

# Subject 125-2-1 PERSONNEL

## Rule 125-2-1-.01 Responsibility

Efficient and effective direction and management of assigned human resources shall be the direct responsibility of Wardens/Superintendents and supervisory personnel at each level. Achievement of assigned objectives within the framework of the law and pertinent directives shall be the criteria by which accomplishment is evaluated.

- (a) Each Manager, Warden/Superintendent or supervisor, at whatever level, shall account for the achievement of all assigned functions at his (her) and related subordinate levels. Certain authority may be delegated, however, assigned responsibility is not delegated.
- (b) Personal honesty and integrity shall be required of all employees.
- (c) Assigned duties and/or functions shall be performed promptly and in accordance with methods and limitations prescribed in the law and current directives consistent with allocated resources.
- (d) All personnel shall be required to adhere to applicable rules, regulations, policies, procedures and directives published by the Department of Corrections and local implementing procedures promulgated in consonance therewith.
- (e) No employee shall be permitted to enter on or remain on duty if under the influence of alcohol, drugs, or any other judgment distorting element.
- (f) Any employee who is contacted with an attempt to exert influence concerning a transfer of an inmate from one correctional institution to another, or the status and assignment of an inmate within a correctional institution must document and report such a contact immediately. Documentation must include the name and address of the person contacting the employee, and the reason for the contact. Contacts which deal with the transfer of an inmate from one institution to another are referred to Offender Administration. Contacts which deal with the status or assignment of an inmate within an institution are referred to the Warden in the respective institution.
- (g) The Commissioner is empowered to authorize the development and administration of a drug screening program to test, for the purpose of detecting illegal drugs, any applicant for employment with the Georgia Department of Corrections; and to randomly or otherwise test current employees.

**Cite as Ga. Comp. R. & Regs. R. 125-2-1-.01**

**Authority:** Ga. Constitution 1983, Art. XI, Sec. I, Par. (b); Ga. L. 1956, pp. 161, 170; 1969, p. 598; 1956, pp. 161, 171; 1956, pp. 161, 174 (O.C.G.A. 42-2-11); Ga. L. 1964, pp. 491, 492; 1970, pp. 318, 319 (O.C.G.A. 42-5-53); Ga. L. 1972, p. 838 (O.C.G.A. 42-10-2); Ga. L. 1972, pp. 1015, 1024; Ga. Constitution 1983, Art. I, Sec. II, Par. III; Ga. L. 1975, p. 1218 (O.C.G.A. 42-5-12).

**History.** Rule entitled "Responsibility," filed as Rule 415-2-1-.01 on November 14, 1984, effective December 4,

1984, renumbered as Rule [125-2-1-.01](#). Filed June 28, 1985; effective July 20, 1985, as specified by the Agency.  
**Amended:** F. Dec. 14, 1990; eff. Jan. 3, 1991.

## **Rule 125-2-1-.02 Employment**

Except for those positions exempted in accordance with law, applicants for employment with the Department of Corrections shall be required to meet the current criteria for the particular position as established under the provisions of the State Personnel Administration.

- (a) No applicant who has been convicted by any state or by federal government, of any crime, the punishment for which could have been imprisonment in a federal or state prison or institution or who has been convicted of sufficient misdemeanors to establish a pattern of disregard for the law is eligible for employment in a position that would require police powers; provided this subparagraph (a) shall not apply to violation of traffic laws and cases involving the operation of motor vehicles when the applicant has received a pardon.
- (b) Applicants previously convicted of a misdemeanor who are former inmates, parolees, former parolees, probationers or former probationers being considered for employment by an institution under the jurisdiction of the State Board of Corrections must first be individually approved by the Commissioner of the Department of Corrections.
- (c) Applicants previously convicted of a felony being considered for employment by the Department of Corrections under the jurisdiction of the State Board of Corrections must first be individually approved by the Commissioner of the Department of Corrections and then submitted to the State Board of Corrections for their review and approval.
- (d) All state employees and all County Wardens, Deputy Wardens and Superintendents shall be subject to a security investigation which will, as a minimum, include a fingerprint check with state and federal agencies and verification of personal data and claimed education and employment experience. Falsification or withholding of pertinent data shall be considered cause for denial of employment or dismissal and may result in prosecution.
  - 1. No county governing authority shall hire, in an acting capacity, for the positions of County Wardens, Deputy Wardens and Superintendents without first performing a criminal background check and credit check on the applicant. These checks will be performed by the Georgia Department of Corrections if so requested by the county governing authority. The reports shall be submitted to the Board of Corrections for review and approval prior to extending any applicant an offer of employment in an acting capacity.
- (e) All County Wardens/Superintendents and Business/Records Managers must have diplomas attesting to their having been graduated from a recognized high school or possess a General Education Development (GED) certificate testifying to their having achieved high school graduation equivalency.

1. Subject to the provisions in (d)1. above, employees selected by a county governing authority to act as warden or deputy warden in a county correctional institution can only be in an acting capacity for a period not to exceed 4 calendar months from the date hired in the acting capacity unless otherwise approved by the Board of Corrections.
- (f) Appointments to the positions of Warden/Superintendents and Deputy Wardens/Superintendents of State Prisons/Centers shall require the approval of the Commissioner of the Department of Corrections.
- (g) The Warden/Superintendent and Deputy Warden of a County Institution shall be appointed by the County governing authority, subject to the approval of the State Board of Corrections and shall serve at the pleasure of the County governing authority, and the State Board of Corrections. The administration of county correctional institutions shall, at a minimum, include a Warden, Deputy Warden, and Business Manager. The following criteria for appointment shall apply:
1. At least thirty (30) days in advance of the appropriate meeting date for the State Board of Corrections, the County governing authority shall submit to the Commissioner of the Department of Corrections a request that a designated applicant be considered for approval as the County Warden/Superintendent and/or Deputy Warden.
  2. The County governing authorities shall attach to their request a detailed resume and an executed APPLICANT fingerprint card concerning the applicant.
  3. On completion of a security investigation, the Commissioner of the Department of Corrections will submit the application, the County recommendation, and his recommendation to the Board of Corrections for consideration at their next regular meeting.
  4. The County Commissioners concerned and the applicant will be notified of the results of the Board action.
- (h) Employees at State Prison/Center shall meet all State Personnel Administration requirements relative to the particular job to which appointed. Except for County Wardens/Superintendents as covered above, state employment criteria, although not mandatory, should be used as a guide in the hiring of County Correctional Institution employees.
- (i) Each candidate for employment shall be required to undergo a medical (complete physical) examination and meet those minimum physical standards which are consistent with the requirements of the position sought.
- (j) Candidates shall be selected and offered employment solely on the basis of their individual merit and capacity to perform the designated job in accordance with all state

and federal laws concerning discrimination with regard to race, color, religion, national origin, sex, handicap or age, except where such affects their ability to perform assigned duties.

**Cite as Ga. Comp. R. & Regs. R. 125-2-1-.02**

**Authority:** Ga. Constitution 1983, Art. XI, Sec. I, O.C.G.A. Secs. 35-8-88, [42-2-1](#), [42-2-4](#), [42-2-11](#), [42-5-53](#), [42-5-55](#), [42-10-2](#), [42-19-21](#), [45-9-81](#).

**History.** Rule entitled "Employment" adopted as R. 415-2-1-.02. F. Nov. 14, 1984; eff. Dec. 4, 1984. R. renumbered as R. [125-2-1-.02](#). F. June 28, 1985; eff. July 20, 1985, as specified by the Agency.

**Amended:** F. Oct. 23, 1990; eff. Nov. 12, 1990.

**Amended:** F. Dec. 10, 1992; eff. Dec. 30, 1992.

**Amended:** F. Nov. 22, 1995; eff. Dec. 12, 1995.

**Amended:** F. Nov. 6, 1998; eff. Nov. 26, 1998.

**Amended:** F. Dec. 3, 1999; eff. Dec. 23, 1999.

**Amended:** F. June 10, 2002; eff. June 30, 2002.

**Amended:** F. Oct. 1, 2009; eff. Oct. 21, 2009.

## **Rule 125-2-1-.03 Bonds**

All Wardens of county correctional institutions will be bonded in the amount of \$75,000.00, all deputy wardens in the amount of \$50,000.00, and all persons acting as business managers in amount of \$25,000.00.

**Cite as Ga. Comp. R. & Regs. R. 125-2-1-.03**

**Authority:** Ga. Constitution 1983, Art. XI, Sec. I, Par. (b); Ga. L. 1956, pp. 161, 170; 1969, p. 598; 1956, pp. 161, 171; 1956, pp. 161, 174 (O.C.G.A. 42-2-11); Ga. L. 1964, pp. 491, 492; 1970, pp. 318, 319 (O.C.G.A. 42-5-53); Ga. L. 1972, p. 838 (O.C.G.A. 42-10-2); Ga. L. 1956, pp. 161, 196 (O.C.G.A. 42-2-11); Ga. L. 1957, pp. 477, 481 (O.C.G.A. 42-2-4); Ga. L. 1985, p. 283 (O.C.G.A. 42-2-1).

**History.** Rule entitled "Bonds", filed as Rule 415-2-1-.03 on November 14, 1984; effective December 4, 1984, renumbered as [125-2-1-.03](#). Filed June 28, 1985; effective July 20, 1985, as specified by the Agency.

**Amended:** F. Oct. 23, 1990; eff. Nov. 12, 1990.

## **Rule 125-2-1-.04 Identification**

Each state employee of the Department of Corrections shall be issued and required to carry on his (her) person an identification card authorized by the Commissioner of Department of Corrections.

**Cite as Ga. Comp. R. & Regs. R. 125-2-1-.04**

**Authority:** Ga. Constitution 1983, Art. XI, Sec. I, Par. (b); O.C.G.A. Secs. [42-2-4](#), [42-2-11](#), [42-5-53](#), [42-5-55](#), [42-10-2](#).

**History.** Rule entitled "Identification," f. as Rule 415-2-1-.04 on Nov. 14, 1984; eff. Dec. 4, 1984, renumbered as Rule [125-2-1-.04](#). F. June 28, 1985, eff. July 20, 1985, as specified by the Agency.

**Amended:** F. Nov. 6, 1998; eff. Nov. 26, 1998.



## **Rule 125-2-1-.05 Uniforms**

Correctional officers and designated security personnel shall be provided uniforms and insignia as prescribed by the State Board of Corrections. Uniforms and accouterments shall be worn when and as prescribed in current Department of Corrections directives. Uniforms for officers in County correctional institutions will be those authorized by the local governing authority. All uniforms and accouterments shall be surrendered by department state employees.

**Cite as Ga. Comp. R. & Regs. R. 125-2-1-.05**

**Authority:** Ga. Constitution 1983, Art. XI, Sec. I, Par. (b); Ga. L. 1956, pp. 161, 170; 1969, p. 598; 1956, pp. 161, 171; 1956, pp. 161, 174 (O.C.G.A. 42-2-11); Ga. L. 1964, pp. 491, 492; 1970, pp. 318, 319 (O.C.G.A. 42-5-53); Ga. L. 1972, p. 838 (O.C.G.A. 42-10-2);

**History.** Rule entitled "Uniforms," filed as Rule 415-2-1-.05 on November 14, 1984; effective December 4, 1984, renumbered as Rule [125-2-1-.05](#). Filed June 28, 1985; effective July 20, 1985, as specified by the Agency.

## **Rule 125-2-1-.06 Training**

- (1) Employees of the Department of Corrections shall be required to participate in applicable training programs designed to foster and improve individual competence, increase operational effectiveness, and achieve established correction goals.
  - (a) Wardens/Superintendents and Deputy Wardens/Superintendents will be encouraged to participate in scheduled Department of Corrections training programs and/or other training courses designated by the Department of Corrections to improve their management and operational skills.
  - (b) All new Correctional Officers shall be required sixty (60) days following employment to enter the Basic Correctional Officer Training Course conducted by or under the auspices of the Department of Corrections.
  - (c) Other departmental personnel shall be required to complete applicable specialized training programs, such as Fire Safety, Food Service, Records Management, Counseling, etc., as scheduled and conducted by or under the auspices of the Department of Corrections.
  - (d) All state institutions that do not have a Tactical Squad shall maintain a Correctional Emergency Response Team. Correctional Emergency Response Teams members shall be required to successfully complete specialized riot and disturbance control training and periodic refresher training in these skills. Such training shall be approved and coordinated by the Department of Corrections Staff Training Section. Institutions having previously organized tactical squads will be exempt from this rule.
  - (e) Selected personnel shall be required to undergo specified training as designated by the Commissioner of the Department of Corrections from time to time.

- (f) Employees shall be encouraged to broaden their understanding of existing and proposed offender rehabilitation programs and methods through use of the institutional library resources and other educational facilities.
- (2) All employees of the Department of Corrections and employees of County Correctional Institutions who are authorized to exercise power of arrest shall successfully complete the program of required training mandated by the Georgia Peace Officer Standards and Training Council and any required annual in-service training. Any employee authorized to carry firearms shall re-qualify biennially with all types of firearms authorized and assigned. Only those employees who are authorized to carry a weapon will be required to complete such biennial re-qualification. Employees who may be required to use other control items such as tear gas, riot batons, and other control weapons, shall be appropriately familiarized with their use.
- (a) Certification of Correctional Officers.
    - 1. Within sixty (60) days of initial employment, a correctional officer must be entered in the Basic Correctional Officer Training Course.
    - 2. The Basic Correctional Officer Training course shall, at a minimum, meet the requirements established by the Georgia Peace Officer Standards and Training Council and shall be conducted by the Georgia Corrections Academy.
    - 3. The Director of the Training Academy or his successor shall submit verification to the Director of Personnel in the Department of Corrections that the state employee has met the training requirements mandated by the Georgia Peace Officer Standards and Training Act.
    - 4. The Director of Training shall submit verification to the Warden of the respective county correctional institution that the county employee has met the training requirements mandated by the Georgia Peace Officer Standards and Training Act.
    - 5. A correctional officer who fails to complete satisfactorily the basic training course shall be dismissed.
    - 6. A correctional officer who has not successfully completed the basic training course shall not be assigned to any post involving direct contact with inmates, except to receive on-the-job training supervised by a trained employee. Neither shall a correctional officer who has not successfully completed the basic training course be assigned any duties which require the exercise of police officer power, including but not limited to exercising the power of arrest.

7. An employee who has not been certified by the Director of Training as having qualified with firearms shall not be issued a firearm or authorized to carry one by the Department.
  8. Any applicant who has a domestic violence conviction may not be hired as a sworn officer requiring Peace Officer Standards and Training (P.O.S.T.) certification. Any current P.O.S.T.-certified employee who is convicted of domestic violence may not possess any firearms or ammunition and may be subject to disciplinary action to include termination.
- (b) Certification of Probation Officers.
1. Probation Officers must complete the Basic Probation Officer Training course within (12) twelve months of date of hire.
  2. The Basic Probation Officer Training course shall at a minimum, meet the requirements established by the Georgia Peace Officer Standards and Training Council and shall be conducted by the Georgia Corrections Academy.
  3. The Director of Training shall submit verification to the Director of personnel in the Department of Corrections that the state employee has met the training requirements mandated by the Georgia Peace Officer Standards and Training Act.
  4. An employee who has not successfully completed the basic training course shall not be assigned any duties which require the exercise of police officer powers, including but not limited to exercising the power of arrest.
  5. A probation officer must successfully complete the Department firearms training course and have authorization in writing from the Division Director prior to carrying a weapon in the performance of duties.
  6. A list of probation officers and surveillance officers certified to carry firearms shall be maintained and provided to the Georgia Peace Officer Standards and Training Council. (3) Department personnel who instruct in courses mandated by the Georgia Peace Officer Standards and Training Council shall be certified by the Council. Department personnel who instruct in courses conducted by the Department of Corrections on a regular basis shall be certified as having successfully completed a department approved instructor training program.

Cite as Ga. Comp. R. & Regs. R. 125-2-1-.06

Authority: Ga. Constitution 1983, Art. XI, Sec. I, Par. (b); O.C.G.A. Secs. [35-8-2](#), [42-2-11](#), [42-5-53](#), [42-5-55](#),

**42-10-2.**

**History.** Rule entitled "Training", f. as Rule 415-2-1-.06 on Nov. 14, 1984; eff. Dec. 4, 1984, renumbered as Rule 125-2-1-.06. F. June 28, 1985, eff. July 20, 1985, as specified by the Agency.

**Amended:** F. Jan. 2, 1990; eff. Jan. 22, 1990.

**Amended:** F. Jan. 9, 1997; eff. Jan. 29, 1997.

**Amended:** F. Nov. 6, 1998; eff. Nov. 26, 1998.

**Amended:** F. July 23, 2001; eff. Aug. 12, 2001.

## **Rule 125-2-1-.07 Performance of Duty**

Managers shall identify to each employee or each category of employees the minimum acceptable standards of all such employees. Each employee shall be required to meet or exceed these standards. In addition to job performance, the following common standards shall be included for all personnel:

- (a) Conduct and comportment shall be consistent at all times with that expected of law enforcement personnel.
- (b) Custody of inmates and security of the institution shall be the principal responsibilities of all institutional personnel.
- (c) All employees are specifically prohibited from giving, receiving, selling, buying, trading, bartering, or exchanging anything of value with any inmate. Any purchase of a bona fide inmate product, such as a hobby craft item, by an employee shall be consummated through the institutional Business Office. Supervisory personnel at all levels bear the responsibility for assuring compliance.
- (d) Employees shall not, without the express written approval of the appropriate Division Director, maintain personal association with, engage in personal business or trade with, or engage in non job-related correspondence with, or correspond in behalf of or for, known inmates, active probationers, or parolees. A copy of the approved application shall be forwarded to the Department Personnel Officer and approval shall be made a part of the employee personnel file. Relatives of inmates shall follow this same procedure.
- (e) It shall be unlawful for any person to obtain or procure for or give to an inmate a gun, pistol, or any other weapon, or intoxicating liquor or amphetamines, or biphetamines, or any other hallucinogenic drugs, or other drugs, regardless of the amount, or any other article or item, without the knowledge and consent of the Warden or his Deputy Warden in charge. Any person who knowingly violates the provisions of this Section shall be guilty of a felony and upon conviction thereof, shall be imprisoned for not less than one, not more then five (5) years.
- (f) An employee must obtain written approval from the Commissioners, or his duly designated agent, before soliciting for or accepting contributions of equipment or of funds to be used in the enforcement of the laws or regulations of the State or any political subdivisions thereof.

**Cite as Ga. Comp. R. & Regs. R. 125-2-1-.07**

**Authority:** Ga. Constitution 1983, Art. XI, Sec. I, Par. (b); (O.C.G.A. 42-2-11; 42-5-53; 42-10-2; 42-5-15; 5-18 and 19); Ga. L. 1987, p. 906 (O.C.G.A. 16-10-3 (a), (b), (c)).

**History.** Rule entitled "Performance of Duty," filed as Rule 415-2-1-.07 on November 14, 1984; effective December 4, renumbered as [125-2-1-.07](#). Filed June 28, 1985; effective July 20, 1985, as specified by the Agency.

**Amended:** Filed September 6, 1988; effective September 26, 1988.

**Amended:** F. Nov. 6, 1998; eff. Nov. 26, 1998.

## **Rule 125-2-1-.08 Personnel Actions**

- (1) Performance evaluations of all employees shall be prepared and submitted in accordance with Georgia Merit System requirements and established departmental policy and procedures.
- (2) The Commissioner of Corrections shall have the authority to establish an employee awards program designed to recognize and reward commendable service rendered by employees who are under the jurisdiction of the Department of Corrections.
- (3) All personnel shall be required to maintain the essential physical, mental and other capabilities to perform assigned functions satisfactorily. Any employee who does not maintain such capabilities shall be separated from active service. The Commissioner may require a determination of physical and/or mental competence to be made by examination and he may use departmental medical and/or other appropriate resources as available for this purpose.
- (4) Except for County Wardens/Superintendents state employment criteria, although not mandatory, should be used as a guide in the retirement and separation of County Correctional Institution employees.
- (5) The Department of Corrections shall establish and operate a formal grievance procedure through which all affected personnel may air their grievances with the assurance that such complaints will be brought to the attention of departmental officials for resolution.

**Cite as Ga. Comp. R. & Regs. R. 125-2-1-.08**

**Authority:** Ga. Constitution 1983, Art. XI, Sec. I, Par. (b); (O.C.G.A. 42-2-11; 42-5-53; 42-10-2; 42-19-21; 45-9-81); Ga. Law 1984, p. 1487.

**History.** Rule entitled "Personnel Actions," filed as Rule 415-2-1-.08 on November 14, 1984; effective December 4, 1984, renumbered as [125-2-1-.08](#). Filed June 28, 1985; effective July 20, 1985, as specified by the Agency.

**Amended:** Paragraphs (3) and (4) have been repealed and Emergency Rule 125-2-1-0.2 containing paragraphs 125-2-1-0.2-.08(3) and (4) adopted. Filed March 9, 1987; effective March 5, 1987, the date of adoption, to remain in effect for a period of 120 days or until the effective date of permanent paragraphs superseding this Emergency Rule, as specified by the Agency.

**Amended:** Emergency Rule 125-2-1-0.2 repealed and permanent paragraphs (3) and (4) adopted. Filed May 22, 1987; effective June 11, 1987.

**Repealed:** New paragraph (4) of same title adopted. F. Mar. 7, 1989; eff. Mar. 27, 1989.

**Amended:** F. Nov. 6, 1998; eff. Nov. 26, 1998.

## **Rule 125-2-1-.09 Police Officer Powers**

- (1) The Commissioner may confer all powers of a police officer of this State, including, but not limited to, the power to make summary arrests for violations of any of the criminal laws in this State and the power to carry weapons, upon persons in his employment and wardens of county correctional institutions as he deems necessary, provided that individuals so designated meet the requirements specified by all applicable laws.
- (2) Arrests may be made incident to Departmental duties and under the following circumstances:
  - (a) Inmate, Probationer, or Parolee committing a felony not limited to commission of said crime on property under the jurisdiction of the Department.
  - (b) Department Personnel committing a misdemeanor or felony on premises which are under the jurisdiction of the Department.
  - (c) Civilian committing a misdemeanor or felony on premises under the jurisdiction of the Department.
  - (d) Inmate, Probationer, Parolee, Department Personnel, or Civilian committing a crime outside the Department but involving an offender within the Department's jurisdiction, such as:
    1. Aiding an escape;
    2. Hindering apprehension of a fugitive;
    3. Obstructing officer.
  - (e) Probationers committing offenses for which arrest is authorized under applicable laws.
  - (f) Emergency situations in which citizen's arrest by a police officer is permitted by law.
- (3) Correctional Officers (Correctional Officers through Chief of Security, Transfer Officers, and Canine Handlers) are not authorized by Department regulations to carry weapons off-duty unless specifically and individually authorized in writing by their Warden/ Superintendent according to established procedure.
- (4) The Department of Corrections is authorized to assist local and state law enforcement officers in the apprehension of persons convicted of or suspected of committing a crime by making canine handlers and canines trained in such apprehension available to such law enforcement officers.

- (5) All statutes governing the authority, protection, and benefits of law enforcement officers apply to such personnel in this Department.
- (6) In the event of the implementation of the Georgia Natural Disaster Operations Plan or the Georgia Nuclear Emergency Operations Plan by the Governor, those personnel having police officer powers are authorized to perform those law and order police functions assigned by these plans and detailed in Department of Corrections Standard Operating Procedures for these plans as now formulated or hereafter amended.
- (7) Wardens and Superintendents shall have authority to deputize any person in their employ. Wardens, Superintendents and their Deputies are legally constituted arresting officers, with or without warrants, for the purpose of arresting persons violating O.C.G.A. Code Sections [42-5-14](#) through [42-5-18](#).
- (8) The Commissioner of the Department of Corrections or his designee may authorize certain persons in his employment to assist law enforcement officers or correctional officers of local governments in preserving order and peace when so requested by such local authorities.

**Cite as Ga. Comp. R. & Regs. R. 125-2-1-.09**

**Authority:** Ga. Constitution 1983, Art. XI, Sec. I, Par. (b); Ga. L. 1986, p. 1170, (O.C.G.A. 42-5-34 and 42-5-35); Ga. L. 1987, p. 454 (O.C.G.A. 42-5-35).

**History.** Rule entitled "Police Officer Powers," filed as Rule 415-2-1-.09 on November 14, 1984; effective December 4, 1984, renumbered as Rule [125-2-1-.09](#). Filed June 28, 1985; effective July 20, 1985, as specified by the Agency.

**Amended:** Filed September 6, 1988; effective September 26, 1988.

**Amended:** F. Nov. 6, 1998; eff. Nov. 26, 1998.

## **[Rule 125-2-1-.10 Indemnification](#)**

Personnel in the Department of Corrections who are covered by the Indemnification Act are those (1) whose principal duties relate to the supervision and incarceration of persons accused or convicted of the violation of the criminal laws of Georgia; (2) who serve as firemen; (3) who serve as emergency medical technicians; (4) and/or any probation supervisor who is required to be certified under the Georgia Peace Officer Standards and Training Act.

**Cite as Ga. Comp. R. & Regs. R. 125-2-1-.10**

**Authority:** Ga. Constitution 1983, Art. XI, Sec. I, Par. (b); Ga. L. 1987, p. 822, (O.C.G.A. 45-9-80 through 45-9-86).

**History.** Rule entitled "Indemnification," filed as Rule 415-2-1-.10 on November 14, 1984; effective December 4, 1984, renumbered as Rule [125-2-1-.10](#). Filed June 28, 1985; effective July 20, 1985, as specified by the Agency.

**Amended:** Rule repealed and a new Rule of same title adopted. Filed September 6, 1988; effective September 26, 1988.

## **[Rule 125-2-1-.11 Reimbursement of Personnel for Loss](#)**

- (1) The Department of Corrections will compensate an employee who is assaulted by an inmate or who is involved in the use of force on an inmate and receives damages to an item or items of wearing apparel as a result of the inmate's action. Such compensation shall be for the employee's loss in the amount of either the repair cost or the replacement value or the cost of the item and wearing apparel, whichever is less.
- (2) Wearing apparel shall be defined as: clothing, functional watches, eyeglasses, hearing aids, and other prosthetic appliances. Items of jewelry are explicitly excluded.

**Cite as Ga. Comp. R. & Regs. R. 125-2-1-.11**

**Authority:** Ga. Constitution 1983, Art. XI, Sec. I, O.C.G.A. Secs. [42-2-11](#), [42-5-37.1](#).

**History.** Rule entitled "Reimbursement of Personnel for Loss" adopted as R. 415-2-1-.11. F. Nov. 14, 1984; eff. Dec. 4, 1984. R. renumbered as R. [125-2-1-.11](#). F. June 28, 1985; eff. July 20, 1985, as specified by the Agency.

## **Rule 125-2-1-.12 Administrative and Employee Housing**

In recognition of the security, emergency, and continuous operational needs of the Department, and with particular recognition of the need for a capability of immediate reaction to emergency situations, the Georgia Board of Corrections makes available housing on the premises of various institutions and prisons for certain employees of the Department who are considered essential to the operation of the Department.

- (a) Each warden/superintendent shall be required, as a condition of employment, to reside in housing on the prison grounds where such housing is available unless granted an exemption by the Commissioner.
  1. In the event such housing is not be available, the Department shall lease adequate housing as close to the Warden's assigned prison as possible.
  2. A warden may request an exemption from the condition of employment of having to reside in housing on the prison grounds. Such requests shall be in writing, shall state the reasons why the warden is seeking the exemption, and shall be forwarded to the Commissioner for review and possible approval. If the Commissioner concludes that there is adequate justification for the warden to reside elsewhere the Commissioner may grant the request. If the Commissioner grants a warden an exemption from the condition of employment of having to reside in housing on the prison grounds then the Commissioner shall require the deputy warden for security or the chief of security to reside in the housing on the prison grounds as a condition of employment for the deputy warden for security or the chief of security. Wardens who receive such an exemption shall be responsible for their own living expenses and shall not receive any financial assistance from the Department for their living arrangements.



3. The occupation of such housing by the warden, deputy warden for security, or the chief of security, shall be pursuant to rental agreements whereby it will be acknowledged by the warden, deputy warden for security, or the chief of security, that: the occupancy of administrative housing is a condition of employment and is not provided as an additional benefit for the performance of his job; the occupancy of the housing does not create an entitlement arising out of the employee's job; each employee shall agree to abide by the terms, conditions and provisions of the agreement as a condition of his employment; and will acknowledge that the agreement creates no estate or other interest in the real property occupied.
  4. The Commissioner of the Department of Corrections or the Commissioner's designee shall be authorized to enter into and execute such agreements on behalf of the Department.
- (b) The assignment of other employees to housing on the premises of various institutions and prisons shall be made by the warden/superintendent, with the approval of the Commissioner or the Commissioner's designee, on the basis of criteria approved by the Commissioner. Such criteria shall give priority to those employees designated by the warden/superintendent as first necessary, or desirable occupants capable of responding to emergency situations and then in accordance with other necessary operational needs of the prison.
1. The occupation of such housing shall be pursuant to rental agreements whereby it will be acknowledged by the employee that: the occupancy of the housing does not create an entitlement arising out of the employee's job; each employee shall agree to abide by the terms, conditions and provisions of the agreement including the timely payment of any monies due; and will acknowledge that the agreement creates no estate or other interest in the real property occupied.
  2. The Commissioner of the Department of Corrections or the Commissioner's designee shall be authorized to enter into or execute such agreements on behalf of the Department.
- (c) The Commissioner of the Department of Corrections shall establish rental and utility fees to be charged for employee housing. If the rental and utility fees to be charged for employee housing are set at less than fair market value the Department of Corrections shall make appropriate income tax payroll deductions for employees who reside in such housing.

**Cite as Ga. Comp. R. & Regs. R. 125-2-1-.12**

**Authority:** Ga. Constitution 1983, Art. XI, Sec. I, O.C.G.A. Secs. [42-2-11](#), [42-5-1](#), [42-5-53](#), [42-5-55](#), [42-10-2](#), [42-10-23](#).

**History.** . Original Rule entitled "Administrative and Employee Housing" adopted. F. Feb. 17, 1986; eff. Mar. 9, 1986.

**Amended:** F. May 21, 1992; eff. June 10, 1992.

**Amended:** F. Nov. 6, 1998; eff. Nov. 26, 1998.

**Amended:** F. June 10, 2002; eff. June 30, 2002.

**Amended:** F. July 6, 2006; eff. July 26, 2006.

## **Rule 125-2-1-.13 Employee Benefit Funds**

Each prison, center, office, or unit operating under the jurisdiction of the Board of Corrections may establish and maintain an employee benefit fund. All employee benefit funds shall be established and maintained in accordance with standard operating procedures to be developed by the Commissioner and subject to annual audits by the Department's Fiscal Audit Section. All expenditures from an employee benefit fund must be used to purchase goods or services for the benefit of the employees of the prison, center, office, or unit that maintains the employee benefit fund from which expenditures are to be made.

**Cite as Ga. Comp. R. & Regs. R. 125-2-1-.13**

**Authority:** Ga. Constitution 1982, Art. XI, Sec. 1, O.C.G.A. Secs. [42-2-11](#), [42-5-55](#).

**History.** Original Rule entitled "Employee Benefit Funds" adopted. F. May 6, 2005; eff. May 26, 2005.

**2010 Georgia Code**  
**TITLE 45 - PUBLIC OFFICERS AND**  
**EMPLOYEES**  
**CHAPTER 10 - CODES OF ETHICS AND**  
**CONFLICTS OF INTEREST**  
**ARTICLE 2 - CONFLICTS OF INTEREST**  
**PART 1 - GENERAL PROVISIONS**  
**§ 45-10-25 - Exceptions to prohibitions on**  
**transactions with state agencies**

O.C.G.A. 45-10-25 (2010)

45-10-25. Exceptions to prohibitions on transactions with state agencies

(a) The provisions of Code Sections 45-10-22, 45-10-23, and 45-10-24 shall not apply to:

(1) Any transaction involving the sale of real property to the state or any agency through eminent domain;

(2) Any transaction involving the purchase by the public official or employee of any health or life insurance, disability benefits, or retirement or pension benefits offered as a part of a public official's or employee's service or employment;

(3) Any transaction between a public official or employee or any business in which such public official or employee or any member of his family has a substantial interest and any person, the cost of which transaction is paid directly or indirectly by state funds, if the property or services involved in the transaction are for the private use and benefit of the person to whom such property or services are sold or rendered and such person does not subsequently sell or lease such property or services to an agency;

(4) Any transaction between a public official or employee or any business in which such public official or employee or any member of his family has a substantial interest and the state or any agency thereof under which it is agreed that the public official or employee or any business in which such public official or employee or any member of his family has a substantial interest is to provide Medicaid and related services and benefits or medicare and related services and benefits, or both, and under which it is agreed that the state or any agency thereof is to reimburse or pay for the services and benefits so provided;

(5) Any transaction between a public official or employee or any business in which such public official or employee or any member of his family has a substantial interest and the state or any agency thereof under which the public official or employee or any business in which such public official or employee or any member of his family has a substantial interest directly or indirectly receives reimbursement or payment from the state or any agency thereof for providing Medicaid and related services and benefits or medicare and related services and benefits, or both, and under which the state or any agency thereof reimburses or pays the public official or employee or any business in which such public official or employee or any member of his family has a substantial interest for providing Medicaid and related services and benefits or medicare and related services and benefits, or both;

(6) Any transaction between a public official or employee or any business in which such public official or employee or any member of his family has a substantial interest and any state contractor if there was no agreement prior to the transaction that the public official or employee would assist, other than by providing goods or services as required under the terms of the agreement underlying the transaction, the contractor in obtaining, retaining, or fulfilling the state contract and if the public official or employee does not assist, other than by providing goods or services as required under the terms of the agreement underlying the transaction, the contractor in obtaining, retaining, or fulfilling the state contract;

(7) Any transaction involving part-time employment by the Georgia Building Authority or the Department of Natural Resources of custodial and cleaning workers or cooks who work for other agencies;

(8) Any transaction involving part-time employment by any agency of a chaplain; firefighter; any person holding a doctoral or master's degree from an accredited college or university; a licensed physician, dentist, or psychologist; a registered nurse or licensed practical nurse; or a certified oral or manual interpreter for deaf persons, if employed by the state, if:

(A) The chief executive officer of the department, agency, commission, or authority which desires to obtain the services of a chaplain, firefighter, any person holding a doctoral or master's degree from an accredited college or university, a licensed physician, dentist, or psychologist, a registered nurse or licensed practical nurse, or a certified oral or manual interpreter for deaf persons presently employed by another department, agency, commission, or authority of the state shall certify in writing the need for the services and set forth why the best interest of the state will be served by obtaining the part-time services of such a person in lieu of obtaining such services from a person not presently employed by the state;

(B) The chief executive officer of the department, agency, commission, or authority presently employing the chaplain; firefighter; any person holding a doctoral or master's degree from an accredited college or university; the licensed physician, dentist, or psychologist; the registered nurse or licensed practical nurse; or the certified oral or manual interpreter for deaf persons shall certify in writing that the person whose services are desired is available to perform such services, that the performance of such services will not detract or have a detrimental effect on the performance of said person's employment and, where appropriate, that the part-time employment of such person by the department, agency,

commission, or authority desirous of obtaining the services will be in the best interest of the state; and

(C) The departments, agencies, commissions, or authorities, after having complied with subparagraphs (A) and (B) of this paragraph shall, by agreement, establish the procedures under which the employee shall perform the additional services. The agreement shall specify the means of employment either as a part-time employee or as a consultant, the compensation, and other pertinent details and conditions of the employment relationship. The agreement shall be terminable at any time by either of the departments, agencies, commissions, or authorities;

(9) Any transaction involving the Public Service Commission's employment of any state employee who has any particular expertise or knowledge which may be of assistance to the Georgia Public Service Commission or the consumers' utility counsel division of the office of the administrator created in Code Section 10-1-395 in fulfilling its duties and responsibilities under Title 46. The terms and conditions of such employment shall be solely determined by the Georgia Public Service Commission; but, in any event, the employee may not provide services to the Georgia Public Service Commission during such times as he or she is regularly scheduled to be at his or her primary place of employment unless the employee has received permission to do so from his or her regular employer or unless the employee is on annual leave or leave without pay;

(10) Any transaction involving an emergency purchase by any agency which must be made to protect the health, safety, or welfare of the citizens or property of Georgia;

(11) Any transaction involving property or a service for which the only source of supply in the State of Georgia is from the public official or employee or a business in which such public official or employee or member of his family has a substantial interest;

(12) Any transaction occurring prior to March 1, 1983;

(13) Any transaction occurring prior to qualifying to run for elective office, accepting appointment to public office, or accepting public employment and any transaction occurring after qualifying to run for elective office, accepting appointment to public office, or accepting public employment if the legal obligation and duty to undertake such transaction arose prior to qualifying to run for elective office, accepting appointment to public office, or accepting public employment;

(14) Any transaction whereby a public official or employee or any business in which such public official or employee or any member of his family has a substantial interest collects a fee or commission as compensation for performing a service for the state when such performance is required or authorized by law, including but not limited to the collection of state sales tax, the collection of license fees, and the collection of excise taxes;

(15) Any transaction whereby an appointed public official or employee, under the procedures specified in this paragraph, sells to a unit of the University System of Georgia services as a teacher or instructor of an evening or night course or program, if:

(A) The chief executive officer of the unit of the University System of Georgia shall certify in writing the need for the services and set forth why the best interest of the state will be served by obtaining the services of such state official or employee in lieu of obtaining such services from a person not presently employed by the state;

(B) The chief executive officer of the department, agency, commission, or authority presently employing the state official or employee shall certify in writing that the person whose services are desired is available to perform such services, that the performance of such services will not detract or have a detrimental effect on the performance of said person's full-time employment, and, where appropriate, that the employment of such person by the unit of the University System of Georgia will be in the best interest of the state; and

(C) The departments, agencies, commissions, authorities, and units, after having complied with subparagraphs (A) and (B) of this paragraph, shall, by agreement, establish the procedures under which the official or employee shall perform the additional services. The agreement shall specify the means of employment, the compensation, and other pertinent details and conditions of the employment relationship. The agreement shall be terminable at any time by any of the departments, agencies, commissions, authorities, or units; or

(16) Any transaction involving the lease for the purpose of small business and economic development of laboratory and research facilities owned by the Board of Regents of the University System of Georgia during times when the laboratory and research facilities are not in use.

(b) Authority is given for a public official or employee or any business in which such public official or employee or any member of his family has a substantial interest and the state or any agency thereof to engage in any transaction exempted from the coverage of this part by subsection (a) of this Code section and subsection (b) of Code Section 45-10-24 and any transaction necessary and proper to such transaction.

# U.S. Code Chapter 81 - DRUG-FREE WORKPLACE

(a) Definitions.—In this chapter:

(1) Contractor.—

The term “contractor” means the department, division, or other unit of a person responsible for the performance under the contract.

(2) Controlled substance.—

The term “controlled substance” means a controlled substance in schedules I through V of section 202 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 ([21 U.S.C. 812](#)).

(3) Conviction.—

The term “conviction” means a finding of guilt (including a plea of nolo contendere), an imposition of sentence, or both, by a judicial body charged with the responsibility to determine violations of Federal or State criminal drug statutes.

(4) Criminal drug statute.—

The term “criminal drug statute” means a criminal statute involving manufacture, distribution, dispensation, use, or possession of a controlled substance.

(5) Drug-free workplace.—The term “drug-free workplace” means a site of an entity—

(A)

for the performance of work done in connection with a specific contract or grant described in section [8102](#) or [8103](#) of this title; and

(B)

at which employees of the entity are prohibited from engaging in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in accordance with the requirements of the Anti-Drug Abuse Act of 1988 ([Public Law 100–690, 102 Stat. 4181](#)).

(6) Employee.—

The term “employee” means the employee of a contractor or grantee directly engaged in the performance of work pursuant to the contract or grant described in section [8102](#) or [8103](#) of this title.

(7) Federal agency.—

The term “Federal agency” means an agency as defined in [section 552\(f\) of title 5](#).

(8) Grantee.—

The term “grantee” means the department, division, or other unit of a person responsible for the performance under the grant.

(b) Construction.—

This chapter does not require law enforcement agencies to comply with this chapter if the head of the agency determines it would be inappropriate in connection with the agency’s undercover operations.

(a) In General.—

(1) Persons other than individuals.—A person other than an individual shall not be considered a responsible source (as defined in [section 113 of this title](#)) for the purposes of being awarded a contract for the procurement of any property or services of a value greater than the simplified acquisition threshold (as defined in [section 134 of this title](#)) by a Federal agency, other than a contract for the procurement of commercial items (as defined in [section 103 of this title](#)), unless the person agrees to provide a drug-free workplace by—

(A)

publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's workplace and specifying the actions that will be taken against employees for violations of the prohibition;

(B) establishing a drug-free awareness program to inform employees about—

(i)

the dangers of drug abuse in the workplace;

(ii)

the person's policy of maintaining a drug-free workplace;

(iii)

available drug counseling, rehabilitation, and employee assistance programs; and

(iv)

the penalties that may be imposed on employees for drug abuse violations;

(C)

making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by subparagraph (A);

(D) notifying the employee in the statement required by subparagraph (A) that as a condition of employment on the contract the employee will—

(i)

abide by the terms of the statement; and

(ii)

notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than 5 days after the conviction;

(E)

notifying the contracting agency within 10 days after receiving notice under subparagraph (D)(ii) from an employee or otherwise receiving actual notice of a conviction;

(F)

imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is convicted, as required by [section 8104 of this title](#); and

(G)

making a good faith effort to continue to maintain a drug-free workplace through implementation of subparagraphs (A) to (F).

(2) Individuals.—

A Federal agency shall not make a contract with an individual unless the individual agrees not to engage in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in the performance of the contract.

(b) Suspension, Termination, or Debarment of Contractor.—

(1) Grounds for suspension, termination, or debarment.—Payment under a contract awarded by a Federal agency may be suspended and the contract may be terminated, and the contractor or



individual who made the contract with the agency may be suspended or debarred in accordance with the requirements of this section, if the head of the agency determines that—

(A)

the contractor is violating, or has violated, the requirements of subparagraph (A), (B), (C), (D), (E), or (F) of subsection (a)(1); or

(B)

the number of employees of the contractor who have been convicted of violations of criminal drug statutes for violations occurring in the workplace indicates that the contractor has failed to make a good faith effort to provide a drug-free workplace as required by subsection (a).

(2) Conduct of suspension, termination, and debarment proceedings.—

A contracting officer who determines in writing that cause for suspension of payments, termination, or suspension or debarment exists shall initiate an appropriate action, to be conducted by the agency concerned in accordance with the Federal Acquisition Regulation and applicable agency procedures. The Federal Acquisition Regulation shall be revised to include rules for conducting suspension and debarment proceedings under this subsection, including rules providing notice, opportunity to respond in writing or in person, and other procedures as may be necessary to provide a full and fair proceeding to a contractor or individual.

(3) Effect of debarment.—

A contractor or individual debarred by a final decision under this subsection is ineligible for award of a contract by a Federal agency, and for participation in a future procurement by a Federal agency, for a period specified in the decision, not to exceed 5 years.

(a) In General.—

(1) Persons other than individuals.—A person other than an individual shall not receive a grant from a Federal agency unless the person agrees to provide a drug-free workplace by—

(A)

publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violations of the prohibition;

(B) establishing a drug-free awareness program to inform employees about—

(i)

the dangers of drug abuse in the workplace;

(ii)

the grantee's policy of maintaining a drug-free workplace;

(iii)

available drug counseling, rehabilitation, and employee assistance programs; and

(iv)

the penalties that may be imposed on employees for drug abuse violations;

(C)

making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by subparagraph (A);

(D) notifying the employee in the statement required by subparagraph (A) that as a condition of employment in the grant the employee will—

(i)

abide by the terms of the statement; and

(ii)

notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than 5 days after the conviction;

(E)

notifying the granting agency within 10 days after receiving notice under subparagraph (D)(ii) from an employee or otherwise receiving actual notice of a conviction;

(F)

imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is convicted, as required by [section 8104 of this title](#); and

(G)

making a good faith effort to continue to maintain a drug-free workplace through implementation of subparagraphs (A) to (F).

(2) Individuals.—

A Federal agency shall not make a grant to an individual unless the individual agrees not to engage in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in conducting an activity with the grant.

(b) Suspension, Termination, or Debarment of Grantee.—

(1) Grounds for suspension, termination, or debarment.—Payment under a grant awarded by a Federal agency may be suspended and the grant may be terminated, and the grantee may be suspended or debarred, in accordance with the requirements of this section, if the head of the agency or the official designee of the head of the agency determines in writing that—

(A)

the grantee is violating, or has violated, the requirements of subparagraph (A), (B), (C), (D), (E), (F), or (G) of subsection (a)(1); or

(B)

the number of employees of the grantee who have been convicted of violations of criminal drug statutes for violations occurring in the workplace indicates that the grantee has failed to make a good faith effort to provide a drug-free workplace as required by subsection (a)(1).

(2) Conduct of suspension, termination, and debarment proceedings.—

A suspension of payments, termination, or suspension or debarment proceeding subject to this subsection shall be conducted in accordance with applicable law, including Executive Order 12549 or any superseding executive order and any regulations prescribed to implement the law or executive order.

(3) Effect of debarment.—

A grantee debarred by a final decision under this subsection is ineligible for award of a grant by a Federal agency, and for participation in a future grant by a Federal agency, for a period specified in the decision, not to exceed 5 years.

Within 30 days after receiving notice from an employee of a conviction pursuant to section [8102\(a\)\(1\)\(D\)\(ii\)](#) or [8103\(a\)\(1\)\(D\)\(ii\)](#) of this title, a contractor or grantee shall—

(1)

take appropriate personnel action against the employee, up to and including termination; or

(2)

require the employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for those purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

(a)In General.—The head of an agency may waive a suspension of payments, termination of the contract or grant, or suspension or debarment of a contractor or grantee under this chapter with respect to a particular contract or grant if—

(1)  
in the case of a contract, the head of the agency determines under [section 8102\(b\)\(1\) of this title](#), after a final determination is issued under section 8102(b)(1), that suspension of payments, termination of the contract, suspension or debarment of the contractor, or refusal to permit a person to be treated as a responsible source for a contract would severely disrupt the operation of the agency to the detriment of the Federal Government or the general public; or

(2)  
in the case of a grant, the head of the agency determines that suspension of payments, termination of the grant, or suspension or debarment of the grantee would not be in the public interest.

(b)Waiver Authority May Not Be Delegated.—

The authority of the head of an agency under this section to waive a suspension, termination, or debarment shall not be delegated.

Government-wide regulations governing actions under this chapter shall be issued pursuant to division B of subtitle I of this title.

# Rules



## Of The Georgia Crime Information Center Council

October 2007

**Rules  
Of The  
Georgia Crime Information Center Council**

**Chapter 140-1**

**Organization**

Table of Contents

- 140-1-.01 Organization. Amended.
- 140-1-.02 General Definitions. Amended.
- 140-1-.03 Administrative Declaratory Rulings. Amended.
- 140-1-.04 Petition for Adoption of Rules. Amended
- 140-1-.05 Approval and Disciplinary Procedures. Amended.
- 140-1-.06 Contested Cases Governed by Express Statutory Provisions.  
Amended

**140-1-.01 Organization. Amended.**

- (1) There is a Director responsible for development, maintenance and operation of the Georgia Crime Information Center (GCIC).
- (2) There is a Council responsible for providing assistance and guidance. The GCIC Director or designee shall attend all Council meetings and maintain records of the proceedings.
- (3) All legal notices and correspondence regarding administrative proceedings shall be directed to the GCIC Director.
- (4) The GCIC mailing address is P. O. Box 370748, Decatur, Georgia 30037-0748.
- (5) The Georgia Bureau of Investigation (GBI) functions as the State CJIS Systems Agency (CSA) for Georgia per the service agreement between Georgia and the Federal Bureau of Investigation (FBI), CJIS Division.

(6) The GCIC Director provides the Georgia representative to the governing body of the International Justice and Public Safety Information Sharing Network (Nlets) per the service agreement between the GBI and the Executive Director of Nlets.

(7) The GCIC Director serves as the state National Crime Prevention and Privacy Compact officer responsible for administering the compact within the state; ensuring compliance with compact provisions and rules, procedures and standards established by the compact council; and, regulating the in-state use of records received from the FBI or other states party to the compact.

(8) The Rules of the GCIC Council rest on the authority of federal law and rules as well as state law.

Authority: O.C.G.A. §§ 35-3-30, 35-3-31, 35-3-32, 35-3-39.1; 42 U.S.C. 3701, et seq., 42 U.S.C. § 14611-14616, 28 CFR 20, Public Law 92-544. **History.** Original Rule entitled "Organization" filed Feb. 25, 1976, effective Mar. 16, 1976. **Amended:** Rule repealed and a new Rule of the same title adopted. Filed Jan. 7, 1983, effective Feb. 1, 1983 as specified by the Agency. **Amended:** Rule repealed and a new Rule of the same title adopted. Filed Sept. 6, 1984, effective Oct. 8, 1984 as specified by the Agency. **Amended:** Rule repealed and a new Rule of the same title adopted. Filed July 2, 1986, effective July 22, 1986. **Repealed:** New Rule of the same title adopted. Filed Nov. 7, 1990, effective Nov. 27, 1990. **Repealed:** New Rule, same title, adopted. Filed Mar. 4, 1998, effective Mar. 24, 1998. **Amended:** Filed Sept. 5, 2002, effective Sept. 25, 2002. **Amended:** Filed Sept. 25, 2007, effective Oct. 15, 2007.

#### **140-1-.02 General Definitions. Amended.**

(1) All words defined in O.C.G.A. § 35-3-30 have the same meaning for these Rules.

(2) The following definitions apply generally to all Rules of the GCIC Council.

(a) Administration of criminal justice – Activities involving the detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision or rehabilitation of accused persons or criminal offenders. It also includes criminal

identification activities; the collection, storage and dissemination of criminal history record information; and, criminal justice employment.

(b) Criminal justice agency – Courts, a governmental agency, or any subunit thereof that performs the administration of criminal justice pursuant to a statute or executive order and that allocates a substantial part of its annual budget to the administration of criminal justice. State and federal Inspectors General Offices are included.

(c) Criminal justice information – Includes the following classes:

1. Criminal History Record Information (CHRI) – Information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, information, or other formal criminal charges, and any disposition arising there from including acquittal, sentencing, correctional supervision and release. Such term also includes the age and sex of each victim as provided by criminal justice agencies. The term does not include identification information, such as fingerprint records not related to an arrest, to the extent that such information does not indicate involvement of the individual in the criminal justice system

2. Restricted data – CJIS network operational procedures, manuals, forms and data gathering techniques

3. Secret data – Information dealing with those operational and programming elements, which prevent unlawful intrusion into the GCIC/CJIS, the communications network and satellite computer systems handling criminal justice information

4. Sensitive data – Statistical information in the form of reports, lists and documents that may identify a group characteristic. It may apply to a group of persons, articles, vehicles, etc. such as white males or stolen guns.

(d) Criminal Justice Information System (CJIS) – All agencies, procedures, mechanisms, media and forms, as well as the information itself, which are or become involved in the organization, transmission, storage, retrieval and dissemination of information related to reported

offenses, offenders and the subsequent actions related to such events or persons.

(e) Designated representative – The person specifically named to receive CHRI from GCIC on behalf of any private person, business and commercial establishment or authorized public agency eligible to request such information.

(f) Disposition – The result of criminal proceedings including information disclosing that arresting agencies elected not to refer the matter to a prosecutor or that a prosecutor elected not to commence criminal proceedings and disclosing the nature of the termination in proceedings or, information disclosing the reason for such postponement.

(g) FBI CJIS and NCIC – The FBI’s Criminal Justice Information Services Division (CJIS), which includes the National Crime Information Center (NCIC). The terms FBI CJIS and NCIC may be used interchangeably throughout the Rules.

(h) GCIC CJIS Security Policy – The Information Technology (IT) security program established by GCIC in conformance with the FBI CJIS Security Policy, as amended, which governs the operation of computers, access devices, circuits, hubs, routers, firewalls and other components that make up and support a telecommunications network and related CJIS systems used to process, store or transmit criminal justice information guaranteeing the priority, integrity and availability of service needed by the criminal justice community.

(i) Georgia Crime Information Center (GCIC) as created by O.C.G.A. § 35-3-31.

(j) Governmental dispatch center – A non-criminal justice agency established by an act of local government to provide communications support services to local government agencies, including criminal justice agencies.

(k) Hearing – A right of GCIC and parties affected by any GCIC action to present formally or informally, relevant information, testimony,



documents, evidence and arguments as to why specified actions should or should not be taken.

(l) Hot files – Computerized files maintained by the FBI’s CJIS division. These files contain accurate and timely documents related to vehicles, license plates, boats, guns, articles, securities, wanted persons, foreign fugitives, United States Secret Service protective, missing persons, unidentified persons, violent gang and terrorist organizations, deported felons, protective orders, convicted sex offender registries, convicted persons on supervised release and vehicle/boat parts.

(m) Information Security Officer (ISO) – The person designated to administer GCIC’s information security program. The ISO is the internal and external point of contact (POC) for all information security matters and ensures that each local agency having access to a criminal justice network has a security POC. {(See Local Agency Security Officer (LASO))}.

(n) Interface – A computer system independent of the State system that transactions must travel through to access the GCIC and FBI CJIS networks, including the NCIC.

(o) Local Agency Security Officer (LASO) – The local agency security POC for agencies that access the GCIC CJIS network.

(p) Management control – The authority to set and enforce priorities; standards for selection, supervision and termination of personnel; and, policy governing the operation of computers, circuits and telecommunications terminals used to process, store or transmit CHRI and /or other criminal justice information.

(q) National Crime Prevention and Privacy Compact – Allows a party state to disseminate its CHRI to other states for non-criminal justice purposes in accordance with the laws of the receiving state. Georgia became a compact state in 1999.

(r) Non-criminal justice agency – Any agency that does not meet the definition of a criminal justice agency.

(s) Non-criminal justice purpose – Using CHRI for purposes authorized by state or federal law other than the administration of criminal justice. Authorized purposes include employment suitability, licensing determinations, immigration and naturalization matters and national security clearances.

(t) Practitioner – An agency employee who accesses the Georgia CJIS network, the FBI CJIS system and other CJIS network databases needed to perform official duties and responsibilities.

(u) Public network – A telecommunications infrastructure consisting of network components not owned, operated and managed solely by a criminal justice agency. This includes, but is not limited to, a common carrier ATM or Frame Relay network where, by design, the redundancy provided is through use of shared public switches within the network cloud. Dedicated criminal justice local or wide area networks (LAN/WAN) that contain no public network component are not considered public networks.

(v) Secondary dissemination – The re-dissemination of CHRI other than for the intended purpose by an authorized recipient to someone unauthorized to receive the CHRI.

(w) Terminal Agency Coordinator (TAC) – An agency employee designated by the agency head to be responsible for ensuring compliance with state and federal policies, regulations and laws established by GCIC, the FBI's CJIS Division and Nlets. Responsibilities include adherence to GCIC/FBI CJIS validation program procedures for specified Georgia and FBI CJIS records.

(x) Terminal operator – An agency employee whose primary job function includes accessing the CJIS network.

(y) The International Justice & Public Safety Information Sharing Network (Nlets) – A message switching network owned by the states that links local, state and federal agencies together to provide the exchange of criminal justice and public safety related information.

(z) User Agreement – A current, signed written agreement between the appropriate signatory authority of the user agency and the Director authorizing the provision of said access set forth within the agreement. The agreement refers to the necessary security-related provisions therein.

Authority: O.C.G.A. § 35-3-30; 28 CFR 20.3; FBI CJIS Security Policy as amended. History. Original Rule entitled "General Definitions" filed Feb. 25, 1976, effective Mar. 16, 1976. **Amended:** Rule repealed and a new Rule of the same title adopted. Filed Jan. 7, 1983, effective Feb. 1, 1983, as specified by the Agency. **Amended:** Rule repealed and a new Rule of the same title adopted. Filed Sept. 6, 1984, effective Oct. 8, 1984, as specified by the Agency. **Amended:** Rule repealed and a new Rule of the same title adopted. Filed July 2, 1986, effective July 22, 1986. **Amended:** Filed Jan. 6, 1988, effective Jan. 27, 1988, as specified by the Agency. **Repealed:** New Rule of same title adopted. Filed Nov. 7, 1990, effective Nov. 27, 1990. **Repealed:** New Rule, same title, adopted. Filed Mar. 4, 1998, effective Mar. 24, 1998. **Amended:** Filed Sept. 5, 2002, effective Sept. 25, 2002. **Amended:** Filed Sept. 25, 2007, effective Oct. 15, 2007.

### **Chapter 140-1-.03 Administrative Declaratory Rulings. Amended.**

(1) Availability of declaratory ruling. Any persons whose legal rights are impaired by the application of any statutory provision or any GCIC Rule or order may petition GCIC and request a declaratory ruling. GCIC will not render advisory opinions, resolve questions that are moot or hypothetical or otherwise act hereunder except in actual controversies or in other cases upon which a superior court would be required to act under the Georgia declaratory judgement statutes as construed by the appellate courts of Georgia.

(2) Form of petition. Each petition filed with GCIC shall be in writing and include:

(a) The name and post office address of the petitioner

(b) The full text of the statute, rule or order upon which a ruling is requested

(c) A detailed statement of all pertinent facts necessary for a determination

(d) The petitioner's contention, if any, as to the applicability of cited legal authorities that authorize, support or require a decision in accordance therewith

(e) A detailed statement setting forth the petitioner's interest in the matter. The statement shall be verified under oath by, or on behalf of, the petitioner.

(3) Proceedings on petition. If GCIC determines a decision can be rendered on the petition without further proceedings, a summary decision shall be rendered. Otherwise, parties shall be notified and the matter reviewed in an informal hearing.

(4) Informal interpretations and rulings

(a) Any person may request GCIC to interpret or otherwise rule informally upon the applicability of any pertinent statute or Rule by personal appearance at GCIC or by letter, telegram or facsimile addressed to the GCIC Director.

(b) GCIC may respond to such requests at its own discretion, or may issue interpretive rulings on its own initiative.

(5) Requests presented in any manner other than in accordance with the provision of 140-1-.03(2) above shall be answered with an informal interpretation.

Authority: O.C.G.A. § 50-13-9. **History.** Original Rule entitled "Administrative Declaratory Rulings" filed Feb. 25, 1976, effective Mar. 16, 1976. **Amended:** Rule repealed and a new Rule of the same title adopted. Filed Jan. 7, 1983, effective Feb. 1, 1983, as specified by the Agency. **Amended:** Rule repealed and a new Rule of the same title adopted. Filed Sept. 6, 1984, effective Oct. 8, 1984, as specified by the Agency. **Amended:** Rule repealed and a new Rule of the same title adopted. Filed July 2, 1986, effective July 22, 1986. **Repealed:** New Rule of same title adopted. Filed Nov. 7, 1990, effective Nov. 27, 1990. **Repealed:** New Rule, same title adopted. Filed Mar. 4, 1998,

effective Mar. 24, 1998. **Amended:** Filed Sept. 5, 2002; effective Sept. 25, 2002. **Amended:** Filed Sept. 25, 2007, effective Oct. 15, 2007.

**140-1-.04 Petition for Adoption of Rules. Amended.**

(1) Form of petition. Each petition for adoption of Rules pursuant to the Georgia Administrative Procedure Act shall be filed with GCIC in writing under oath and include:

(a) The name and post office address of the petitioner

(b) The full text of the Rule(s) requested to be amended, repealed or promulgated

(c) A detailed statement of why such Rule should be amended, repealed or promulgated, including a statement of the petitioner's interest in the matter

(d) Citations of legal authorities, if any, that authorize, support or require the action requested by the petitioner.

(2) Proceedings on petition. The GCIC Council shall consider each petition at regularly scheduled meetings. The Council may decline to take action or may initiate Rule making or Rule changing proceedings in accordance with the Georgia Administrative Procedure Act. The Council shall notify the petitioner by certified mail of its decision and shall state its reasons if it declines to act.

Authority: O.C.G.A. § 50-13-9. **History.** Original Rule entitled "Petition for Adoption of Rules" filed Feb. 25, 1976, effective Mar. 16, 1976. **Amended:** Rule repealed and a new Rule of the same title adopted. Filed Jan. 7, 1983, effective Feb. 1, 1983, as specified by the Agency. **Amended:** Rule repealed and a new Rule of the same title adopted. Filed Sept. 6, 1984, effective Oct. 8, 1984, as specified by the Agency. **Amended:** Rule repealed and a new Rule of the same title adopted. Filed July 2, 1986, effective July 22, 1986. **Repealed:** New Rule of same title adopted. Filed Nov. 7, 1990, effective Nov. 27, 1990. **Repealed:** New Rule, same title, adopted. Filed Mar. 4, 1998, effective Mar. 24, 1998. **Amended:** Filed Sept. 25, 2007, effective Oct. 15, 2007.

**140-1-.05 Approval and Disciplinary Procedures. Amended.**

(1) Information exchange and service from GCIC. Persons and agencies shall exchange information and receive service from GCIC only when approved by the Director. GCIC shall not provide any service or exchange any information unless the Director finds:

(a) The person or agency is permitted by Georgia law and these Rules to exchange information or receive service

(b) There is no significant danger that the person or agency will use the information or service in a manner that would violate Georgia law, these Rules or applicable federal law or rules.

(2) Notification and resolution of violations. When the Director determines that any law, Rule, regulation or policy of the GCIC Council concerning criminal justice information was violated, is being violated or about to be violated, he shall immediately advise the person or responsible agency head of the existence and nature of such violation. If possible, the Director and concerned parties should agree on a mutually satisfactory resolution, which is documented and signed. Upon review and approval by the GCIC Council, the resolution will be the final disposition of the matter. If the GCIC Council requires modification of the agreement and the concerned parties accept the modification, it shall be the final disposition of the matter. Suspension proceedings are possible when there is failure to agree on a resolution that is satisfactory to the GCIC Council and concerned parties.

(3) Suspension. If an agreement satisfactory to the Director and concerned parties cannot be reached within 45 days of the initial notification of violation the Director may, at his discretion, cause any or all services rendered by GCIC to be suspended. In such cases, the Director shall notify the Chairman of the GCIC Council; however, suspension shall be immediate when major violations exist.

(4) Reinstatement. Upon petition of concerned parties that have had any service suspended the Director may, at his discretion, reinstate full or partial service pending a final decision by the Council, if he finds that reinstatement will not create a significant danger of future violations.

(5) Contested cases. Hearings and appeals regarding refusals by the Director to exchange information or provide services or regarding any disciplinary measure taken by the Director or the GCIC Council pursuant to this Rule shall be conducted pursuant to the Georgia Administrative Procedure Act and the following.

(a) Initiating a contested case. Any person or agency legally entitled to contest a refusal to exchange information, or provide services or to contest any disciplinary measure under this Rule may do so by filing a request for hearing with the Director, which shall include:

1. The complete name and post office address of the party filing the request
2. The name and post office address of all other interested parties
3. A detailed statement of the facts upon which the GCIC action is contested
4. A statement describing the relief sought
5. The name and post office address of counsel, if the party filing the request is represented by counsel.

(b) Limitations on right to a hearing. A hearing to contest the imposition of a disciplinary measure will be granted as a matter of right only if it is filed within 30 days of the imposition of the action. A hearing upon a refusal to exchange information or provide services upon a request for reinstatement of suspended services shall be granted as a matter of right at any time while service is partially or wholly suspended. A petition for such a hearing may be denied only when the petition presents no substantial grounds that have not been previously presented. The Council may, at its discretion, allow extensions of time and amendment of requests for good cause.

(c) Responses to requests for hearing. The GCIC Council will respond to all requests for hearings with scheduling notices or orders denying requests and reasons for denials.

(d) Motions. Any application to the Director or the GCIC Council to enter any order or to take any action, after filing a request for hearing, shall be made by motion that, unless made during the hearing, shall be in writing stating the specific grounds therefore and set forth the action or order sought. No motion shall be ruled upon except when the case-in-chief is ruled upon, unless the moving party specifically requests a ruling at some other time and the Council deems such ruling appropriate.

(e) Hearings. Three members of the GCIC Council appointed by the Chairman or his designee shall conduct hearings in contested cases. Following each hearing, Council members shall notify the Director and each interested party of their findings. Each party shall have 20 days following the notification to file written exceptions and briefs. At the next scheduled meeting of the GCIC Council, the Director and all concerned parties shall have an opportunity to present oral arguments. The Council shall then render a final decision.

(6) Notwithstanding anything previously stated, if it appears that the provisions of O.C.G.A. § 35-3-38 have been violated, the Director or the GCIC Council may refer the matter to the appropriate prosecuting authority.

Authority: O.C.G.A. §§ 35-3-32, 35-3-33; 42 U.S.C. 3771, 28 CFR 20.21.

**History.** Original Rule entitled "Approval and Disciplinary Procedures" filed Feb. 25, 1976, effective Mar. 16, 1976. **Amended:** Rule repealed and a new Rule of the same title adopted. Filed Jan. 7, 1983, effective Feb. 1, 1983, as specified by the Agency. **Amended:** Rule repealed and a new Rule of the same title adopted. Filed Sept. 6, 1984, effective Oct. 8, 1984, as specified by the Agency. **Amended:** Rule repealed and a new Rule of the same title adopted. Filed July 2, 1986, effective July 22, 1986. **Repealed:** New Rule of same title adopted. Filed Nov. 7, 1990, effective Nov. 27, 1990. **Repealed:** New Rule, same title, adopted. Filed Mar. 4, 1998, effective Mar. 24, 1998. **Amended:** Filed Sept. 5, 2002; effective Sept. 25, 2002. **Amended:** Filed Sept. 25, 2007, effective Oct. 15, 2007.

#### **140-1-.06 Contested Cases Governed by Express Statutory Provisions. Amended.**

Contested cases, which arise under O.C.G.A. § 35-3-37 concerning an individual's right to access and correct his criminal record are governed



and processed by provisions contained therein, rather than the Administrative Procedure Act.

Authority: O.C.G.A. § 35-3-37. **History.** Original Rule entitled "Contested Cases Governed by Express Statutory Provisions" filed Feb. 25, 1976, effective Mar. 16, 1976. **Amended:** Rule repealed and a new Rule of the same title adopted. Filed Jan. 7, 1983, effective Feb. 1, 1983, as specified by the Agency. **Amended:** Rule repealed and a new Rule of the same title adopted. Filed Sept. 6, 1984, effective Oct. 8, 1984, as specified by the Agency. **Amended:** Rule repealed and a new Rule of the same title adopted. Filed July 2, 1986, effective July 22, 1986. **Repealed:** New Rule of same title adopted. Filed Nov. 7, 1990, effective Nov. 27, 1990. **Repealed:** New Rule, same title, adopted. Filed Mar. 4, 1998; effective Mar. 24, 1998. **Amended:** Filed Sept. 25, 2007, effective Oct. 15, 2007.

**Rules  
Of The  
Georgia Crime Information Center Council**

**Chapter 140-2**

**Practice and Procedure**

Table of Contents

- 140-2-.01 Scope. Amended.
- 140-2-.02 Security Policy for Criminal Justice Information. Amended.
- 140-2-.03 Completeness and Accuracy of Criminal Justice Information. Amended.
- 140-2-.04 Criminal Justice Information Exchange and Dissemination. Amended.
- 140-2-.05 Integrity of Criminal Justice Information. Amended.
- 140-2-.06 Criminal History Dissemination Logs. Amended.
- 140-2-.07 Audit Procedures. Amended.
- 140-2-.08 Physical Security Standards. Amended.
- 140-2-.09 Personnel Security Standards. Amended.
- 140-2-.10 Procedures for Criminal History Record Inspection by Record Subjects. Amended.
- 140-2-.11 Security Requirements for Criminal Justice Information in a Data Processing Environment. Amended.
- 140-2-.12 Uniform Crime Reporting. Amended.
- 140-2-.13 Wanted/Missing Persons and Stolen/Abandoned Serial-Numbered Property. Amended.
- 140-2-.14 Validation Procedures for Wanted/Missing Person and Stolen Property Records. Amended.
- 140-2-.15 Procedures for Handling Missing and Unidentified Deceased Persons. Amended.
- 140-2-.16 Training. Amended.
- 140-2-.17 Georgia Instant Background Checks for Firearms Purchases. Amended.
- 140-2-.18 The Georgia Sexually Violent Offender Registry. Amended.
- 140-2-.19 The Georgia Protective Order Registry.
- 140-2-.20 Sanctions. Amended.

**140-2-.01 Scope. Amended.**

(1) These Rules apply to Georgia criminal justice agencies and all other agencies or persons with access to criminal justice information as defined in Georgia law and Rule 140-1-.02 (c).

(2) These Rules do not restrict any criminal justice agency from publicly disclosing certain information to include:

(a) The status of a current investigation

(b) The recent arrest, release or prosecution of an individual.

(3) A criminal justice agency may release prior CHRI to the news media or any other person if the CHRI is based on data contained in:

(a) Posters, announcements, flyers or computerized databases created to aid in the identification or arrest of fugitives, wanted persons, habitual offenders, career criminals or highly dangerous offenders

(b) Incident reports, arrest/booking reports and other reports prepared by criminal justice agencies and defined by law as public records

(c) Official records of public judicial proceedings.

(4) The names of living victims of sexual offenses and juveniles involved in police investigations are not to be released.

(5) Nothing in these Rules shall close any record that is now or hereafter made public by law.

(6) Nothing in these Rules shall mandate the exchange of criminal justice information except where specifically required by these Rules.

Authority: O.C.G.A §§ 16-6-23, 35-3-34, 35-3-35, 50-18-72; 42 U.S.C. 3371, 28 CFR 20.21. **History.** Original Rule entitled "Scope" filed Feb. 25, 1976, effective Mar. 16, 1976. **Amended:** Rule repealed and a new Rule of same title adopted. Filed Jan. 7, 1983, effective Feb. 1, 1983; as specified by the Agency. **Amended:** Rule repealed and a new Rule of same title adopted. Filed Sept. 6, 1984, effective Oct. 8, 1984, as specified by the Agency. **Amended:** Rule

repealed and a new Rule of same title adopted. Filed July 2, 1986, effective July 22, 1986. **Amended:** Rule repealed and a new Rule of same title adopted. Filed July 7, 1988, effective July 27, 1988. **Repealed:** New Rule of same title adopted. Filed Nov. 7, 1990, effective Nov. 27, 1990. **Amended:** Filed Dec. 2, 1992, effective Dec. 22, 1992. **Amended:** Filed Sept. 5, 2002, effective Sept. 25, 2002. **Amended:** Filed Sept. 25, 2007, effective Oct. 15, 2007.

**140-2-.02 Security Policy for Criminal Justice Information.  
Amended.**

(1) Handling procedures

(a) Secret data (as defined in Rule 140-1-.02 (2) (c) 3):

1. When not in use it shall be stored in locking, fire-resistant vaults or safes. Computer programs and data files should be backed-up on electronic media and secured in a location separate from the building in which the computer system is located.
2. Areas where the information is processed and handled shall be restricted to authorized personnel in the performance of official duties.
3. The information shall be under the absolute control of criminal justice agencies with access regulated by agency heads or their designees.
4. A log or other record shall be maintained when information is removed from, or returned to the physically secured storage defined above in paragraph (1) (a) 1.

(b) CHRI, as defined in Rule 140-1-.02 (2) (c) 1, shall be:

1. Stored in a secure location when not under the control of authorized criminal justice agency employees.
2. Processed in areas restricted to authorized personnel in the performance of official duties.
3. Under the absolute control of criminal justice agencies except as exempted by these Rules.

(c) Restricted and Sensitive data, as defined in Rule 140-1-.02 (2) (c) 2 and 4, shall be used and stored in a controlled access area.

(2) Secret information, CHRI or restricted information is a "Secret of State", which is required by State policy, the interest of the community and the right of privacy of the citizens of this State to be confidential. Such information shall not be divulged except as permitted by Georgia law and these Rules. Criminal justice agencies must destroy documents containing secret information, CHRI or restricted information no longer required for operations in a manner precluding access to the information by unauthorized persons.

(3) Criminal justice agencies shall disseminate CHRI only to agencies or persons requiring such information to perform duties serving the administration of criminal justice or as otherwise provided by statute, executive order or these Rules. Under no circumstances will CHRI be transmitted via the CJIS network to devices not authorized to access such information, which may exist in the GCIC computerized files, FBI Interstate Identification Index (III) or computerized files maintained in other states.

(4) Local agency heads shall provide the GCIC Director with written notification of security policy violations for criminal justice information committed by employees of their agencies or agencies over which they exercise management control.

(5) The Director shall establish an information security structure that provides for an ISO. The Director shall also ensure that each local agency having access to the CJIS network designates a LASO.

Authority: O.C.G.A. §§ 35-3-30, 35-3-32; 28 C.F.R. 20.21, FBI CJIS Security Policy as amended. **History.** Original Rule entitled "Data Security Requirements for Criminal Justice Information" filed Feb. 25, 1976, effective Mar. 16, 1976. **Amended:** Rule repealed and a new Rule of the same title adopted. Filed Jan. 7, 1983, effective Feb. 1, 1983, as specified by the Agency. **Amended:** Rule repealed and a new Rule of the same title adopted. Filed Sept. 6, 1984, effective Oct. 8, 1984, as specified by the Agency. **Amended:** Rule repealed and a new Rule entitled "Security Policy for Criminal Justice Information" adopted. Filed July 2, 1986, effective July 22, 1986. **Repealed:** New Rule of same title adopted. Filed Nov. 7, 1990, effective. Nov. 27, 1990.

**Repealed:** New Rule, same title, adopted. Filed Mar. 4, 1998, effective Mar. 24, 1998. **Amended:** Filed Sept. 5, 2002, effective Sept. 25, 2002. **Amended:** Filed Sept. 25, 2007, effective Oct. 15, 2007.

**140-2-.03 Completeness and Accuracy of Criminal Justice Information. Amended.**

(1) Each law enforcement agency is responsible for obtaining fingerprints of persons charged with criminal offenses described in O.C.G.A. § 35-3-33. Additionally, O.C.G.A. § 15-11-83 requires agencies charging juveniles (16 years of age and younger) with felony offenses to submit criminal cards to GCIC in the same manner prescribed for adult offenders. Fingerprint images may be transmitted electronically to GCIC utilizing GCIC certified livescan/cardscan devices, or submitted manually (rolled, inked prints) on FBI provided fingerprint cards preprinted with the arresting agency's Originating Agency Identifier (ORI). Only black printer's ink or an alternative medium authorized by the FBI is acceptable for fingerprint images submitted manually to GCIC; additionally, two original arrest fingerprint cards are required for manual submissions. Agencies should seek GCIC approval before using other criminal fingerprint cards, or buying/using any alternative medium or system.

(a) All required fields on arrest fingerprint cards or electronic transmissions must be complete and legible. When applicable, agencies should indicate 'Treat as Adult' status (persons 13 to 16 years of age) by checking the appropriate block on the reverse side of fingerprint cards, or keying the appropriate code in designated field(s).

(b) Only law enforcement personnel may obtain fingerprints and complete the data fields necessary to submit an arrest record to GCIC. At no time should arrested persons or inmates of jails or correctional institutions assist in obtaining fingerprints or completing data fields.

(c) Agencies must forward individual arrest data and fingerprint images to GCIC within 24 hours of arrest; however, this time may be extended to cover any intervening holiday or weekend.

(2) Each law enforcement agency arresting persons under paragraph (1) above is also responsible for forwarding the Offender Tracking Number (OTN) and Charge Tracking Number (CTN), and other associated information, along with arrest warrants, citations or charges to appropriate prosecutors or courts. Prosecutors and courts use the OTN and CTN to report the final disposition of charges to GCIC. Agencies may electronically transmit disposition information to GCIC via systems and programs meeting GCIC requirements. Final disposition reporting is required for complete and accurate adult and juvenile criminal history records.

(a) When a district attorney or solicitor makes a final disposition decision, it is the duty of this official to forward the disposition information to GCIC.

(b) When a final disposition or modification of earlier disposition decision occurs in a court of competent jurisdiction, it is the court's duty to forward the disposition information to GCIC.

(c) When the State Board of Pardons and Paroles modifies a sentence, revokes parole or discharges a parolee, it is the Board's duty to forward the disposition information of sentence modification to GCIC.

(d) When a probation sentence is successfully completed (under provisions of Georgia's First Offender Act) , revoked, or there is a disposition arising from a revocation hearing, it is the duty of probation offices under the direct supervision of the Department of Corrections to forward disposition information to GCIC.

(e) When the Georgia Court of Appeals or Supreme Court of Georgia issues a decision or order to modify or suspend a trial court's decision regarding an individual defendant, it is the duty of the clerk of the Court of Appeals or the Supreme Court of Georgia and the clerk of the trial court to forward the disposition information of such modification or suspension to GCIC.

(f) Juvenile courts must submit final dispositions on juvenile offenses reported under O.C.G.A. § 15-11-83. Final dispositions are required for a complete and accurate juvenile criminal history database.

1. Criminal justice agencies must report final dispositions of juvenile cases.
  2. The specific name and ORI of the judicial agency handling the juvenile case must be in the disposition information. Superior Court Clerks will forward juvenile disposition information to GCIC for counties without a juvenile court and should indicate "Juvenile" in the final disposition information to ensure use of the appropriate juvenile codes when processing the record. Juvenile courts that do not have an ORI may make application for an ORI through GCIC.
  3. Juvenile records are available to criminal justice agencies only for the administration of criminal justice using purpose code C.
  4. Juvenile records are not automatically purged from the criminal history database. A court order to seal, expunge, or destroy a juvenile record is required and must contain sufficient identifying information (juvenile's name, sex, race, date of birth, date of arrest, OTN and CTN) to carry out actions required. Further guidance may be found in O.C.G.A. §§ 15-11-79, 15-11-79.2, 15-11-81 and 15-11-82.
- (3) Responsible agencies must forward final disposition information to GCIC within 30 days of the final disposition decision.
- (4) GCIC will publish a list of fingerprintable offenses as prescribed by Georgia law and the Attorney General of Georgia and revise the list when necessary as determined by the Attorney General.

Authority: O.C.G.A. §§ 15-11-79.2, 15-11-81, 15-11-82, 15-11-83, 35-3-33, 35-3-36; 42 U.S.C. 3773, 28 C.F.R. 20.21. **History.** Original Rule entitled "Completeness and Accuracy of Criminal History Record Information" filed Feb. 25, 1976, effective Mar. 16, 1976. **Amended:** Rule repealed and a new Rule of same title adopted. Filed Jan. 7, 1983, effective Feb. 1, 1983, as specified by the Agency. **Amended:** Rule repealed and a new Rule of same title adopted. Filed Sept. 6, 1984, effective Oct. 8, 1984, as specified by the Agency. **Amended:** Rule repealed and a new Rule of same title adopted. Filed July 2, 1986, effective July 22, 1986. **Amended:** Filed Jan. 6, 1988, effective Jan. 27, 1988, as specified by the Agency. **Amended:** Rule repealed and a new Rule of same title adopted. Filed July 7, 1988, effective July 27, 1988. **Repealed:** New Rule of same title adopted. Filed Nov. 7, 1990, effective November 27, 1990. **Repealed:** New Rule entitled "Completeness and Accuracy of Criminal Justice



Information" adopted. Filed Mar. 4, 1998, effective Mar. 24, 1998. **Amended:** Filed Sept. 5, 2002, effective Sept. 25, 2002. **Amended:** Filed Sept. 25, 2007, effective Oct. 15, 2007.

**140-2-.04 Criminal Justice Information Exchange and Dissemination. Amended.**

(1) Exchange and dissemination of criminal justice information by criminal justice agencies:

(a) Criminal justice agencies shall exchange criminal justice information with other criminal justice agencies and authorized private contractors to facilitate the administration of criminal justice and criminal justice employment. Dissemination of criminal justice information to such agencies will follow the provisions of user agreements executed between GCIC and criminal justice agency heads. If there is a question as to whether an agency is a criminal justice agency as defined by these Rules, the Director will determine the agency's status.

1. Local criminal justice agencies must refer private attorneys requesting CHRI in criminal cases to GCIC.

2. Local criminal justice agencies may process CHRI requests from a Public Defender's Office when that Office has a State assigned ORI (ends in S). When processing these CHRI requests, the local agency must use the Public Defender's ORI and purpose code L. Consent of the individual (criminal defendant or witness) is not required.

3. Local criminal justice agencies may process private attorney requests for CHRI in civil cases when provided the signed consent of the persons whose records are sought utilizing the appropriate purpose code.

4. Criminal records containing information on arrest charges disposed of under provisions of the Georgia First Offender Act may be disseminated by Georgia criminal justice agencies as described in subparagraph (2) (a) 3 of this Rule.

(b) Criminal justice agencies may disseminate CHRI to private persons, businesses, public agencies, political subdivisions, authorities and other

entities, including state or federal licensing and regulatory agencies or their designated representatives. In these cases, CHRI shall contain only Georgia or local criminal justice agency information, excluding information relating to any arrest disposed of under provisions of the Georgia First Offender Act after the person's successful discharge from First Offender status. The exchange of CHRI obtained from NCIC, or the III for a non-criminal justice purpose is prohibited except when permitted by federal law.

1. Requesters must provide the fingerprints or signed consent of persons whose criminal history records they are seeking at the time of each request. The signed consent must be in a format approved by GCIC and include the person's full name, address, social security number, race, sex and date of birth. When the requester represents a county Board of Voter Registrars or a county Board of Voter Registration and Elections, neither the fingerprints nor signed consent of persons whose records are sought shall be required, if the sole purpose is to verify information provided on a voter registration card by a voter registration applicant. In addition, criminal justice agencies may disseminate Georgia felony conviction records to any requester, without the person's consent, as provided for by Georgia law.

2. Criminal justice agencies may charge fees for disseminating criminal history records or "no record" reports to private individuals, public and private agencies or their designated representatives. Fees should approximate as nearly as possible the direct and indirect costs associated with providing such information services.

3. Criminal justice agencies that disseminate CHRI to private individuals and public and private agencies shall advise all requesters that if an adverse employment, licensing, housing or other decision is made, the individual or agency making the adverse decision must inform the applicant of all information pertinent to that decision. This disclosure must include that a CHRI check was made, the specific contents of the record and the effect it had on the decision. Failure to provide all such information to the applicant is a misdemeanor under Georgia law.

(c) Federal law exempts the FBI, State Department, Defense Investigative Service, Central Intelligence Agency and Office of

Personnel Management from these provisions of Georgia law. Authorized representatives of these agencies are not required to provide the fingerprints or signed consent of persons whose CHRI is sought. All criminal justice agencies are required by federal law to provide these agencies with CHRI, as described in subparagraph (1) (b) of this Rule, on security clearance applicants and applicants for employment in sensitive national security jobs. However, the Office of Personnel Management (OPM) contracts with companies that perform its background investigations. OPM contractors with Georgia offices have NCIC assigned ORIs, which end in R (GAOPM010R) and access Georgia's CJIS network to run background investigations under purpose code S (Security Clearance Information Act).

(d) Pursuant to signed GCIC user agreements and management control agreements, criminal justice agencies may provide criminal justice information and CHRI to individuals and agencies to provide for the development and operation of computerized information systems or for the operation of consolidated governmental communications centers supporting the administration of criminal justice. These individuals and agencies shall be under the management control of the criminal justice agencies they support. These agreements shall authorize specific access to information, limit the use of information to purposes for which it was disseminated, require the review and signing of Awareness Statements and ensure the security and confidentiality of information consistent with the Rules of the GCIC Council.

(e) Criminal justice agencies may disseminate criminal justice information and CHRI to individuals and agencies for the express purpose of research when the Director has approved the research project in advance. In each case, GCIC shall execute a special user agreement with requesters prior to the dissemination of such information. The agreement shall provide for non-identification of specific individuals in published research reports and that information furnished by criminal justice agencies shall be immune from legal process and shall not, without consent of the criminal justice agency providing the information, be admitted as evidence for any purpose in any action, suit or other judicial or administrative proceedings.

(f) Criminal justice agencies must advise recipients of CHRI that use of this information shall be limited to the intended purpose and may not be secondarily disseminated.

(g) Criminal justice agencies have authority to access the FBI's III files for criminal justice administration and criminal justice employment. In addition, this information may be used in civil or criminal courts in domestic violence or stalking cases and other purposes authorized by federal law. Criminal justice agencies shall not access III files for information pursuant to state license/permit applications or for non-criminal justice employment purposes, unless specifically provided for by federal law or regulation.

(h) The FBI CJIS Security Policy documents the minimum level of Information Technology (IT) security requirements determined acceptable for the transmission, processing and storage of the nation's CJIS data. It further stipulates that III CHRI may be accessed only for an authorized purpose. Dissemination to another agency is permissible if the other agency is an authorized recipient of such information. This policy also identifies the requirements for methods of disseminating III CHRI data.

1. Transmitting III CHRI via the internet and associated electronic media such as email facilities, remote access file transfers and any other file modifications is allowed, provided all technical security requirements have been met.

2. Transmitting III CHRI via electronic devices using wireless or radio technology is allowed when an officer determines there is an immediate need for this information to further an investigation or there is a situation affecting the safety of an officer or the public.

3. Transmitting III CHRI via a facsimile device not connected to a CJIS system is allowed when both agencies involved in the transmission have an authorized NCIC ORI number. Prior to the transmission, the sending agency shall verify the receiving agency's authenticity.

4. Georgia CHRI may be disseminated via the internet, wireless or radio technology, or facsimile to authorized agencies as described in the FBI CJIS Security Policy.

5. Additionally, a criminal justice agency may only disseminate Georgia CHRI via facsimile to a non-criminal justice or entity provided the receiving facsimile is located in an area not readily accessible by persons other than the individual authorized to receive the CHRI.

(i) Private contractors are permitted access to GCIC and FBI CJIS systems pursuant to a specific agreement/contract to provide services for the administration of criminal justice. The agreement/contract between the government agency and the private contractor must incorporate the Security Addendum approved by the Director of the FBI (acting for the U.S. Attorney General), as referenced in Title 28 CFR 20.33 (a) (7). Private entities performing the administration of criminal justice must meet the same training and certification criteria required by governmental agencies performing a similar function. All private entities performing criminal justice functions, including administration of private correctional facilities, police crime labs and the administration of probation services are included.

(j) No criminal justice information shall be disseminated except as provided by law and these Rules.

(2) Exchange and dissemination of criminal justice information by GCIC.

(a) GCIC shall exchange criminal justice information with criminal justice agencies and those non-criminal justice agencies under a specific contract to a criminal justice agency to serve the administration of criminal justice and to facilitate criminal justice employment, based on the following criteria:

1. GCIC shall execute appropriate user agreements with all criminal justice agencies

2. GCIC shall provide any information in its files or in files available to GCIC, which may aid these agencies in the performance of their duties

3. Use of information relating to any arrest disposed of under provisions of the Georgia First Offender Act is unauthorized for licensing or employment purposes after successful discharge of an individual from First Offender status, except as specifically authorized by Georgia law and these Rules

4. When requested electronically, GCIC may electronically disseminate CHRI of in-state felony convictions, pleas and sentences provided there is sufficient identifying information.

(b) GCIC shall exchange criminal justice information with:

1. The Governor, when acting as Chief Law Enforcement Officer of the State

2. The Attorney General, when performing activities relating to the apprehension or prosecution of criminal offenders

3. The Supreme Court, when the Court's administrative arm is evaluating candidates for the Georgia bar.

(c) GCIC shall exchange CHRI with public agencies and officials, private businesses and individuals.

1. Public agencies, private individuals and businesses requesting fingerprint-based criminal history record checks shall submit applicant fingerprints using GCIC approved means and pay the prescribed fees for each criminal history record or "No Record" report disseminated by GCIC.

2. If CHRI provided by GCIC is for employment, licensing or other decisions, GCIC shall provide guidance to requesters as contained in subparagraph (1) (b) (3) of this Rule.

3. Public agencies and officials requesting criminal history record checks shall be subject to periodic audits by GCIC to assure compliance with the relevant provisions of Georgia law and these Rules.

4. Georgia law authorizes GCIC to conduct certain criminal history record checks for criminal defense purposes based on personal identifiers supplied by authorized requesters. All such record checks are conducted in a manner determined by the Director. Criminal history records provided by GCIC pursuant to this subparagraph shall contain the entire Georgia criminal history record to include completed first offender records. Authorized requesters shall pay prescribed fees.

(d) GCIC will perform criminal history record checks for non-criminal justice purposes only after fulfilling its duties and obligations to criminal justice agencies as required by law.

(e) GCIC may allow access to the CJIS network and other computerized files containing criminal justice information and/or CHRI, pursuant to special user agreements and management control agreements with governmental computerized information systems and governmental dispatch centers in support of criminal justice agencies. These governmental agencies shall be under the management control of the criminal justice agencies they support. User agreements and management control agreements shall authorize access to information, limit the use of information to purposes for which it was disseminated, require the signing of Awareness Statements and ensure the security and confidentiality of data consistent with these Rules.

(f) The commercial dissemination of state or federal hot file records obtained from NCIC is prohibited. Information derived for other than criminal justice purposes from national hot file records can be used by authorized criminal justice personnel only to confirm the status of a person or article, e.g. wanted or stolen. Any advertising of services providing "data for dollars" is prohibited. Authorized agencies are allowed to charge a processing fee for disseminating data for authorized purposes. The wholesale marketing of data for profit is not permitted, as in the example of a pre-employment screening or background check company requesting that wanted person checks from NCIC be conducted on individuals for various non-criminal justice employments.

(g) Use of information disseminated by GCIC shall be limited to the purposes for which it was disseminated. Recipients shall be so advised.

(h) No information shall be disseminated by GCIC except as provided by Georgia law or these Rules.

Authority: O.C.G.A. §§ 3-3-2, 7-1-682(c), 7-1-702(c), 7-1-1004(e), 10-9-9, 15-16-1, 16-11-129, 17-6-50, 19-8-16(d), 20-1A-34, 20-2-211, 25-4-8, 31-7-254, 35-3-33, 35-3-34, 35-3-34.2, 35-3-35, 35-3-35 (a)(1), 35-8-8, 38-3-27, 40-5-2, 40-5-82, 42-8-60, 42-8-62, 42-8-63, 42-8-63.1, 42-8-65, 43-12A-4, 43-38-6, 43-38-7, 43-38-7.1, 43-39A-22.1, 43-40-27.1, 43-47-6, 49-2-14, 49-5-64, 49-5-69.1; 42 U.S.C. 3771; 5 U.S.C. 9101; 28 C.F.R. 20.21; Pub. L. 92-544; FBI Security Policy, as amended. History. Original Rule entitled "Criminal Justice Information Exchange and Dissemination" filed Feb. 25, 1976, effective Mar. 16, 1976. **Amended:** Filed June 11, 1976, effective July 1, 1976. **Amended:** Filed July 29, 1976, effective Aug. 18, 1976. **Amended:** Filed Aug. 25, 1976, effective Sept. 14, 1976. **Amended:** Filed June 10, 1977, effective June 30, 1977. **Amended:** Filed May 26, 1978, effective July 1, 1978, as specified by the Agency. **Amended:** Rule repealed and a new Rule of same title adopted. Filed Jan. 7, 1983, effective Feb. 1, 1983, as specified by the Agency. **Amended:** Rule repealed and a new Rule of same title adopted. Filed Sept. 6 1984, effective Oct. 8, 1984, as specified by the Agency. **Amended:** Rule repealed and a new Rule of same title adopted. Filed July 2, 1986, effective July 22, 1986. **Amended:** Rule repealed and a new Rule of same title adopted. Filed Jan. 6, 1988, effective Jan. 27, 1988, as specified by the Agency. **Amended:** Rule repealed and a new Rule of same title adopted. Filed July 7, 1988, effective July 27, 1988. **Repealed:** New Rule of same title adopted. Filed Nov. 7, 1990, effective Nov. 27, 1990. **Amended:** Filed Dec. 4, 1991, effective Dec. 24, 1991. **Amended:** Filed Mar. 4, 1992, effective Mar. 24, 1992. **Amended:** Filed Dec. 2, 1992, effective Dec. 22, 1992. **Amended:** Filed Oct. 13, 1999, effective Nov. 2, 1999. **Amended:** Filed Oct. 12, 2000, effective Nov. 1, 2000. **Amended:** Filed Sept. 5, 2002, effective Sept. 25, 2002. **Amended:** Filed Sept. 25, 2007, effective Oct. 15, 2007.

#### **140-2-.05 Integrity of Criminal Justice Information. Amended.**

Documents containing criminal justice information, regardless of its source, shall not be altered, obtained, copied, destroyed, delayed, misplaced, misfiled, given, bought or sold when the intent of such action is to obstruct justice or facilitate the violation of any law or these Rules.

Authority: O.C.G.A. §§ 35-3-35, 35-3-38; 42 U.S.C. 3771, 28 C.F.R. 20.21. **History.** Original Rule entitled "Security and Privacy of Criminal Justice Information" filed Feb. 25, 1976, effective Mar. 16, 1976. **Amended:** Rule repealed and a new Rule of same title adopted. Filed Jan. 7, 1983, effective Feb.



1, 1983, as specified by the Agency. **Amended:** Rule repealed and a new Rule of same title adopted. Filed Sept. 6, 1984, effective Oct. 8, 1984, as specified by the Agency. **Amended:** Rule repealed and a new Rule of same title adopted. Filed July 2, 1986, effective July 22, 1986. **Repealed:** New Rule entitled "Integrity of Criminal Justice Information" adopted. Filed Nov. 7, 1990, effective Nov. 27, 1990. **Repealed:** New Rule, same title, adopted. Filed Mar. 4, 1998, effective Mar. 24, 1998.

#### **140.2-.06 Criminal History Dissemination Logs. Amended.**

- (1) GCIC will maintain computer system logs of all criminal history record inquiries and record requests transmitted to GCIC.
- (2) The following minimum information shall be maintained in GCIC computer system logs.
  - (a) Date, time and purpose of each inquiry or request
  - (b) Identification of each requester
  - (c) Identification of the terminal operator or practitioner
  - (d) Identification of each person inquired
  - (e) Each record subject's GCIC assigned state identification (SID) and/or FBI number(s)
  - (f) Agency reference numbers (ARN) are required for all criminal justice (purpose code C), firearm permits or purchases (purpose code F), defense attorney (purpose code L), POST certification (purpose code Z) and DHR exigent circumstances (purpose code X) record checks. ARNs shall be unique, significant numbers and limited to incident report numbers, other criminal case numbers, docket numbers, inmate numbers or any other numbers that link criminal history record requests to criminal investigations or specific files.
- (3) Criminal justice agencies that access Georgia's CJIS network may establish local paper or computer system logs to control and document requests for criminal history records, CJIS inquiries and/or secondary disseminations within their agencies. These agencies may request

printouts of GCIC system logs when required for internal investigations or other special circumstances. Agencies establishing computer system logs may record information items listed above; detailed criminal history record information shall not be recorded in computer system logs.

Authority: O.C.G.A. §§ 35-3-33, 35-3-35; 42 U.S.C. 3771, 28 C.F.R. 20.21.

**History.** Original Rule entitled "Criminal History Logs" filed Feb. 25, 1976, effective Mar. 16, 1976. **Amended:** Rule repealed and a new Rule of same title adopted. Filed Jan. 7, 1983, effective Feb. 1, 1983, as specified by the Agency. **Amended:** Rule repealed and a new Rule of same title adopted. Filed Sept. 6, 1984, effective Oct. 8, 1984, as specified by the Agency. **Amended:** Rule repealed and a new Rule of same title adopted. Filed July 2, 1986, effective July 22, 1986. **Amended:** Rule repealed and a new Rule of same title adopted. Filed July 7, 1988, effective July 27, 1988. **Repealed:** New Rule of same title adopted. Filed Nov. 7, 1990, effective Nov. 27, 1990. **Amended:** Filed Dec. 2, 1992, effective Dec. 22, 1992. **Repealed:** New Rule of same title adopted. Filed Apr. 16, 1993, effective May 6, 1993. **Repealed:** New Rule entitled "Criminal History Dissemination Logs" adopted. Filed Mar. 4, 1998, effective Mar. 24, 1998. **Amended:** Filed Sept. 5, 2002, effective Sept. 25, 2002. **Amended:** Filed Sept. 25, 2007, effective Oct. 15, 2007.

#### **140-2-.07 Audit Procedures. Amended.**

(1) The Director shall appoint auditors to conduct performance audits of criminal justice agencies that access Georgia's CJIS network to assess and enforce compliance with these Rules, O.C.G.A. §§ 35-3-34 through 35-3-38, other relevant Georgia code sections and pertinent federal statutes and regulations.

(a) The GCIC audit program shall be designed and conducted to meet the performance audit standards and practices set out in the General Accounting Office (GAO) publication Government Auditing Standards also adhered to by the FBI CJIS Division audit staff.

(b) GCIC auditors shall audit these agencies triennially as required by NCIC operating policy. A representative sample of agencies that do not access Georgia's CJIS network will be audited, based on the availability of auditor resources.

(c) Agency heads shall receive at least 15 days advance notice of on-site GCIC audits. Written notification will identify all areas of audit program interest and the applicable performance standards.

(d) Upon completion of each performance audit, GCIC auditors shall discuss their findings with agency heads, TACs, or their designees. GCIC auditors will recommend strategies for remedial action to resolve any area of non-compliance. In addition, GCIC auditors will assist agency heads in obtaining agency personnel training or any other assistance related to efforts to resolve areas of non-compliance.

(e) GCIC auditors will provide agency heads with written reports, which identify areas of compliance, non-compliance and other written comments specific to audit assessments. The Audit Program Manager will report the results of completed audits to the Assistant Deputy Director for Compliance and Customer Support and the Director.

(f) The Director shall report the status of the Georgia audit program to the Chairman and members of the GCIC Council. In cases of continued non-compliance, the Director shall provide recommendations to the Council for sanctions or other actions per the provisions of GCIC Council Rule 140-2-.20 (Sanctions).

(2) Agencies scheduled for audit shall make the following available to GCIC auditors:

(a) Facility access policy

(b) Personnel records (maintained in agency files) to include results of employee fingerprint-based background checks, GCIC Awareness Statements, records of relevant training, e.g. CJIS Network Terminal Operator workbooks, end of chapter tests and final certification tests, as well as any other training materials used for practitioners and any other documents deemed appropriate to accomplish the audit responsibilities

(c) Local criminal history record files

(d) CHRI handling procedures

- (e) Standard operating procedures governing the access, use, security and discipline regarding the dissemination of criminal justice information
- (f) Case files that support GCIC/NCIC computerized record entries, e.g. incident and supplemental reports, missing persons reports, family violence reports, arrest warrants
- (g) Computer system hardware, when requested
- (h) Computer system software, when requested
- (i) Computer system documentation to include system topologies, when requested.

Authority: O.C.G.A. §§ 35-3-31, 35-3-32, 35-3-34, 35-3-38; 42 U.S.C. 3771, 28 C.F.R. 20.21. **History.** Original Rule entitled "Audit Procedures" filed Feb. 25, 1976, effective Mar. 16, 1976. **Amended:** Rule repealed and a new Rule of same title adopted. Filed Jan. 7, 1983, effective Feb. 1, 1983, as specified by the Agency. **Amended:** Rule repealed and a new Rule of same title adopted. Filed Sept. 6, 1984, effective Oct. 8, 1984, as specified by the Agency. **Amended:** Rule repealed and a new Rule of same title adopted. Filed July 2, 1986, effective July 22, 1986. **Repealed:** New Rule of same title adopted. Filed Nov. 7, 1990, effective Nov. 27, 1990. **Repealed:** New Rule of same title adopted. Filed Dec. 2, 1992, effective Dec. 22, 1992. **Amended:** Filed Apr. 16, 1993, effective May 6, 1993. **Repealed:** New Rule, same title, adopted. Filed Mar. 4, 1998, effective Mar. 24, 1998. **Amended:** Filed Sept. 5, 2002, effective Sept. 25, 2002. **Amended:** Filed Sept. 25, 2007, effective Oct. 15, 2007.

**140-2-.08 Physical Security Standards. Amended.**

- (1) Criminal justice agencies, governmental dispatch centers and other governmental agencies approved by the Director for direct CJIS network access shall provide secure areas out of public view in which criminal justice information is handled.
- (2) Such agencies shall place CJIS network devices in secure areas with adequate physical security to protect at all times against any unauthorized viewing or access to computer terminals, access devices or stored/printed data. This includes locations or vehicles housing Mobile

Data Terminals (MDTs) or personal/laptop computers capable of accessing criminal justice information.

(3) Such agencies shall institute reasonable procedures to protect any central depository of CHRI from unauthorized access, theft, sabotage or damage resulting from fire, wind, flood, power failure or other natural or manmade disasters.

(4) Such agencies operating computer systems connected to the Georgia CJIS network should provide adequate backup and recovery plans to protect these systems and ensure system recovery within minimal time. Recovery should focus on hardware and software.

(5) Authorized personnel must accompany visitors to CJIS computer centers and/or terminal areas at all times. Access to terminal areas should be restricted to the minimum number of authorized employees required for operations.

Authority: O.C.G.A. §§ 35-3-32, 35-3-33; 28 C.F.R. 20.21, FBI Security Policy as amended. **History.** Original Rule entitled "Physical Security Standards for Criminal Justice Agencies" filed Feb. 25, 1976, effective Mar. 16, 1976.

**Amended:** Rule repealed and a new Rule of same title adopted. Filed Jan. 7, 1983, effective Feb. 1, 1983, as specified by the Agency. **Amended:** Rule repealed and a new Rule of same title adopted. Filed Sept. 6, 1984, effective Oct. 8, 1984, as specified by the Agency. **Amended:** Rule repealed and a new Rule entitled "Physical Security Standards" adopted. Filed July 2, 1986, effective July 22, 1986. **Repealed:** New Rule of same title adopted. Filed Nov. 7, 1990, effective Nov. 27, 1990. **Amended:** Filed Dec. 4, 1991, effective Dec. 24, 1991. **Amended:** Filed Dec. 2, 1992, effective Dec. 22, 1992. **Repealed:** New Rule, same title, adopted. Filed Mar. 4, 1998, effective Mar. 24, 1998. **Amended:** Filed Sept. 5, 2002, effective Sept. 25, 2002. **Amended:** Filed Sept. 25, 2007, effective Oct. 15, 2007.

#### **140-2-.09 Personnel Security Standards. Amended.**

(1) Criminal justice agency employees, and other personnel as identified by the GCIC Director, who handle criminal justice information shall consent to investigations of their moral character, reputation and honesty. All applicants, including appropriate information technology (IT) personnel having access to CJIS systems information, shall submit to a state and national fingerprint-based identification check to be conducted

within 30 days of employment, assignment or subsequent re-employment. Investigations should produce information sufficient to determine applicants' suitability and fitness for employment.

(2) Criminal justice agencies, governmental dispatch centers and other governmental agencies handling criminal justice information shall disqualify applicants convicted by any state or the federal government of any felony, or have convictions of sufficient misdemeanors to establish a pattern of disregard for the law. If the applicant appears to be a fugitive or have an arrest history without conviction for a felony or serious misdemeanor, the Director or criminal justice agency head, or his/her designee, will review the matter and decide if access/employment is appropriate.

(3) Giving false information shall disqualify applicants and be cause for employee dismissal.

(4) Agencies identified in subparagraph (2) of this Rule shall establish security constraints for all personnel who work in secure areas where criminal justice information is stored, collected or disseminated. Terminal operators and practitioners shall access the CJIS network only for purposes within their authority. Each criminal justice agency authorized to access CJIS network information must have a written disciplinary policy for violators of GCIC Council Rules and GCIC/FBI CJIS Security Policy as amended.

(5) Within their political subdivisions, criminal justice agencies must monitor the selection, utilization and retention of non-criminal justice personnel who are authorized direct access to criminal justice information in support of criminal justice operations.

(6) All personnel whose jobs require them to access or process criminal justice information shall sign an Awareness Statement for permanent filing in the employees' personnel file. Should the content of the Awareness Statement change by act of law, action by the Director or other official act, agency heads shall direct their employees to sign amended Awareness Statement forms when provided by GCIC.

Authority: O.C.G.A. §§ 16-9-90 et seq., 35-3-32, 35-3-33; 28 C.F.R. 20.21; FBI Security Policy, as amended. **History.** Original Rule entitled "Personnel

Security Standards for Criminal Justice Agencies" filed Feb. 25, 1976, effective Mar. 16, 1976. **Amended:** Rule repealed and a new Rule of same title adopted. Filed Jan. 7, 1983, effective Feb. 1, 1983, as specified by the Agency. **Amended:** Rule repealed and a new Rule of same title adopted. Filed Sept. 6, 1984, effective Oct. 8, 1984, as specified by the Agency. **Amended:** Rule repealed and a new Rule entitled "Personnel Security Standards" adopted. Filed July 2, 1986, effective July 22, 1986. **Repealed:** New Rule of same title adopted. Filed Nov. 7, 1990, effective Nov. 27, 1990. **Amended:** Filed Dec. 2, 1992, effective Dec. 22, 1992. **Repealed:** New Rule, same title, adopted. Filed Mar. 4, 1998, effective Mar. 24, 1998. **Amended:** Filed Sept. 5, 2002, effective Sept. 25, 2002. **Amended:** Filed Sept. 25, 2007, effective Oct. 15, 2007.

**140-2-.10 Procedures for Criminal History Record Inspection by Record Subjects. Amended.**

(1) GCIC processing procedures:

(a) All applications for criminal history record inspection must include a current set of the record subject's fingerprints taken by a GCIC employee or trained employee of a local criminal justice agency. GCIC personnel will request identification documentation at time of fingerprinting

(b) Applications are processed upon payment of a \$3.00 fee payable in cash or money order

1. GCIC will issue receipts for cash payments

2. Money orders shall be made payable to the Georgia Bureau of Investigation

(c) GCIC will accept applications from 8:00 a.m. to 4:30 p.m., Monday through Friday, except for State holidays. Appointments are preferred.

(2) An attorney may, upon written application and payment of fees, inspect and obtain a copy of his or her client's criminal history record maintained by GCIC.

(3) General processing procedures:

(a) Pursuant to these Rules, a local criminal justice agency may prescribe its own applicable forms and procedures for a record subject, or his or her attorney, to review and obtain a copy of the record subject's criminal history record

(b) Local agencies may charge reasonable fees to offset costs of handling inspection requests

(c) Agencies providing record inspection services shall impose only such procedures and restrictions reasonably necessary to

1. Ensure the integrity of its records

2. Verify the identity of those who seek to inspect their records; verification procedures may include fingerprinting

3. Establish orderly and efficient inspection procedures.

(4) Criminal history records determined by GCIC or other criminal justice agencies to be in error shall be corrected without undue delay; the record subject or attorney of representation shall be notified when record corrections have been made.

(5) For criminal history records determined by GCIC or other criminal justice agencies as accurate, the individual may initiate further actions under the provisions of Georgia law.

Authority: O.C.G.A. §§ 35-3-33 35-3-37; 42 U.S.C. 3771, 28 C.F.R. 20.21.

**History.** Original Rule entitled "Procedures Whereby An Individual May Access His Criminal History Record File" filed Feb. 25, 1976, effective Mar. 16, 1976. **Amended:** Rule repealed and a new Rule entitled "Procedures for an Individual to Inspect His Criminal History Record File" adopted. Filed Jan. 7, 1983, effective Feb. 1, 1983, as specified by the Agency. **Amended:** Rule repealed and a new Rule of same title adopted. Filed Sept. 6, 1984, effective Oct. 8, 1984, as specified by the Agency. **Amended:** Rule repealed and a new Rule of same title adopted. Filed July 2, 1986, effective July 27, 1988.

**Repealed:** New Rule of same title adopted. Filed Nov. 7, 1990, effective Nov. 27, 1990. **Amended:** Filed Dec. 2, 1992, effective Dec. 22, 1992. **Repealed:** New Rule, same title, adopted. Filed Mar. 4, 1998, effective Mar. 24, 1998.

**Amended:** Filed Sept. 5, 2002, effective Sept. 25, 2002. **Amended:** Filed Sept. 25, 2007, effective Oct. 15, 2007.



**140-2-.11 Security Requirements for Criminal Justice Information in a Data Processing Environment. Amended.**

(1) Computers used to collect, store or disseminate CHRI shall be protected from unauthorized access by means of software or hardware control systems, which log all access attempts. Each individual authorized to store, process and/or transmit CJIS information will use a unique identifier. The unique identification is also required for personnel who administer and maintain the system. The unique identification can take the form of a full name, badge number, serial number or other unique alphanumeric identifier. The identifier shall be authenticated.

(2) CHRI transmitted from one point to another by computer shall be protected from unauthorized access by means of software or hardware control systems. Standards for control systems outlined here must meet FBI CJIS Security Policy requirements.

(a) Procedures to prevent unauthorized copying or retaining of messages containing CHRI must be in place.

(b) Computers may log any message traffic and record such data elements as date, time, message number, origin and destination.

(c) CJIS information passing through a public network segment shall be protected with encryption.

(d) CJIS information transmitted over dial-up or internet connections shall be protected with encryption.

(e) The Director may grant authorization for internet access to support CJIS processing when a minimum set of technical and administrative requirements, which assure the security of the CJIS system from unauthorized access via the internet are in place.

(f) CJIS information passing over wireless links shall be protected with encryption. Transmitting hot file data over wireless links is allowed with either encryption or a proprietary data transmission protocol that prevents recognizable clear text transmissions. All wireless links or

server access points shall be protected by authentication to ensure protection from unauthorized system access.

(g) Networks having terminals or devices that access CJIS and/or the internet must be protected by firewalls meeting the GCIC/FBI CJIS Security Policy standard as amended.

(3) Computers storing or disseminating CHRI may perform logging activities pursuant to Rule 140-2-.06.

(4) Computers and the agencies operating or administratively responsible for the operation of computers utilized in whole or part for the collection, storage, dissemination or message switching of CHRI shall be subject to GCIC audits pursuant to Rule 140-2-.07.

(5) Physical security standards for these computers shall be maintained pursuant to Rule 140-2-.08.

(6) Personnel security standards for persons employed to operate, program or maintain these computers shall be established pursuant to Rule 140-2-.09 as follows:

(a) A criminal justice agency responsible for collecting, storing, disseminating or transmitting CHRI by computers not under its direct administrative control shall not employ any person convicted by any state or the federal government of any felony or sufficient misdemeanors to establish a pattern of disregard for the law

(b) A criminal justice agency responsible for collecting, storing, disseminating or transmitting CHRI by a computer center not under its direct administrative control has the right and responsibility to investigate computer center job applicants and employees and disqualify any person convicted by any state or the federal government of any felony or sufficient misdemeanors to establish a pattern of disregard for the law.

(7) Secret data or CHRI contained in a computer system, whether dedicated or shared, shall be kept under maximum-security conditions. Documents containing secret data or CHRI no longer required to support

criminal justice operations, must be destroyed in a secure manner that precludes unauthorized access to the information.

(8) The agency administratively responsible for the supervision of persons, computer hardware or software assumes liability for any misuse of secret data or CHRI stored in a shared computer environment.

Authority: O.C.G.A. §§ 35-3-32, 35-3-33, 35-3-34, 35-3-35, 35-3-38; 42 U.S.C. 3771, 28 C.F.R. 20.21, FBI Security Policy as amended. **History.** Original Rule entitled "Security Requirements for Criminal Justice Information in a Data Processing Environment" filed Feb. 25, 1976, effective Mar. 16, 1976.

**Amended:** Rule repealed and a new Rule of same title adopted. Filed Jan. 7, 1983, effective Feb. 1, 1983, as specified by the Agency. **Amended:** Rule repealed and a new Rule of same title adopted. Filed Sept. 6, 1984, effective Oct. 8, 1984, as specified by the Agency. **Amended:** Rule repealed and a new Rule of same title adopted. Filed July 2, 1986, effective July 22, 1986.

**Repealed:** New Rule of same title adopted. Filed Nov. 7, 1990, effective Nov. 27, 1990. **Amended:** Filed Dec. 2, 1992, effective Dec. 22, 1992. **Amended:** Filed Apr. 16, 1993, effective May 6, 1993. **Repealed:** New Rule, same title, adopted. Filed Mar. 4, 1998, effective Mar. 24, 1998. **Amended:** Filed Sept. 5, 2002, effective Sept. 25, 2002. **Amended:** Filed Sept. 25, 2007, effective Oct. 15, 2007.

#### **140-2-.12 Uniform Crime Reporting. Amended.**

(1) Each law enforcement agency is required by Georgia law (O.C.G.A. § 35-3-36) to participate in the Uniform Crime Reporting (UCR) program. GCIC is similarly required (O.C.G.A. § 35-3-33) to manage Georgia's UCR program and participate in the FBI's national UCR program.

(2) Law enforcement agencies are required to submit UCR and Family Violence reports to GCIC in a manner prescribed by GCIC.

(3) GCIC will provide general crime and offender data derived from UCR reports to the Governor, the General Assembly, state and local criminal justice agencies and the public.

(4) Law enforcement agencies shall retain case file copies (or an equivalent) of incident and Family Violence reports in manual or automated format that supports active wanted/missing person and/or

stolen serial numbered property records entered in GCIC/NCIC computerized files until these records are cleared, canceled or purged.

(5) Local agency UCR program procedures, records and supporting documents are subject to GCIC and FBI audit.

Authority: O.C.G.A. §§ 17-4-20.1, 35-3-33, 35-3-36; U.S. DOJ/FBI UCR Handbook, 1984. **History.** Original Rule entitled "Uniform Crime Reporting" filed Jan. 7, 1983, effective Feb. 1, 1983, as specified by the Agency. **Amended:** Rule repealed and a new Rule of same title adopted. Filed Sept. 6, 1984, effective Oct. 8, 1984, as specified by the Agency. **Amended:** Rule repealed and a new Rule of same title adopted. Filed July 2, 1986, effective July 22, 1986. **Amended:** Rule repealed and a new Rule of same title adopted. Filed July 7, 1988, effective July 27, 1988. **Repealed:** New Rule of same title adopted. Filed Nov. 7, 1990, effective Nov. 27, 1990. **Repealed:** New Rule, same title, adopted. Filed Dec. 4, 1991, effective Dec. 24, 1991. **Amended:** Filed Dec. 2, 1992, effective Dec. 22, 1992. **Repealed:** New Rule, same title, adopted. Filed Mar. 4, 1998, effective Mar. 24, 1998. **Amended:** Filed Sept. 5, 2002, effective Sept. 25, 2002. **Repealed:** New Rule, same title, adopted. Filed Sept. 25, 2007, effective Oct. 15, 2007.

**140-2-.13 Wanted/Missing Persons and Stolen/Abandoned Serial Numbered Property. Amended.**

Responsible agencies shall enter (or cause entry of) information in GCIC and/or NCIC computerized files pertaining to wanted/missing persons, protected persons, sex offenders, unidentified deceased persons and serial-numbered property reported as stolen; entries shall be made when required data elements become available. O.C.G.A. § 35-3-36 requires agencies to enter records within 12 hours of determining that persons should be arrested or serial-numbered property was stolen. Provisions for entry of GCIC/NCIC computerized records regarding missing persons are contained in GCIC Council Rule 140-2-.15.

(a) Criminal justice agencies accessing Georgia's CJIS network shall use GCIC/NCIC codes, formats and operating procedures when making record entries. GCIC will provide procedural manuals and operations bulletins containing codes, procedures and guidance for record entry. GCIC will also provide updates and revisions as needed.

1. Heads of criminal justice agencies authorized to make GCIC/NCIC record entries or otherwise access databases maintained by Georgia, other states and the FBI are responsible for ensuring that current GCIC publications are maintained and used as authoritative CJIS network operational directives within their respective agency.

2. Heads of criminal justice agencies accessing Georgia's CJIS network are responsible for ensuring the proper training of employees authorized to enter, modify, locate, clear, cancel and validate GCIC/NCIC record entries identified by this Rule. The training program shall emphasize that a second employee must verify each record entry for completeness and accuracy. Training requirements are contained in GCIC Council Rule 140-2-.16.

(b) Criminal justice agencies accessing Georgia's CJIS network shall assist criminal justice and other authorized agencies by providing controlled and monitored network access.

(c) Each record entered in GCIC/NCIC computerized files shall contain the ORI of the agency responsible for the record entry.

1. Any criminal justice agency or governmental dispatch center connected to the CJIS network may act as "holder" of GCIC/NCIC record entries on behalf of another agency responsible for criminal cases or other actions involving GCIC/NCIC computerized files. An agency may use its own ORI in GCIC/NCIC record entries only when a signed Holder of Record Agreement exists between the entering agency and the non-terminal agency. The Holder of Record Agreement must outline each agency's legal responsibilities for records entered in GCIC/NCIC computerized files.

2. Record responsibilities include entry, update and confirmation of positive inquiry responses (known as "hits") made by other agencies when these agencies confront persons who may be wanted or missing, violators of protection orders, or come into contact with serial-numbered property which may be stolen.

(d) Record entries shall be made within 12 hours of a determination by the investigating criminal justice agency that a wanted person should be

arrested or serial-numbered property is stolen. Missing person record entries shall be made in accordance with Rule 140-2-.15 (2) (a). Record entries shall be made within the above period as soon as minimum information for records is obtained. Agencies responsible for record entries shall take necessary actions to obtain minimum data to meet the 12-hour entry requirement.

(e) All record entries must have supporting official documents that reflect initial and continuing efforts to apprehend wanted persons, validate registered sex offender information, protect victims of domestic violence, or recover identifiable, serial-numbered stolen property. Arrest warrants must be available to support GCIC/NCIC wanted person record entries.

1. CJIS network terminal agencies shall require non-terminal agencies to provide copies of such supporting documents prior to making GCIC/NCIC record entries on behalf of such agencies. If emergencies arise, where immediate or prompt record entry is critical to apprehending a wanted person or recovering serial-numbered property reported as stolen, supporting documents may be provided after record entries are made. CJIS network terminal agencies and non-terminal agencies should establish Service Agreements to ensure proper and timely handling of record entries and responsibilities.

2. If supporting documents are not provided within 48 hours of entry, record entries shall be removed from GCIC/NCIC computerized files. CJIS network terminal agencies shall notify non-terminal agencies upon removal of GCIC/NCIC record entries from GCIC/NCIC files.

3. CJIS network terminal agencies shall maintain supporting documents in their files until arrest warrants are served or recalled, stolen serial-numbered property is recovered, missing persons are located or record entries are otherwise removed from GCIC/NCIC computerized files.

(f) Any agency with records entered in GCIC/NCIC computerized files shall respond to hit confirmation request messages. Responses may include notification that a specific amount of time will be required for record verification or deemed as official verification.

1. Responses to priority messages must be made within ten minutes; responses to routine messages must be made within one hour. Obvious abuse of this process, such as a priority hit request (10 minutes) for wanted/missing persons who are in custody or stolen property that has been recovered, shall be subject to GCIC disciplinary procedures as determined by the Director.

2. Verification messages must include the status of record entries representing wanted/missing persons, protected persons, or stolen serial-numbered property.

(g) GCIC/NCIC record entries that are no longer valid must be removed immediately from GCIC/NCIC computerized files.

1. CJIS network terminal agencies are responsible for the timely removal of their records when no longer valid.

2. Non-terminal agencies are likewise responsible for the timely removal of their records when no longer valid by submitting a request for record removal to the CJIS network agency providing service.

(h) GCIC provides a computerized file for entry of abandoned motor vehicles recovered by law enforcement agencies and/or reported to them by wrecker service operators or vehicle storage facilities. Georgia law requires a law enforcement agency to make record entries, or have record entries made if the law enforcement agency does not have access to Georgia's CJIS network, in the designated GCIC computerized file. Georgia law also requires law enforcement agencies to furnish wrecker service operators, or vehicle storage facilities, with the name and address of the last known registered owner and title/lien holder information. Such information is available from the Georgia Department of Revenue via the CJIS network. The name and address of the last known owner of an abandoned vehicle registered in another state is available from that state's motor vehicle file through Nlets via a CJIS network inquiry. Georgia law further requires owners of abandoned motor vehicles, which later are determined as stolen, to receive recovery notification from law enforcement agencies after receiving reports that such vehicles were stolen. GCIC abandoned vehicle file records are automatically purged

90 days after entry if not removed sooner by entering agencies. NCIC does not maintain an abandoned vehicle file.

Authority: O.C.G.A. §§ 35-3-33, 35-3-36, 40-11-2. **History.** Original Rule entitled "Wanted/Missing Persons and Stolen Property" filed Sept. 6, 1984, effective Oct. 8, 1984, as specified by the Agency. **Amended:** Rule repealed and a new Rule entitled "Wanted/Missing Persons and Stolen Property" adopted. Filed July 2, 1986, effective July 22, 1986. **Amended:** Filed Jan. 6, 1988, effective Jan. 27, 1988, as specified by the Agency. **Amended:** Rule repealed and a new Rule entitled "Wanted/Missing Persons and Stolen/Abandoned Property" adopted. Filed July 7, 1988, effective July 27, 1988. **Repealed:** New Rule of same title adopted. Filed Nov. 7, 1990, effective Nov. 27, 1990. **Amended:** Filed Dec. 2, 1992, effective Dec. 22, 1992. **Repealed:** New Rule entitled "Wanted/Missing Persons and Stolen/Abandoned Serial Numbered Property" adopted. Filed Mar. 4, 1998, effective Mar. 24, 1998. **Amended:** Filed Sept. 5, 2002, effective Sept. 25, 2002. **Amended:** Filed Sept. 25, 2007, effective Oct. 15, 2007.

#### **140-2-.14 Validation Procedures for Wanted/Missing Person and Stolen Property Records. Amended.**

All criminal justice agencies with wanted/missing persons, protected persons and/or stolen property record entries in GCIC and NCIC computerized files are required to participate in the record validation program established and administered by GCIC and NCIC.

(a) Record entries subject to validation are wanted/missing persons, protected persons, unidentified deceased persons, stolen vehicles, stolen guns, stolen boats, stolen securities, protection order records, records on violent gangs and terrorist organizations, persons on supervised released and abandoned vehicles.

(b) GCIC produces monthly listings of record entries for validation. Specifically, a CJIS network terminal agency will receive a validation package for its own records and records established for another agency under a Holder of Record Agreement. When a CJIS network terminal agency establishes GCIC/NCIC records for another criminal justice agency the agency of record, not the terminal agency, will receive validation packages.



(c) Agencies of record shall review validation listings by (1) comparing each record to supporting documentation such as the original arrest warrant (has it been served) and the court of jurisdiction; criminal case file (is information accurate, complete and valid); protection order; missing persons report, including available criminal history records; documented extradition limit changes, if any, from the District Attorney; wanted persons record; (2) checking with issuing authorities or prosecutors to determine if warrants remain valid or cases will be prosecuted; (3) determining from owners of stolen serial-numbered property if recovery has been made or ownership has changed; (4) verifying that missing persons have not returned; and, (5) contacting the Clerk of Superior Court to ensure Protection Orders are valid.

(d) Agencies shall cancel record entries that are no longer valid.

(e) Agencies shall modify record entries that contain erroneous information or are incomplete and create supplemental record entries as required when additional information becomes available.

(f) When record entries are verified as accurate and current or have been modified or canceled, persons responsible for processing validation packages shall complete validation certification using procedures prescribed by GCIC.

(g) Non-receipt of certification messages by GCIC cited suspense dates will result in the removal of all record entries contained in validation listings processed from GCIC/NCIC files.

(h) Validation procedures, records and supporting documents are subject to GCIC and NCIC audits.

Authority: O.C.G.A. §§ 35-3-33, 35-3-36. **History.** Original Rule entitled "Validation Procedures for Wanted/Missing Person and Stolen Property Records" filed Sept. 6, 1984, effective Oct. 8, 1984, as specified by the Agency. **Amended:** Rule repealed and a new Rule of same title adopted. Filed July 2, 1986, effective July 22, 1986. **Amended:** Rule repealed and a new Rule of same title adopted. Filed July 7, 1988, effective July 27, 1988. **Repealed:** New Rule of same title adopted. Filed Nov. 7, 1990, effective Nov. 27, 1990. **Amended:** Filed Dec. 2, 1992, effective Dec. 22, 1992. **Repealed:** New Rule, same title, adopted. Filed Mar. 4, 1998, effective Mar. 24, 1998. **Amended:**

Filed Sept. 5, 2002, effective Sept. 25, 2002. **Amended:** Filed Sept. 25, 2007, effective Oct. 15, 2007.

**140.2-.15 Procedures for Handling Missing and Unidentified Deceased Persons. Amended.**

(1) All law enforcement agencies shall collect information about each person reported missing by a parent, guardian or next of kin. Information about unknown deceased persons shall also be collected and preserved for identification purposes. Information collected includes physical descriptions, descriptions of clothing, dental charts, fingerprints if available and other personal data useful in identifying missing or unknown deceased persons.

(2) Agencies receiving missing person reports shall enter appropriate records in GCIC/NCIC computerized files. Agencies investigating unknown deceased cases shall enter, or authorize entry of, unidentified deceased persons in NCIC. In compliance with federal law (42 USC 5779, Section 3701), GCIC will advise the Georgia Missing Person Clearinghouse of all such record entries.

(a) Record entries for missing minors, including juveniles reported as runaways, shall be made immediately. Entries for all other persons reported missing must be made within 12 hours, pursuant to O.C.G.A. § 35-3-36.

(b) Within sixty (60) days of entry of a missing juvenile, the agency must attempt to update the record with any available medical/dental records for identification purposes.

(c) Thirty-days after missing person records are entered in the NCIC computerized file, NCIC will check all records for completeness. NCIC sends messages to agencies of record when records are incomplete.

(d) A non-terminal agency should request assistance in making missing person record entries from the terminal agency that provides it CJIS network service.

(e) Agencies that enter or authorize the entry of missing person and unidentified deceased person records in GCIC/NCIC computerized files shall respond within 10 minutes to priority messages from other agencies reference possible identifications. Responses to messages classified as 'routine' shall be made within one hour. NCIC conducts daily matches to determine if identifiers in a missing person record are similar to those of a recent unidentified deceased person entry.

(3) Agencies authorizing entry of missing person and unidentified deceased person records shall cause these record entries to be removed from GCIC/NCIC computerized files immediately upon identification of missing or unidentified deceased persons.

Authority: O.C.G.A. §§ 35-1-8, 35-3-4, 35-3-33, 35-3-36; 42 U.S.C. 5779, Sec. 37.01. **History.** Original Rule entitled "Special Handling Provisions for Missing and Unidentified Deceased Persons" filed Sept. 6, 1984, effective Oct. 8, 1984, as specified by the Agency. **Amended:** Rule repealed and a new Rule of same title adopted. Filed July 2, 1986, effective July 22, 1986. **Amended:** Rule repealed and a new Rule of same title adopted. Filed July 7, 1988, effective July 27, 1988. **Repealed:** New Rule of same title adopted. Filed Nov. 7, 1990, effective Nov. 27, 1990. **Amended:** Filed Dec. 4, 1991, effective Dec. 24, 1991. **Repealed:** New Rule entitled "Procedures for Handling Missing and Unidentified Deceased Persons" adopted. Filed Mar. 4, 1998, effective Mar. 24, 1998. **Amended:** Filed Sept. 5, 2002; effective Sept. 25, 2002. **Amended:** Filed Sept. 25, 2007, effective Oct. 15, 2007.

#### **140-2-.16 Training. Amended.**

(1) Criminal justice officials and agency heads shall provide training and retraining, as required by policy, to ensure their employees' effective performance of job-specific tasks relating to

(a) Use of the Georgia CJIS network and information files to which it provides access and CJIS network terminal operations

(b) Use of NCIC

(c) Use of Nlets

(d) Dissemination and use of CHRI

(e) State and national UCR programs

(f) Fingerprinting arrested persons and use of the OTN and CTN when reporting an arrest, update or modification of an offender's criminal history record

(g) Preparing and submitting OBTS reports with final dispositions of charges.

(2) All personnel directly associated with maintaining, processing or disseminating CHRI shall be specially trained. The training shall provide a working knowledge of federal and state regulations and laws governing the security and processing of criminal justice information. Agency heads are responsible for ensuring their personnel receive such training as supported by the GCIC Policy Manual. In cases where agency head requests for training cannot be accommodated within a reasonable time, employees are required to read the Rules of the GCIC Council as contained herein. This will provide basic knowledge regarding the access, use, control and dissemination of criminal justice information until training occurs.

(3) Managers of computer centers and governmental dispatch centers shall ensure that employees supporting criminal justice operations are trained to perform job-specific tasks relating to the functions described in paragraph (1) above.

(4) Each CJIS network terminal agency head shall immediately appoint a TAC to serve as the agency point of contact on GCIC/NCIC record validations, hit confirmations, training and all other NCIC/CJIS network related matters. GCIC shall provide job-specific training for TACs and any assistant TACs.

(5) TACs must be trained as CJIS terminal operators before admission to the TAC certification course. The minimum requirement is terminal operator practitioner.

(6) TACs shall be subject to certification training and testing within 90 days of appointment.

(7) Each TAC must attend a TAC refresher course, as required by GCIC policy, to maintain TAC certification.

(8) Agency heads and TACs are responsible for developing agency specific policies and procedures relating to CJIS network operations and the administration of terminal operator and practitioner training programs developed by GCIC. Agency heads have discretion to designate CJIS network terminals users as either terminal operators or practitioners.

(9) Terminal operators are subject to certification testing within six months of their employment or assignment of terminal operator duties and subject to re-certification testing every two years thereafter for the duration of their employment as terminal operators. Additionally, practitioners must receive training in the components of CJIS network operations they use in performing their official duties. Practitioners must also successfully complete performance tests administered by TACs and are subject to retesting every two years thereafter for the duration of their employment in which CJIS network access is necessary to complete job assignments.

(10) The appointment of a TAC, the immediate appointment of a new TAC when required to fill a TAC vacancy, the training, testing and certification of the TAC, and the training, testing, certification and recertification of terminal operators and practitioners are mandatory for initial and on-going terminal agency status on the Georgia CJIS network.

Authority: O.C.G.A. § 35-3-33. **History.** Original Rule entitled "Training" filed July 2, 1986, effective July 22, 1986. **Amended:** Rule repealed and a new Rule of same title adopted. Filed July 7, 1988, effective July 27, 1988. **Repealed:** New Rule of same title adopted. Filed Nov. 7, 1990, effective Nov. 27, 1990. **Amended:** Filed Dec. 2, 1992, effective Dec. 22, 1992. **Repealed:** New Rule, same title, adopted. Filed Mar. 4, 1998, effective Mar. 24, 1998. **Amended:** Filed Sept. 5, 2002, effective Sept. 25, 2002. **Amended:** Filed Sept. 25, 2007, effective Oct. 15, 2007.

#### **140-2-.17 Brady Handgun Violence Prevention Act. Amended.**

(1) Effective November 1998, the Federal Brady Law established a National Instant Criminal Background Check System (NICS) that Federal Firearms Licensees (FFLs) must contact before transferring any

firearm to an unlicensed individual. GCIC has authority to provide criminal history, wanted person and involuntary hospitalization records information to the FBI in conjunction with the NICS and in accordance with the federal 'Brady Handgun Violence Prevention Act'.

(2) GCIC records shall include information as to whether a person has been involuntarily hospitalized. Notwithstanding any other provisions of law, and in order to carry out O.C.G.A § 16-11-172, GCIC shall be provided – in a manner agreed upon by the Probate Judges Training Council and the Georgia Bureau of Investigation (GBI) – such information and no other mental health information, to preserve the confidentiality of patient's rights in all other respects, from the involuntary hospitalization records of the probate courts concerning persons involuntarily hospitalized after March 22, 1995. Further, notwithstanding any other provisions of law and in order to carry out the provisions of O.C.G.A. § 16-11-172, GCIC shall be provided information as to whether a person has been adjudicated mentally incompetent to stand trial or not guilty by reason of insanity at the time of the crime, has been involuntarily hospitalized or both from the records of the clerks of the superior courts concerning persons involuntarily hospitalized after March 22, 1995, in a manner agreed upon by the Council of Superior Court Clerks of Georgia and the GBI to preserve the confidentiality of patient's rights in all other respects. Five years from the date that GCIC receives a person's involuntary hospitalization information, the center shall purge its records of such information as soon as practicable and, in any event, within 30 days of the expiration of such five-year period.

Authority: O.C.G.A. §§ 16-11-172, 35-3-32, 35-3-34, 35-3-38, 37-3-81; 18 U.S.C. Secs. 921-923. **History.** Original Rule entitled "Sanctions" adopted. Filed Dec. 4, 1991, effective Dec. 24, 1991. **Repealed:** New Rule entitled "Georgia Instant Background Checks for Firearms Purchases" adopted. Filed Mar. 4, 1998, effective Mar. 24, 1998. **Amended:** Filed Sept. 5, 2002, effective Sept. 25, 2002. **Repealed:** New Rule, same title, adopted. Filed Sept. 25, 2007, effective Oct. 15, 2007.

**140-2-.18 The Georgia Sexually Violent Offender Registry.  
Amended.**

(1) Georgia law places responsibility for the establishment, operation and management of a sexually violent offender registry within the Georgia Bureau of Investigation and principally, GCIC. Accordingly, GCIC will perform the following functions:

(a) Provide public access to the registry via the internet

(b) Participate in the National Sex Offender Public Registry (NSOPR)

(c) Mail non-forwarding verification letters to the last known address of each registered sex offender, as required by law. The verification letter will serve as official notification to sex offenders that they must re-register with the Sheriff's Department in their county of residence

(d) Notify sheriffs when a sex offender record is entered, updated, or deleted from the registry

(e) Publish periodic reports for sheriffs that list sex offenders and sexually dangerous predators residing in each county

(f) Notify appropriate out-of-state law enforcement agencies when a sex offender relocates to their state

(g) Conduct training on issues related to operation and maintenance of the sex offender registry.

(2) The Department of Corrections, State Board of Pardons and Paroles and the Director of Private Probation agencies will enter sex offender records on the registry. They will submit updates including photos to the CJIS file as prescribed by statute and GCIC policy.

(3) Each sheriff must maintain accurate information on all registered sex offenders residing within their jurisdiction, as required by law.

(a) Each sheriff must update all required information, i.e. residence address, employment, school, etc. as required by law.

Authority: O.C.G.A. § 42-1-12. **History:** Original Rule entitled "Georgia Sex Offender Registry" adopted. Filed Mar. 4, 1998, effective Mar. 24, 1998.

**Amended:** Filed Sept. 5, 2002, effective Sept. 25, 2002. **Repealed:** New Rule, same title, adopted. Filed Sept. 25, 2007, effective Oct. 15, 2007.

### **140-2-.19 The Georgia Protective Order Registry.**

(1) Georgia law places responsibility for the establishment, operation and management of a protective order registry within the GBI and principally, GCIC. Accordingly, GCIC will perform the following functions:

- (a) Provide access via a secure internet web site to a centralized database for statewide protective orders
- (b) Assign law enforcement officers, prosecuting attorneys and the courts a unique user ID and password established specifically for access to the registry
- (c) Ensure entry into the registry of any protective order or modification thereof received from the Clerk of Court
- (d) Ensure transmission to the NCIC Protection Order File of all protective orders and modifications entered in the registry that meet NCIC data requirements
- (e) Authorize an alternative method of transmitting protective orders to the registry in the event of electronic failure
- (f) Consult with the Georgia Commission on Family Violence regarding the effectiveness of the registry in enhancing the safety of the victims of domestic violence and stalking.

(2) The Superior Court Clerk will scan the protective orders issued by the judge and enter data requested, if available, required by NCIC.

- (a) The Court Clerk shall electronically transmit a copy of the protective order or modification thereof to the registry as prescribed by statute.
- (b) The Court Clerk shall provide the local Sheriff with a hard copy of all protective orders transmitted to the registry.



(3) Each Sheriff shall be responsible for the validation of all NCIC protective order entries made on its behalf by the Superior Court Clerks office.

(a) Each Sheriff shall validate in accordance with the validation steps and file retention schedule established by both GCIC and NCIC.

(b) Each Sheriff shall respond to and confirm hit confirmation requests based on the records maintained in their office.

(4) The Courts of this state shall use a standardized form or forms for the issuance of any protective order.

(a) Standardized form or forms shall be subject to approval as to form and format by GCIC and the Georgia Superior Court Clerks Cooperative Authority (GSCCCA).

(b) The form or forms shall be promulgated by the Uniform Superior Court Rules Committee.

(c) The Administrative Office of the Courts shall distribute the forms.

Authority O.C.G.A. § 19-13-50 et seq. **History.** Original Rule entitled "Sanctions" adopted. Filed Mar. 4, 1998, effective Mar. 24, 1998. **Repealed:** New Rule, entitled "The Georgia Protective Order Registry" adopted. Filed Sept. 25, 2007, effective Oct. 15, 2007.

#### **140-2-.20 Sanctions. Amended.**

(1) Criminal justice agencies, governmental dispatch centers and other governmental agencies are subject to GCIC administrative sanctions for violating laws governing operation of the CJIS network, these Rules or CJIS network policies published by GCIC pursuant to O.C.G.A. § 35-3-33 (13). Administrative sanctions for terminal agencies may include, but not limited to purging wanted/missing person and stolen property serial-numbered records entered in GCIC/NCIC computerized files by CJIS network agencies or established by these agencies for non-terminal agencies pursuant to signed service agreements; restricted access to the CJIS network; and suspension/revocation of an agency's CJIS network access.

(2) Administrative sanctions may be imposed on individual violators. Such sanctions may include mandatory re-training and/or re-certification of TACs, terminal operators and/or practitioners and suspension from access to the CJIS network.

(3) Individual violators are also subject to criminal prosecution when their actions constitute violations of applicable state or federal statutes.

Authority: O.C.G.A. §§ 16-9-90 et seq., 35-3-32, 35-3-38; 18 U.S.C. 641, 1030, 1343, 1951, 1952. **History:** Original Rule 140-2-.19 entitled "Sanctions" adopted. Filed Mar. 4, 1998, effective Mar. 24, 1998. **Repealed:** New Rule, same title, adopted. Filed Sept. 25, 2007, effective Oct. 15, 2007.

**2010 Georgia Code**  
**TITLE 35 - LAW ENFORCEMENT**  
**OFFICERS AND AGENCIES**  
**CHAPTER 3 - GEORGIA BUREAU OF**  
**INVESTIGATION**  
**ARTICLE 2 - GEORGIA CRIME**  
**INFORMATION CENTER**  
**§ 35-3-38 - Unauthorized requests or**  
**disclosures of criminal history record**  
**information; disclosure of techniques used to**  
**ensure security or privacy of criminal history**  
**records**

O.C.G.A. 35-3-38 (2010)

35-3-38. Unauthorized requests or disclosures of criminal history record information; disclosure of techniques used to ensure security or privacy of criminal history records

(a) Any person who knowingly requests, obtains, or attempts to obtain criminal history record information under false pretenses, or who knowingly communicates or attempts to communicate criminal history record information to any agency or person except in accordance with this article, or any member, officer, employee or agent of the center, the council, or any participating agency who knowingly falsifies criminal history record information or any records relating thereto shall for each such offense, upon conviction thereof, be fined not more than \$5,000.00, or imprisoned for not more than two years, or both.

(b) Any person who communicates or attempts to communicate criminal history record information in a negligent manner not in accordance with this article shall for each such offense, upon conviction thereof, be fined not more than \$100.00, or imprisoned not more than ten days, or both.

(c) Any person who knowingly discloses or attempts to disclose the techniques or methods employed to ensure the security and privacy of information or data contained in criminal justice information systems except in accordance with this article shall for each such offense, upon conviction thereof, be fined not

more than \$5,000.00, or imprisoned not more than two years, or both.

(d) Any person who discloses or attempts to disclose the techniques or methods employed to ensure the security and privacy of information or data contained in criminal justice information systems in a manner not permitted by this article shall for each such offense, upon conviction thereof, be fined not more than \$100.00, or imprisoned not more than ten days, or both.

# Georgia Computer Systems Protection Act

H. B. No. 822 (AS PASSED HOUSE AND SENATE)

By: Representatives Walker of the 115th, Coleman of the 118th, Murphy of the 18th and Buck of the 95th

## A BILL TO BE ENTITLED AN ACT

To amend Chapter 9 of Title 16 of the Official Code of Georgia Annotated, relating to crimes involving forgery and fraudulent practices, so as to repeal the existing Georgia Computer Systems Protection Act and enact a new Georgia Computer Systems Protection Act; to provide for legislative intent; to provide for definitions; to provide for criminal liability and penalties for the crimes of computer theft, computer trespass, computer invasion of privacy, computer forgery, and computer password disclosure; to provide for civil remedies and damages; to provide for venue; to provide for other related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

### Section 1.

Chapter 9 of Title 16 of the Official Code of Georgia Annotated, relating to crimes involving forgery and fraudulent practices, is amended by repealing in its entirety Article 6, the Georgia Computer Systems Protection Act, and inserting in its place a new Article 6 to read as follows:

#### "ARTICLE 6

##### **16-9-90.**

This article may be cited as the Georgia Computer Systems Protection Act.

##### **16-9-91.**

The General Assembly finds that:

- (1) Computer related crime is a growing problem in the government and in the private sector;
- (2) Such crime occurs at great cost to the public, since losses for each incident of computer crime tend to be far greater than the losses associated with each incident of other white collar crime;
- (3) The opportunities for computer related crimes in state programs, and in other entities which operate within the state, through the introduction of fraudulent records into a computer system, unauthorized use of computer facilities, alteration or destruction of computerized information files, and stealing of financial instruments, data, or other assets are great;

- (4) Computer related crime operations have a direct effect on state commerce;
- (5) Liability for computer crimes should be imposed on all persons, as that term is defined in this title; and
- (6) The prosecution of persons engaged in computer related crime is difficult under previously existing Georgia criminal statutes.

16-9-92.

As used in this article, the term:

- (1) Computer means an electronic, magnetic, optical, electrochemical, or other high-speed data processing device or system performing computer operations with or on data and includes any data storage facility or communications facility directly related to or operating in conjunction with such device; but such term does not include an automated typewriter or typesetter, portable hand-held calculator, household appliance, or other similar device that is not used to communicate with or to manipulate any other computer.
- (2) Computer network means a set of related, remotely connected computers and any communications facilities with the function and purpose of transmitting data among them through the communications facilities.
- (3) Computer operation means computing, classifying, transmitting, receiving, retrieving, originating, switching, storing, displaying, manifesting, measuring, detecting, recording, reproducing, handling, or utilizing any form of data for business, scientific, control, or other purposes.
- (4) Computer program means one or more statements or instructions composed and structured in a form acceptable to a computer that, when executed by a computer in actual or modified form, cause the computer to perform one or more computer operations. The term 'computer program' shall include all associated procedures and documentation, whether or not such procedures and documentation are in human readable form.
- (5) Data includes any representation of information, intelligence, or data in any fixed medium, including documentation, computer printouts, magnetic storage media, punched cards, storage in a computer, or transmission by a computer network.
- (6) Financial instruments includes any check, draft, money order, note, certificate of deposit, letter of credit, bill of exchange, credit or debit card, transaction-authorizing mechanism, or marketable security, or any computer representation thereof.
- (7) Property includes computers, computer networks, computer programs, data, financial instruments, and services.
- (8) Services includes computer time or services or data processing services.

(9) Use includes causing or attempting to cause:

(A) A computer or computer network to perform or to stop performing computer operations;

(B) The obstruction, interruption, malfunction, or denial of the use of a computer, computer network, computer program, or data; or

(C) A person to put false information into a computer.

(10) Victim expenditure means any expenditure reasonably and necessarily incurred by the owner to verify that a computer, computer network, computer program, or data was or was not altered, deleted, damaged, or destroyed by unauthorized use.

(11) Without authority includes the use of a computer or computer network in a manner that exceeds any right or permission granted by the owner of the computer or computer network.

### **16-9-93.**

#### **(a) Computer Theft.**

Any person who uses a computer or computer network with knowledge that such use is without authority and with the intention of:

(1) Taking or appropriating any property of another, whether or not with the intention of depriving the owner of possession;

(2) Obtaining property by any deceitful means or artful practice; or

(3) Converting property to such person's use in violation of an agreement or other known legal obligation to make a specified application or disposition of such property

shall be guilty of the crime of computer theft.

#### **(b) Computer Trespass.**

Any person who uses a computer or computer network with knowledge that such use is without authority and with the intention of:

(1) Deleting or in any way removing, either temporarily or permanently, any computer program or data from a computer or computer network;

(2) Obstructing, interrupting, or in any way interfering with the use of a computer program or data; or

(3) Altering, damaging, or in any way causing the malfunction of a computer, computer network, or computer program, regardless of how long the alteration, damage, or malfunction persists

shall be guilty of the crime of computer trespass.

**(c) Computer Invasion of Privacy.**

Any person who uses a computer or computer network with the intention of examining any employment, medical, salary, credit, or any other financial or personal data relating to any other person with knowledge that such examination is without authority shall be guilty of the crime of computer invasion of privacy.

**(d) Computer Forgery.**

Any person who creates, alters, or deletes any data contained in any computer or computer network, who, if such person had created, altered, or deleted a tangible document or instrument would have committed forgery under Article 1 of this chapter, shall be guilty of the crime of computer forgery. The absence of a tangible writing directly created or altered by the offender shall not be a defense to the crime of computer forgery if a creation, alteration, or deletion of data was involved in lieu of a tangible document or instrument.

**(e) Computer Password Disclosure.**

Any person who discloses a number, code, password, or other means of access to a computer or computer network knowing that such disclosure is without authority and which results in damages (including the fair market value of any services used and victim expenditure) to the owner of the computer or computer network in excess of \$500.00 shall be guilty of the crime of computer password disclosure.

**(f) Article not Exclusive.**

The provisions of this article shall not be construed to preclude the applicability of any other law which presently applies or may in the future apply to any transaction or course of conduct which violates this article.

**(g) Civil Relief; Damages.**

(1) Any person whose property or person is injured by reason of a violation of any provision of this article may sue therefor and recover for any damages sustained and the costs of suit. Without limiting the generality of the term, 'damages' shall include loss of profits and victim expenditure.

(2) At the request of any party to an action brought pursuant to this Code section, the court shall by reasonable means conduct all legal proceedings in such a way as to protect the secrecy and security of any computer, computer network, data, or computer program involved in order to prevent possible recurrence of the same or a similar act by another person and to protect any trade secrets of any party.



(3) The provisions of this article shall not be construed to limit any person's right to pursue any additional civil remedy otherwise allowed by law.

(4) A civil action under this Code section must be brought within four years after the violation is discovered or by exercise of reasonable diligence should have been discovered. For purposes of this article, a continuing violation of any one subsection of this Code section by any person constitutes a single violation by such person.

#### **(h) Criminal Penalties.**

(1) Any person convicted of the crime of computer theft, computer trespass, computer invasion of privacy, or computer forgery shall be fined not more than \$50,000.00 or imprisoned not more than 15 years, or both.

(2) Any person convicted of computer password disclosure shall be fined not more than \$5,000.00 or incarcerated for a period not to exceed one year, or both.

#### **16-9-94.**

For the purpose of venue under this article, any violation of this article shall be considered to have been committed:

(1) In the county of the principal place of business in this state of the owner of a computer, computer network, or any part thereof; and,

(2) In any county in which any person alleged to have violated any provision of this article had control or possession of any proceeds of the violation or of any books, records, documents, or property which were used in furtherance of the violation; and,

(3) In any county in which any act was performed in furtherance of any transaction which violated this article; and,

(4) In any county from which, to which, or through which any use of a computer or computer network was made, whether by wires, electro-magnetic waves, microwaves, or any other means of communication."

#### **Section 2.**

This Act shall become effective on July 1, 1991.

#### **Section 3.**

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

2010 Georgia Code

TITLE 35 - LAW ENFORCEMENT OFFICERS AND AGENCIES

CHAPTER 3 - GEORGIA BUREAU OF INVESTIGATION

ARTICLE 2 - GEORGIA CRIME INFORMATION CENTER

§ 35-3-31 - Establishment of center; staff and equipment generally;  
State Personnel Administration status of personnel

O.C.G.A. 35-3-31 (2010)

35-3-31. Establishment of center; staff and equipment generally; State Personnel Administration status of personnel

(a) There is established for the state, within the Georgia Bureau of Investigation, a system for the intrastate communication of vital information relating to crimes, criminals, and criminal activity, to be known as the Georgia Crime Information Center.

(b) Central responsibility for the development, maintenance, and operation of the center shall be vested with the director of the center with the assistance and guidance of the Georgia Crime Information Council, the establishment of which is provided for in Code Section 35-3-32.

(c) The director of the center shall maintain the necessary staff along with support services to be procured within the Georgia state government, such as computer services from the Department of Administrative Services, physical space and logistic support from the Department of Public Safety, and other services or sources as necessary, to enable the effective and efficient performance of the duties and responsibilities ascribed to the center in this article.

(d) All personnel of the center shall be administered according to appropriate special and standard schedules by the State Personnel Administration with due recognition to be given by the latter to the special qualifications and availability of the types of individuals required in such an agency.

**GEORGIA DEPARTMENT OF CORRECTIONS**

Standard Operating Procedures

<b>Functional Area:</b> Office of Information Technology	<b>Reference Number:</b> IVJ01-0001	<b>Revises Previous Effective Date:</b>  5/01/00
<b>Subject:</b> Technology Policies & Procedures		
<b>Authority:</b> Wetherington/Ferrero	<b>Effective Date:</b> 12/31/01	Page 1 of  <b>10</b>

**I. POLICY**

It is the policy of the Georgia Department of Corrections (GDC) that the Office of Information Technology (OIT) will provide and assume the responsibility for the procurement, delivery, maintenance and support for the information technology environment of the agency solely or via State approved processes.

**II. APPLICABILITY**

All state correctional institutions, transitional centers, probation detention centers, probation diversion centers, boot camps, other facilities and offices operated by the Georgia Department of Corrections. All employees within the Department of Corrections, its contractors or sub divisions, and other part-time employees of the Department.

**III. RELATED DIRECTIVES**

- A. O.C.G.A: 16-9-90
- B. GDC-Rules: 125-1-1.09, 125-1-2-.02, 125-1-2.04
- C. Standard Operating Procedures: IIA0503, IVJ0201
- D. ACA Standards:

**IV. DEFINITIONS:**

**Computing environment**

Refers to all computers and processors of all types used for data manipulation, transmission, or storage. It includes all hardware, software, connectivity devices, storage devices, printers, modems, cabling, servers, monitors, and keyboards, mouse-pointing devices, speakers and multimedia peripherals that were bought, provided or maintained by OIT. Generally it applies to those computer related devices and software that assist the user in the performance of their business activity. It does not include embedded

Functional Area:	Prev. Eff. Date: 5/01/00	Page 2 of 10
Office of Information Technology	Effective Date: 12/31/01	Reference Number: IVJ01-0001

computing devices such as perimeter detection monitoring computers, control room fire/safety monitoring units, inmate telephone systems, access point devices, and so forth.

**Software** Any computer application, purchased off the shelf or developed from code or developed from a purchased shell program. Any application loaded on any computer or server within the Georgia Department of Corrections.

**Hardware** The physical part of a computer system, the machinery and equipment. Hardware consists of the computer system's CPU (central processing unit), disks, CDs, keyboard, modem, monitor, cables, printer, and so forth.

**V. ATTACHMENTS:**

N/A

**VI. CONTENTS**

- (1) [Total Cost of Ownership](#)
- (2) [Purchasing Equipment and/or Software](#)
- (3) [Computing Hardware](#)
- (4) [Inventory](#)
- (5) [Software](#)
- (6) [Computing Environment](#)
- (7) [Internet Access](#)
- (8) [Security](#)

**VII. PROCEDURES:**

This document contains the standard operating procedures pertaining to the computing environment in the Georgia Department of Corrections.

**VIII. Total Cost of Ownership**

The Total Cost of Ownership (TCO) is a financial figure derived from the actual cost of placing a computer into use in the Department of Corrections work environment for authorized users. This figure is an all inclusive one that begins with the purchase of the user workstation but also extends to the software installed on it, its license, service, network access prorating; WAN costs for installation

Functional Area:	Prev. Eff. Date: 5/01/00	Page 3 of 10
Office of Information Technology	Effective Date: 12/31/01	Reference Number: IVJ01-0001

and monthly recurring fees; use of central office servers, their purchase, applications; central office developers and maintenance engineers, just to mention some of the behind the scenes costs. This is not an all-inclusive list. The TCO can, very generally, be derived by dividing the number of computers in the agency into the overall OIT budget. For example, the TCO for 1999 was \$2727 per computer workstation. [\(Return to Contents\)](#)

**IX. Purchasing:**

The Georgia Technology Authority (GTA) is the only authorizing body in the State of Georgia with the authority to grant permission and approval to purchase computing equipment, regardless of the source of money (GDC budget, grants, etc.). All purchases must be approved via OIT through GTA. Procedures for what must have prior approval versus routine purchases are outlined in GTA procedures and purchasing work flow diagrams. Purchasing in the Georgia Department of Corrections for computing related items (software, hardware, peripherals, etc.) will be handled through the OIT Business Office. Payment for such items may originate from a variety of sources but will comply with this policy in all aspects. This will help ensure that standard items are introduced into our environment and help minimize the maintenance and trouble calls. [\(Return to Contents\)](#)

**X. Computing Hardware**

A. Assignment:

The placement of computers within the agency will be determined by a combination of the requesting user, proper approval from Division Information Systems Coordinators (DISC) or Directors with sufficient business justification, security, and the technological feasibility of the location (considering connectivity and functionality limitations).

B. Relocation:

Computer equipment is not to be moved from one location to another without the knowledge and approval of OIT. If the computing needs change for any reason, OIT should be contacted to express those needs and request assistance. Requests will be considered and addressed as resources and policy allow.

1. Most workstations are configured with the software and hardware interface devices to comply with the user's needs. Movement of a workstation, or any of the equipment making up that workstation, may cause conflicts, logon failures, incompatibilities, and unnecessary support calls and/or return of the workstation to the original location. Generally, moves can be accomplished with little or no trouble within the same

Functional Area:	Prev. Eff. Date: 5/01/00	Page 4 of 10
Office of Information Technology	Effective Date: 12/31/01	Reference Number: IVJ01-0001

segment or LAN location; however, it should not be attempted without OIT approval.

2. All GDC staff and sites are accountable for the computing equipment inventory at the location to which it is assigned. Once the equipment is placed at a site, it can be moved from that site only by OIT staff or its authorized maintenance vendor/contractor or via common carrier or courier services authorized by OIT.

C. Equipment Replacement and Upgrade:

OIT has, as part of the Technology Strategic Plan, the vision of maintaining a refreshed level of computing capability. This is to be accomplished by identifying approximately the oldest 25% of existing hardware and replacing it annually with new equipment. This can only be accomplished if the appropriate budget funding is available but should keep the equipment at most only three to four years old. The goal is to reduce the maintenance cost of repairing older equipment and to provide users with a reasonably modern computing tool set.

D. Maintenance:

The responsibility for maintaining computing equipment within the agency will be that of OIT. OIT will have each item of authorized equipment inventoried and will use this authorized equipment inventory list to determine maintenance. If the item is not part of the official OIT inventory, maintenance will not be authorized. Maintenance will be accomplished through factory warranty service, field technician on site visits, or OIT central office repair staff. Maintenance may, in some cases, result in replacement of the item.

Functional Area:	Prev. Eff. Date: 5/01/00	Page 5 of 10
Office of Information Technology	Effective Date: 12/31/01	Reference Number: IVJ01-0001

- E. Equipment not purchased via the authorized method will not be maintained or replaced by OIT and will be in violation of this policy. [\(Return to Contents\)](#)

## **XI. Inventory**

### A. Inventory Transfers

1. OIT equipment shall be transferred from a site only by OIT staff or its authorized contractors.
2. All equipment transfers will be documented and tracked in the OIT SCRIBE Computer Inventory application.

### B. OIT Staff, Authorized Contractors

1. The OIT authorized staff and/or contractors may swap broken equipment during a service call to a site.
2. OIT staff and/or authorized contractors are required to document the change out of equipment. The OIT staff/contractor will document a transfer out of the piece of equipment being replaced on the transfer inventory page in the OIT SCRIBE Computer Inventory application.
3. The OIT staff/contractor will receive the replacement piece of equipment for the receiving site on the Receive Inventory page in the OIT SCRIBE Computer Inventory application.
4. OIT field staff and/or authorized contractors shall not remove the GDC sticker from any OIT equipment.
5. OIT equipment shipped to the local site via common carrier or courier service authorized by OIT will be deemed to have arrived at the site when the transfer form packed with the equipment is signed by the local site. OIT inventory staff will document the transfer out of equipment in the OIT SCRIBE Computer Inventory application. The receiving site should notify the field tech that transferred equipment has arrived. The field tech will accept the transferred equipment on the Receive Inventory page in the OIT SCRIBE Computer Inventory application for the receiving site.

### C. GDC Sticker

1. Only OIT may issue a GDC sticker for OIT equipment.
2. OIT will issue a GDC sticker for the equipment swapped out by the vendor at a site. The sticker will be mailed to the site with the instructions for the LISC (Local Information Services Coordinator) or OA (Operations Analyst) to sticker the specific piece of equipment.

Functional Area:	Prev. Eff. Date: 5/01/00	Page 6 of 10
Office of Information Technology	Effective Date: 12/31/01	Reference Number: IVJ01-0001

D. OIT Inventory

1. OIT inventory will maintain and update a local inventory tracking program identifying equipment, transfer or receipt, GDC sticker number and serial number.
2. OIT inventory will issue all GDC sticker numbers for new OIT equipment or for vendor exchanged equipment.

E. Surplus

1. The determination that equipment will be surplus will be made by OIT. OIT staff will physically surplus equipment and complete the appropriate surplus and inventory documentation.

[\(Return to Contents\)](#)

**XII. Software**

Software will be provided for the users in the agency. It may be in the form of applications loaded locally on a computer, on a server on a Local Area Network (LAN), or in centralized servers accessed via a Wide Area Network (WAN).

- A. OIT will maintain a master list of software and will publish it on the GDC Intranet (Captiva) under Information Technology. Only that software needed for business and deemed appropriately licensed will be allowed. Licensing records will be maintained via OIT purchases and records.
- B. Any use or installation of any software from any source other than that authorized by OIT will be in violation of this policy. Companies that police software usage are hired by major vendors to identify abuses. Federal authority regulates their access to our computers, and they can obtain access upon request.
- C. In addition to placing the agency in jeopardy, any person violating this policy may be subject to personal liability for fines.
- D. Any person needing software for a legitimate business purpose should request it through their Division Information Systems Coordinator (DISC).

[\(Return to Contents\)](#)

**XIII. Computing Environment**

A. Appropriate Use:

GDC computing equipment is purchased for authorized individuals for the intended business purposes for which the equipment was purchased. The limited or occasional personal use of equipment and software may be accomplished with the supervisor's permission but



Functional Area:	Prev. Eff. Date: 5/01/00	Page 7 of 10
Office of Information Technology	Effective Date: 12/31/01	Reference Number: IVJ01-0001

will adhere strictly to the policies outlined in this document governing the use of computers.

B. Inappropriate Use:

The inappropriate use of a computer can be a physical abuse, neglect, or purposeful misuse. It can also be an inappropriate utilization of the equipment or software that would violate usage, security, or access policies and procedures. It can also include negligence in maintaining the data kept within the storage devices or drives. Care should be taken to protect the computing equipment from extremes in temperature, moisture, damage, or any other damaging environmental hazard or exposure. Care should be taken to insure the safety of diskettes, CDs, tapes or any other means of storage of data. [\(Return to Contents\)](#)

**XIV. Internet Access**

The use of GDC provided Internet access imposes certain responsibilities and obligations on users and is subject to state government policies and local, state, and federal laws. As a condition of being granted Internet access by GDC, each employee must comply with this policy and refrain from inappropriate and/or prohibited use at all times.

Information and files composed, transmitted, or received on GDC equipment may be considered part of the GDC records. Employees should ensure that all information accessed with or stored on GDC equipment is appropriate, ethical, and lawful.

Unnecessary Internet usage causes network and server congestion, slows other users, takes away from work time, and could over burden other shared resources. Because of this, accessing/downloading large audio or video files is strictly limited to business purposes only.

Functional Area:	Prev. Eff. Date: 5/01/00	Page 8 of 10
Office of Information Technology	Effective Date: 12/31/01	Reference Number: IVJ01-0001

A. Appropriate Use

1. Federal, state, or local government Internet sites.
2. Access to sites related to professional organizations or other professional development information.
3. Downloading of technical bug fixes, patches or drivers used by OIT for providing the latest updates to software and applications.
4. Job-related research.
5. Other supervisor approved usage.

B. Inappropriate Use

1. Any use of the Internet (WWW) that is not in the best interest of the Department of Corrections will be considered inappropriate. Inappropriate Internet use includes, but is not limited to:
  - a) Private or personal for-profit activities. This includes business or solicitations related to commercial ventures, religious or political causes, or any matter related to outside organizations.
  - b) Knowingly downloading or distributing pirated software, information, or malicious program code (viruses).
  - c) Downloading any software or electronic files without ensuring that GDC-provided virus protection is active.
  - d) Uploading or downloading commercial or agency software in violation of copyrights or trademarks.
  - e) Playing games and "chatting".
  - f) Performing any activity that could cause the loss or corruption of data or the degradation of system/network performance.
  - g) Any other activity that would reflect discredit on GDC.

C. Prohibited Use

1. Any use of the Internet (WWW) for the following purposes is strictly prohibited:
  - a) Accessing or downloading pornographic or sexually explicit material.
  - b) Accessing or downloading material that could be considered discriminatory, offensive, threatening, harassing, or intimidating.

Functional Area:	Prev. Eff. Date: 5/01/00	Page 9 of 10
Office of Information Technology	Effective Date: 12/31/01	Reference Number: IVJ01-0001

c) Conducting any illegal activities as defined by federal, state, or local laws or regulations.

d) Gambling.

D. Internet Usage Monitoring

1. Employees with access to the Internet should be aware that any information accessed, downloaded, or transmitted may be reviewed by system's staff and agency management. While GDC respects the privacy of its employees, the importance of ensuring appropriate use of state resources may result in the occasional monitoring of Internet sites visited by GDC employees. Inappropriate Internet usage can expose the GDC to significant legal liability and reflect discredit on the department.
2. When using GDC computers and resources to access Internet sites, employees are consenting to the monitoring of their use and have no reasonable expectation of privacy in the use of these resources.
3. OIT staff is required to notify agency management when inappropriate material is discovered on GDC computers or when a review of Internet sites visited indicates misuse.

E. Penalties for Misuse of Internet Access

1. Employees using GDC provided Internet access agree to adhere to the policies and guidelines established by the department. Alleged violations of this policy will be reviewed on a case-by-case basis.
  - a) Internet access can be revoked at any time.
  - b) Clear and willful violations or abuse of what is considered to be acceptable use will be subject to appropriate disciplinary action, up to and including termination from employment.
  - c) In appropriate circumstances, criminal or civil action may be initiated.

F. Purchasing ISP Accounts

1. The purchase of Internet access accounts must be approved by Division Information System Coordinators (DISC) or Directors, and will be reviewed for conformity to standards by the Office of Information Technology. The responsibility of the payments for ISP accounts, modems, modem lines, and any services associated with the access to the Internet will be the responsibility of the section under which the facility or

Functional Area:	Prev. Eff. Date: 5/01/00	Page 10 of 10
Office of Information Technology	Effective Date: 12/31/01	Reference Number: IVJ01-0001

office falls. The Office of Information Technology is not responsible for these payments. [\(Return to Contents\)](#)

## **XV. Security**

The introduction of information technology throughout the Georgia Department of Corrections (GDC) has resulted in the GDC becoming heavily dependent on the availability of reliable information technology to meet its business needs. The networks that facilitate our ability to instantaneously share information may also allow unauthorized persons to gain detrimental access to information technology resources in the GDC network.

- A. Detrimental access to the GDC enterprise network is defined as any intervention, from either an internal or external entity, that creates any situation whereby authentication and access control mechanisms are bypassed that may compromise the confidentiality or integrity of information resources or render it unavailable. OIT Security Administration will proactively track detrimental access activity and work to prohibit or correct such activity.
- B. Detrimental access may be intentional or unintentional. Where unintentional detrimental access activity is detected, the affected individual will be advised to correct exploitable vulnerabilities to prevent future occurrences. Where detrimental access activity is determined to be intentional, it will be assumed as malicious activity and an appropriate response will be initiated.
- C. The Georgia Computer Systems Protection Act (O.C.G.A. 16-9-90) specified unlawful acts involving information resources and the subsequent penalties upon conviction. As data residing or transiting State networks and equipment is held in public trust, it must be afforded the greatest safeguards. Therefore, computer security policies, procedures, instructions, processes, and standards created in furtherance of protecting GDC computer assets rely upon the Georgia Computer System Protection Act (O.C.G.A. 16-9-90) to ensure compliance. Violators may be prosecuted accordingly.

The Georgia Department of Corrections security policy, procedures, and processes are outlined in SOP [IVJ0201](#). Please refer to that document for security procedures. [\(Return to Contents\)](#)

<b>GEORGIA DEPARTMENT OF CORRECTIONS</b> <b>Standard Operating Procedures</b>		
<b>Policy Name: Social Media Policy</b>		
<b>Policy Number:</b> 102.03	<b>Effective Date:</b> 11/14/14	<b>Page Number</b> 1 of 5
<b>Authority:</b> OWENS	<b>Originating Division:</b> <i>Executive Division</i>	<b>Access Listing:</b> <i>Level I: All Access</i>

**I. Introduction and Summary:**

The purpose of this policy is to establish the Georgia Department of Corrections' standards for the use and management of social media and provide guidance on its administration and oversight.

GDC uses a number of public social media platforms to improve communication with members of the public, employees, media representatives, and other stakeholders. This policy provides the department's standard on the official management and use of social media for departmental purposes as well as setting standards for an employee's use of social media. This policy applies to all GDC employees and volunteers, in addition to employees of any vendor working at any GDC facility or office.

This policy does not create rights in any person nor should it be interpreted or applied in such a manner as to abridge the rights of an individual.

**II. Authority:**

**IVO14-0001:** Employee Standards of Conduct

**IVO13-0003:** Unlawful Harassment (Includes Sexual Harassment)

**III. Definitions:**

**Social Network/Media Site** - web-based services that allow individuals to create public profiles, share information and socialize with others using a range of communications technologies. This includes, but is not limited to, social networking sites (Facebook, MySpace), microblogging sites (Twitter, Nixle), photo- and video-sharing sites (Flickr, Pinterest, YouTube), wikis (Wikipedia), blogs, and news sites (Digg, Reddit).

**Inappropriate Comments:** may include topics such as advertisements or endorsements for services or products, abusive or profane language, hate speech, personal attacks, harassment or threats of violence, libelous or slanderous statements against GDC or its employees, statements that threaten the security of GDC

<b>GEORGIA DEPARTMENT OF CORRECTIONS</b> <b>Standard Operating Procedures</b>		
<b>Policy Name: Social Media Policy</b>		
<b>Policy Number:</b> 102.03	<b>Effective Date:</b> 11/14/14	<b>Page Number</b> 2 of 5
<b>Authority:</b> OWENS	<b>Originating Division:</b> <i>Executive Division</i>	<b>Access Listing:</b> <i>Level I: All Access</i>

operations or facilities, statements likely to cause immediate harm or incite crime, or unlawful conduct.

**Post:** content an individual shares on a social media site or the act of publishing content on a site.

**Social Media Account:** an established profile using a social media platform for the purpose of social media use.

**Social Media Page:** the specific portion of a social media website where content is displayed, and managed by an individual or individuals with administrator rights.

IV. **Statement of Policy and Applicable Procedures:**

A. **GDC Official Social Media Usage:**

1. The Public Affairs Office (PAO) oversees the:
  - a. Management, maintenance and administration of all social media sites and pages utilized for official Departmental use;
  - b. Approval of any modifications to or expansions of the social media sites and pages utilized for official Departmental use;
  - c. Monitoring of comments posted on social media sites and pages utilized for official Departmental use; and
  - d. Maintenance of social media usernames and passwords for all sites owned by GDC.
2. Social media pages utilized for official departmental use shall clearly indicate that they are maintained by GDC, and shall have GDC contact information prominently displayed or hyperlinked.

<b>GEORGIA DEPARTMENT OF CORRECTIONS</b> <b>Standard Operating Procedures</b>		
<b>Policy Name: Social Media Policy</b>		
<b>Policy Number:</b> 102.03	<b>Effective Date:</b> 11/14/14	<b>Page Number</b> 3 of 5
<b>Authority:</b> OWENS	<b>Originating Division:</b> <i>Executive Division</i>	<b>Access Listing:</b> <i>Level I: All Access</i>

3. Content on official GDC social media pages is subject to applicable laws, regulations, and policies, including all information technology and records management policies.
  - a. Content is subject to public records laws and records retention schedules.
  - b. Content must be managed, stored, and retrieved to comply with open records law, e-discovery laws, and GDC policies.
4. Individual facilities, centers, or offices shall not be permitted to establish or maintain a social media page.
5. GDC maintains official social media pages to:
  - a. Provide a direct way to reach constituents and stakeholders;
  - b. Promote transparency in government;
  - c. Assist with community outreach and engagement;
  - d. Assist in making time-sensitive notifications;
  - e. Provide an additional recruitment mechanism for GDC; and
  - f. Use as an investigative tool, through the collection of evidence and information for on-going investigations.
6. GDC employees who are working undercover are prohibited from creating a social media account as an alias for the purpose of an investigation unless written approval is given by the Office of Legal Services and Office of Investigations and Compliance.

**B. Social Media Guidelines:**

Social media is an ever-evolving forum. As such, guidelines within this policy are likely to be updated as new technologies and social networking tools emerge.

<b>GEORGIA DEPARTMENT OF CORRECTIONS</b> <b>Standard Operating Procedures</b>		
<b>Policy Name: Social Media Policy</b>		
<b>Policy Number:</b> 102.03	<b>Effective Date:</b> 11/14/14	<b>Page Number</b> 4 of 5
<b>Authority:</b> OWENS	<b>Originating Division:</b> <i>Executive Division</i>	<b>Access Listing:</b> <i>Level I: All Access</i>

Therefore to ensure policy compliance, it is recommended that employees review the policy regularly.

1. The following speech may subject a GDC employee to personnel action if employee's social media posts:
  - a. Adversely affect the department's operations;
  - b. Interfere with an employee's performance of duties;
  - c. Impair discipline, harmony or relationships among coworkers;
  - d. Showcase obscene or sexually explicit content;
  - e. Ridicule, harass or are discriminatory in nature against an individual or group of people in regards to their race, color, religion, sex, national origin or any protected class of individuals as defined by federal law;
  - f. Include content that would reasonably be considered as reckless or irresponsible; or
  - g. Use any image or photograph of images that belong to GDC that would reflect discredit on the Department or undermine public trust **IVO14-0001: Employee Standards of Conduct**, to include: GDC patch, official logo, photos of any GDC facility, any image of an inmate (with or without consent), and any material for which GDC holds a copyright, trademark, patent or other intellectual property right.
2. Employees shall not disclose any confidential or non-public information obtained by virtue of employment. **IVO14-0001: Employee Standards of Conduct**
3. Staff are cautioned that posts that constitute a violation of **IVO14-0001: Employee Standards of Conduct** and **IVO13-0003: Unlawful Harassment (Includes Sexual Harassment)** may result in personnel action by GDC.



GEORGIA DEPARTMENT OF CORRECTIONS  
Standard Operating Procedures

**Policy Name: Social Media Policy**

**Policy Number:** 102.03

**Effective Date:** 11/14/14

**Page Number** 5 of 5

**Authority:** OWENS

**Originating Division:**  
*Executive Division*

**Access Listing:**  
*Level I: All Access*

**V. Attachments:**

None

**2010 Georgia Code**  
**TITLE 16 - CRIMES AND OFFENSES**  
**CHAPTER 9 - FORGERY AND**  
**FRAUDULENT PRACTICES**  
**ARTICLE 6 - COMPUTER SYSTEMS**  
**PROTECTION**  
**PART 1 - COMPUTER CRIMES**  
**§ 16-9-93 - Computer crimes defined;**  
**exclusivity of article; civil remedies; criminal**  
**penalties**

O.C.G.A. 16-9-93 (2010)

16-9-93. Computer crimes defined; exclusivity of article; civil remedies; criminal penalties

(a) Computer theft. Any person who uses a computer or computer network with knowledge that such use is without authority and with the intention of:

(1) Taking or appropriating any property of another, whether or not with the intention of depriving the owner of possession;

(2) Obtaining property by any deceitful means or artful practice; or

(3) Converting property to such person's use in violation of an agreement or other known legal obligation to make a specified application or disposition of such property

shall be guilty of the crime of computer theft.

(b) Computer Trespass. Any person who uses a computer or computer network with knowledge that such use is without authority and with the intention of:

(1) Deleting or in any way removing, either temporarily or permanently, any computer program or data from a computer or computer network;

(2) Obstructing, interrupting, or in any way interfering with the use of a computer program or data; or

(3) Altering, damaging, or in any way causing the malfunction of a computer, computer network, or computer program, regardless of how long the alteration, damage, or malfunction persists

shall be guilty of the crime of computer trespass.

(c) Computer Invasion of Privacy. Any person who uses a computer or computer network with the intention of examining any employment, medical, salary, credit, or any other financial or personal data relating to any other person with knowledge that such examination is without authority shall be guilty of the crime of computer invasion of privacy.

(d) Computer Forgery. Any person who creates, alters, or deletes any data contained in any computer or computer network, who, if such person had created, altered, or deleted a tangible document or instrument would have committed forgery under Article 1 of this chapter, shall be guilty of the crime of computer forgery. The absence of a tangible writing directly created or altered by the offender shall not be a defense to the crime of computer forgery if a creation, alteration, or deletion of data was involved in lieu of a tangible document or instrument.

(e) Computer Password Disclosure. Any person who discloses a number, code, password, or other means of access to a computer or computer network knowing that such disclosure is without authority and which results in damages (including the fair market value of any services used and victim expenditure) to the owner of the computer or computer network in excess of \$500.00 shall be guilty of the crime of computer password disclosure.

(f) Article not Exclusive. The provisions of this article shall not be construed to preclude the applicability of any other law which presently applies or may in the future apply to any transaction or course of conduct which violates this article.

(g) Civil Relief; Damages.

(1) Any person whose property or person is injured by reason of a violation of any provision of this article may sue therefor and recover for any damages sustained and the costs of suit. Without limiting the generality of the term, "damages" shall include loss of profits and victim expenditure.

(2) At the request of any party to an action brought pursuant to this Code section, the court shall by reasonable means conduct all legal proceedings in such a way as to protect the secrecy and security of any computer, computer network, data, or computer program involved in order to prevent possible recurrence of the same or a similar act by another person and to protect any trade secrets of any party.

(3) The provisions of this article shall not be construed to limit any person's right to pursue any additional civil remedy otherwise allowed by law.

(4) A civil action under this Code section must be brought within four years after the violation is discovered or by exercise of reasonable diligence should have been discovered. For purposes of this

article, a continuing violation of any one subsection of this Code section by any person constitutes a single violation by such person.

(h) Criminal Penalties.

(1) Any person convicted of the crime of computer theft, computer trespass, computer invasion of privacy, or computer forgery shall be fined not more than \$50,000.00 or imprisoned not more than 15 years, or both.

(2) Any person convicted of computer password disclosure shall be fined not more than \$5,000.00 or incarcerated for a period not to exceed one year, or both.

**GEORGIA DEPARTMENT OF CORRECTIONS**  
**FULL SHIFT OVERTIME VERIFICATION AND PAYMENT REQUEST**  
 (DO NOT ATTACH TIME SHEET)

Full Shift Overtime (FSO) is supervisor-approved work of 8 hours or greater by a Correctional Officer on a regularly scheduled off-day or regularly scheduled off-shift.

Do not attach time sheet. Do not submit FSO time sheets when the work period ends. This "Full Shift Overtime Verification and Payment Request" form is all documentation necessary, if properly completed, for requesting payment of an eligible FSO shift worked. Requests must be completed and submitted for only the FSO shift worked (8 hours or greater) in each calendar day. All FSO requests are subject to and contingent upon approval by appropriate Appointing Authorities. No other types of overtime will be processed using this request form.

The FSO paperwork processing week begins each Saturday and ends each Friday after third shift with no correlation to the Officer's work period. After the FSO processing week ends each Friday, this verification and payment request form must be completed by the employee, approved and signed by the supervisor, and submitted to the local Personnel Office by 12:00 p.m. the following Monday. A designee in the Personnel Office must verify all information on this form, obtain Appointing Authority approval, and forward to Division Office within 27 hours of receipt (i.e., Tuesday, 3:00 p.m.) for further processing and approval.

FACILITY/UNIT:	DEPARTMENT ID:
PRINT LAST NAME:	EMPLOYEE ID NUMBER:
FIRST NAME:	MONTHLY SALARY: \$ <span style="float: right;">PAYGRADE: 11</span>
JOB TITLE: CORRECTIONAL OFFICER	OVERTIME TECH:
FLSA STATUS (N=NONEXEMPT, E=EXEMPT):	& PHONE #:

MONTHLY SALARY SUPPLEMENTS

TYPE	(\$ MONTHLY DOLLAR AMOUNT
1)	1)
2)	2)
3)	3)

DATE FULL SHIFT OVERTIME WORKED:	DAY OF WEEK: _____ CIRCLE FSO SHIFT WORKED: 1 <sup>st</sup> 2 <sup>nd</sup> 3 <sup>rd</sup> Split	NUMBER OF HOURS/MINS WORKED: (MUST BE 8 HOURS OR GREATER)
DATE FULL SHIFT OVERTIME WORKED:	DAY OF WEEK: _____ CIRCLE FSO SHIFT WORKED: 1 <sup>st</sup> 2 <sup>nd</sup> 3 <sup>rd</sup> Split	NUMBER OF HOURS/MINS WORKED: (MUST BE 8 HOURS OR GREATER)
DATE FULL SHIFT OVERTIME WORKED:	DAY OF WEEK: _____ CIRCLE FSO SHIFT WORKED: 1 <sup>st</sup> 2 <sup>nd</sup> 3 <sup>rd</sup> Split	NUMBER OF HOURS/MINS WORKED: (MUST BE 8 HOURS OR GREATER)

I CERTIFY THAT THE ABOVE INFORMATION IS EXACT AND CORRECT. I UNDERSTAND THAT I MAY LIST ONLY THE FSO SHIFT OR SHIFTS WORKED EACH CALENDAR DAY. I FURTHER UNDERSTAND THAT PAYMENT OF FULL SHIFT OVERTIME IS CONTINGENT UPON APPROVAL BY APPROPRIATE APPOINTING AUTHORITIES.

Signature of Employee \_\_\_\_\_

Date \_\_\_\_\_

Request forms lacking appropriate supervisory approval will not be processed and will be returned to the employee. Supervisor must verify FSO against the duty roster and the employee's time sheet. Personnel Rep must retain copy and file with employee's completed time sheet at end of work period.

DATE:	SUPERVISOR APPROVAL:	JOB TITLE:
DATE:	APPOINTING AUTHORITY APPROVAL:	
DATE:	DIVISION DIRECTOR APPROVAL:	

FOR CENTRAL PERSONNEL ADMINISTRATION USE ONLY:

NOTES:
CASH OVERTIME _____ O/T HRS X \$ _____ / HRS = \$ _____
ENTRY DATE: _____ CONFIRM DATE: _____

Retention Schedule: Retain in Central Personnel Administration and local leave file for three (3) full years.

# The Fair Labor Standards Act Of 1938, As Amended

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U.S. Department of Labor  
Wage and Hour Division

WH Publication 1318  
Revised May 2011



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Toll-free help line: 1-866-187-9243 (1-866-4-USWAGE)  
TTY TDD\* phone: 1-877-889-5627

\*Telecommunications Device for the Deaf.

Internet: [www.wagehour.dol.gov](http://www.wagehour.dol.gov)





# The Fair Labor Standards Act of 1938, as amended

## 29 U.S.C. 201, *et seq.*

To provide for the establishment of fair labor standards in employments in and affecting interstate commerce, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Fair Labor Standards Act of 1938".

### § 201. Short title

This chapter may be cited as the "Fair Labor Standards Act of 1938".

### § 202. Congressional finding and declaration of policy

**(a)** The Congress finds that the existence, in industries engaged in commerce or in the production of goods for commerce, of labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers

**(1)** causes commerce and the channels and instrumentalities of commerce to be used to spread and perpetuate such labor conditions among the workers of the several States;

**(2)** burdens commerce and the free flow of goods in commerce;

**(3)** constitutes an unfair method of competition in commerce;

**(4)** leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce; and

**(5)** interferes with the orderly and fair marketing of goods in commerce. That Congress further finds that the employment of persons in domestic service in households affects commerce.

**(b)** It is declared to be the policy of this chapter, through the exercise by Congress of its power to regulate commerce among the several States and with foreign nations, to correct and as rapidly as practicable to eliminate the conditions above referred to in such industries without substantially curtailing employment or earning power.

## Sec. 203

### § 203. Definitions

As used in this chapter—

**(a)** "Person" means an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons.

**(b)** "Commerce" means trade, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof.

**(c)** "State" means any State of the United States or the District of Columbia or any Territory or possession of the United States.

**(d)** "Employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency, but does not include any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization.

**(e)**

**(1)** Except as provided in paragraphs (2), (3), and (4), the term "employee" means any individual employed by an employer.

**(2)** In the case of an individual employed by a public agency, such term means—

**(A)** any individual employed by the Government of the United States—

**(i)** as a civilian in the military departments (as defined in section 102 of Title 5),

**(ii)** in any executive agency (as defined in section 105 of such title),

**(iii)** in any unit of the judicial branch of the Government which has positions in the competitive service,

**(iv)** in a nonappropriated fund instrumentality under the jurisdiction of the Armed Forces,

**(v)** in the Library of Congress, or

**(vi)** the Government Printing Office;

**(B)** any individual employed by the United States Postal Service or the Postal Regulatory Commission; and

**(C)** any individual employed by a State, political subdivision of a State, or an interstate governmental agency, other than such an individual—

## Sec. 203(e)(2)(C)(i)

**(i)** who is not subject to the civil service laws of the State, political subdivision, or agency which employs him; and

**(ii)** who—

**(I)** holds a public elective office of that State, political subdivision, or agency,

**(II)** is selected by the holder of such an office to be a member of his personal staff,

**(III)** is appointed by such an officeholder to serve on a policymaking level,

**(IV)** is an immediate adviser to such an officeholder with respect to the constitutional or legal powers of his office, or

**(V)** is an employee in the legislative branch or legislative body of that State, political subdivision, or agency and is not employed by the legislative library of such State, political subdivision, or agency.

**(3)** For purposes of subsection (u) of this section, such term does not include any individual employed by an employer engaged in agriculture if such individual is the parent, spouse, child, or other member of the employer's immediate family.

**(4)**

**(A)** The term "employee" does not include any individual who volunteers to perform services for a public agency which is a State, a political subdivision of a State, or an interstate governmental agency, if—

**(i)** the individual receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered; and

**(ii)** such services are not the same type of services which the individual is employed to perform for such public agency.

**(B)** An employee of a public agency which is a State, political subdivision of a State, or an interstate governmental agency may volunteer to perform services for any other State, political subdivision, or interstate governmental agency, including a State, political subdivision or agency with which the employing State, political subdivision, or agency has a mutual aid agreement.

**(5)** The term "employee" does not include individuals who volunteer their services solely for humanitarian purposes to private non-profit food banks and who receive from the food banks groceries.

## Sec. 203(f)

**(f)** "Agriculture" includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 1141j(g) of Title 12), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

**(g)** "Employ" includes to suffer or permit to work.

**(h)** "Industry" means a trade, business, industry, or other activity, or branch or group thereof, in which individuals are gainfully employed.

**(i)** "Goods" means goods (including ships and marine equipment), wares, products, commodities, merchandise, or articles or subjects of commerce of any character, or any part or ingredient thereof, but does not include goods after their delivery into the actual physical possession of the ultimate consumer thereof other than a producer, manufacturer, or processor thereof.

**(j)** "Produced" means produced, manufactured, mined, handled, or in any other manner worked on in any State; and for the purposes of this chapter an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any closely related process or occupation directly essential to the production thereof, in any State.

**(k)** "Sale" or "sell" includes any sale, exchange, contract to sell, consignment for sale, shipment for sale, or other disposition.

**(l)** "Oppressive child labor" means a condition of employment under which

**(1)** any employee under the age of sixteen years is employed by an employer (other than a parent or a person standing in place of a parent employing his own child or a child in his custody under the age of sixteen years in an occupation other than manufacturing or mining or an occupation found by the Secretary of Labor to be particularly hazardous for the employment of children between the ages of sixteen and eighteen years or detrimental to their health or well-being) in any occupation, or

**(2)** any employee between the ages of sixteen and eighteen years is employed by an employer in any occupation which the Secretary of Labor shall find and by order declare to be particularly hazardous for the employment of children between such ages or detrimental to their health or well-being; but oppressive child labor shall not be deemed to exist by virtue of the employment in any occupation of any person with respect to whom the employer shall have on file an unexpired certificate issued and held pursuant to regulations of the Secretary of Labor certifying that such person is above the oppressive child-labor age. The Secretary of Labor shall provide by regulation or by order that the employment of employees between the ages of fourteen and sixteen years in occupations other than manufacturing and

## Sec. 203(l)(2)

mining shall not be deemed to constitute oppressive child labor if and to the extent that the Secretary of Labor determines that such employment is confined to periods which will not interfere with their schooling and to conditions which will not interfere with their health and well-being.

**(m)** "Wage" paid to any employee includes the reasonable cost, as determined by the Administrator, to the employer of furnishing such employee with board, lodging, or other facilities, if such board, lodging, or other facilities are customarily furnished by such employer to his employees: *Provided*, That the cost of board, lodging, or other facilities shall not be included as a part of the wage paid to any employee to the extent it is excluded therefrom under the terms of a bona fide collective-bargaining agreement applicable to the particular employee: *Provided further*, That the Secretary is authorized to determine the fair value of such board, lodging, or other facilities for defined classes of employees and in defined areas, based on average cost to the employer or to groups of employers similarly situated, or average value to groups of employees, or other appropriate measures of fair value. Such evaluations, where applicable and pertinent, shall be used in lieu of actual measure of cost in determining the wage paid to any employee. In determining the wage an employer is required to pay a tipped employee, the amount paid such employee by the employer shall be an amount equal to—

**(1)** the cash wage paid such employee which for purposes of such determination shall be not less than the cash wage required to be paid such an employee on August 20, 1996; and

**(2)** an additional amount on account of the tips received by such employee which amount is equal to the difference between the wage specified in paragraph (1) and the wage in effect under section 206(a)(1) of this title.

The additional amount on account of tips may not exceed the value of the tips actually received by an employee. The preceding 2 sentences shall not apply with respect to any tipped employee unless such employee has been informed by the employer of the provisions of this subsection, and all tips received by such employee have been retained by the employee, except that this subsection shall not be construed to prohibit the pooling of tips among employees who customarily and regularly receive tips.

**(n)** "Resale" shall not include the sale of goods to be used in residential or farm building construction, repair, or maintenance: *Provided*, That the sale is recognized as a bona fide retail sale in the industry.

**(o)** Hours Worked.— In determining for the purposes of sections 206 and 207 of this title the hours for which an employee is employed, there shall be excluded any time spent in changing clothes or washing at the beginning or end of each workday which was excluded from measured working time during the week involved by the express terms of or by custom or practice under a bona fide collective-bargaining agreement applicable to the particular employee.

**(p)** "American vessel" includes any vessel which is documented or numbered under the laws of the United States.

**(q)** "Secretary" means the Secretary of Labor.

## Sec. 203(r)

(r)

**(1)** "Enterprise" means the related activities performed (either through unified operation or common control) by any person or persons for a common business purpose, and includes all such activities whether performed in one or more establishments or by one or more corporate or other organizational units including departments of an establishment operated through leasing arrangements, but shall not include the related activities performed for such enterprise by an independent contractor. Within the meaning of this subsection, a retail or service establishment which is under independent ownership shall not be deemed to be so operated or controlled as to be other than a separate and distinct enterprise by reason of any arrangement, which includes, but is not necessarily limited to, an agreement,

**(A)** that it will sell, or sell only, certain goods specified by a particular manufacturer, distributor, or advertiser, or

**(B)** that it will join with other such establishments in the same industry for the purpose of collective purchasing, or

**(C)** that it will have the exclusive right to sell the goods or use the brand name of a manufacturer, distributor, or advertiser within a specified area, or by reason of the fact that it occupies premises leased to it by a person who also leases premises to other retail or service establishments.

**(2)** For purposes of paragraph (1), the activities performed by any person or persons—

**(A)** in connection with the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, the mentally ill or defective who reside on the premises of such institution, a school for mentally or physically handicapped or gifted children, a preschool, elementary or secondary school, or an institution of higher education (regardless of whether or not such hospital, institution, or school is operated for profit or not for profit), or

**(B)** in connection with the operation of a street, suburban or interurban electric railway, or local trolley or motorbus carrier, if the rates and services of such railway or carrier are subject to regulation by a State or local agency (regardless of whether or not such railway or carrier is public or private or operated for profit or not for profit), or

**(C)** in connection with the activities of a public agency,

shall be deemed to be activities performed for a business purpose.

## Sec. 203(s)

**(s)**

**(1)** "Enterprise engaged in commerce or in the production of goods for commerce" means an enterprise that—

**(A)**

**(i)** has employees engaged in commerce or in the production of goods for commerce, or that has employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person; and

**(ii)** is an enterprise whose annual gross volume of sales made or business done is not less than \$500,000 (exclusive of excise taxes at the retail level that are separately stated);

**(B)** is engaged in the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises of such institution, a school for mentally or physically handicapped or gifted children, a preschool, elementary or secondary school, or an institution of higher education (regardless of whether or not such hospital, institution, or school is public or private or operated for profit or not for profit); or

**(C)** is an activity of a public agency.

**(2)** Any establishment that has as its only regular employees the owner thereof or the parent, spouse, child, or other member of the immediate family of such owner shall not be considered to be an enterprise engaged in commerce or in the production of goods for commerce or a part of such an enterprise. The sales of such an establishment shall not be included for the purpose of determining the annual gross volume of sales of any enterprise for the purpose of this subsection.

**(t)** "Tipped employee" means any employee engaged in an occupation in which he customarily and regularly receives more than \$30 a month in tips.

**(u)** "Man-day" means any day during which an employee performs any agricultural labor for not less than one hour.

**(v)** "Elementary school" means a day or residential school which provides elementary education, as determined under State law.

**(w)** "Secondary school" means a day or residential school which provides secondary education, as determined under State law.

**(x)** "Public agency" means the Government of the United States; the government of a State or political subdivision thereof; any agency of the United States (including the United States Postal Service and Postal Regulatory Commission), a State, or a political subdivision of a State; or any interstate governmental agency.

**(y)** "Employee in fire protection activities" means an employee, including a firefighter, paramedic, emergency medical technician, rescue worker, ambulance personnel, or hazardous materials worker, who—



## Sec. 203(y)(1)

**(1)** is trained in fire suppression, has the legal authority and responsibility to engage in fire suppression, and is employed by a fire department of a municipality, county, fire district, or State; and

**(2)** is engaged in the prevention, control, and extinguishment of fires or response to emergency situations where life, property, or the environment is at risk.

## § 204. Administration

### **(a) Creation of Wage and Hour Division in Department of Labor; Administrator**

There is created in the Department of Labor a Wage and Hour Division which shall be under the direction of an Administrator, to be known as the Administrator of the Wage and Hour Division (in this chapter referred to as the "Administrator"). The Administrator shall be appointed by the President, by and with the advice and consent of the Senate.

### **(b) Appointment, selection, classification, and promotion of employees by Administrator**

The Administrator may, subject to the civil-service laws, appoint such employees as he deems necessary to carry out his functions and duties under this chapter and shall fix their compensation in accordance with chapter 51 and subchapter III of chapter 53 of Title 5. The Administrator may establish and utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may appear for and represent the Administrator in any litigation, but all such litigation shall be subject to the direction and control of the Attorney General. In the appointment, selection, classification, and promotion of officers and employees of the Administrator, no political test or qualification shall be permitted or given consideration, but all such appointments and promotions shall be given and made on the basis of merit and efficiency.

### **(c) Principal office of Administrator; jurisdiction**

The principal office of the Administrator shall be in the District of Columbia, but he or his duly authorized representative may exercise any or all of his powers in any place.

### **(d) Biennial report to Congress; studies of exemptions to hour and wage provisions and means to prevent curtailment of employment opportunities**

**(1)** The Secretary shall submit biennially in January a report to the Congress covering his activities for the preceding two years and including such information, data, and recommendations for further legislation in connection with the matters covered by this chapter as he may find advisable. Such report shall contain an evaluation and appraisal by the Secretary of the minimum wages and overtime coverage established by this chapter, together with his recommendations to the Congress. In making such evaluation and appraisal, the Secretary shall take into consideration any changes which may

## Sec. 204(d)(1)

have occurred in the cost of living and in productivity and the level of wages in manufacturing, the ability of employers to absorb wage increases, and such other factors as he may deem pertinent. Such report shall also include a summary of the special certificates issued under section 214(b) of this title.

**(2)** The Secretary shall conduct studies on the justification or lack thereof for each of the special exemptions set forth in section 213 of this title, and the extent to which such exemptions apply to employees of establishments described in subsection (g) of such section and the economic effects of the application of such exemptions to such employees. The Secretary shall submit a report of his findings and recommendations to the Congress with respect to the studies conducted under this paragraph not later than January 1, 1976.

**(3)** The Secretary shall conduct a continuing study on means to prevent curtailment of employment opportunities for manpower groups which have had historically high incidences of unemployment (such as disadvantaged minorities, youth, elderly, and such other groups as the Secretary may designate). The first report of the results of such study shall be transmitted to the Congress not later than one year after the effective date of the Fair Labor Standards Amendments of 1974. Subsequent reports on such study shall be transmitted to the Congress at two-year intervals after such effective date. Each such report shall include suggestions respecting the Secretary's authority under section 214 of this title.

### **(e) Study of effects of foreign production on unemployment; report to President and Congress**

Whenever the Secretary has reason to believe that in any industry under this chapter the competition of foreign producers in United States markets or in markets abroad, or both, has resulted, or is likely to result, in increased unemployment in the United States, he shall undertake an investigation to gain full information with respect to the matter. If he determines such increased unemployment has in fact resulted, or is in fact likely to result, from such competition, he shall make a full and complete report of his findings and determinations to the President and to the Congress: *Provided*, That he may also include in such report information on the increased employment resulting from additional exports in any industry under this chapter as he may determine to be pertinent to such report.

### **(f) Employees of Library of Congress; administration of provisions by Office of Personnel Management**

The Secretary is authorized to enter into an agreement with the Librarian of Congress with respect to individuals employed in the Library of Congress to provide for the carrying out of the Secretary's functions under this chapter with respect to such individuals. Notwithstanding any other provision of this chapter, or any other law, the Director of the Office of Personnel Management is authorized to administer the provisions of this chapter with respect to any individual employed by the United States (other than an individual employed in the Library of Congress, United States Postal Service, Postal Regulatory Commission, or the Tennessee Valley Authority). Nothing in this subsection shall be construed to affect the right of an employee to bring an action for unpaid minimum wages, or unpaid overtime compensation, and liquidated damages under section 216(b) of this title.

## Sec. 205

§ 205. Repealed. Pub.L. 110-28, Title VIII, § 8103(c)(1)(A), May 25, 2007, 121 Stat. 189

## § 206. Minimum wage

### **(a) Employees engaged in commerce; home workers in Puerto Rico and Virgin Islands; employees in American Samoa; seamen on American vessels; agricultural employees**

Every employer shall pay to each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, wages at the following rates:

**(1)** except as otherwise provided in this section, not less than—

**(A)** \$5.85 an hour beginning on the 60th day after May 25, 2007;

**(B)** \$6.55 an hour, beginning 12 months after that 60th day; and

**(C)** \$7.25 an hour, beginning 24 months after that 60th day:

**(2)** if such employee is a home worker in Puerto Rico or the Virgin Islands, not less than the minimum piece rate prescribed by regulation or order; or, if no such minimum piece rate is in effect, any piece rate adopted by such employer which shall yield, to the proportion or class of employees prescribed by regulation or order, not less than the applicable minimum hourly wage rate. Such minimum piece rates or employer piece rates shall be commensurate with, and shall be paid in lieu of, the minimum hourly wage rate applicable under the provisions of this section. The Administrator, or his authorized representative, shall have power to make such regulations or orders as are necessary or appropriate to carry out any of the provisions of this paragraph, including the power without limiting the generality of the foregoing, to define any operation or occupation which is performed by such home work employees in Puerto Rico or the Virgin Islands; to establish minimum piece rates for any operation or occupation so defined; to prescribe the method and procedure for ascertaining and promulgating minimum piece rates; to prescribe standards for employer piece rates, including the proportion or class of employees who shall receive not less than the minimum hourly wage rate; to define the term "home worker"; and to prescribe the conditions under which employers, agents, contractors, and subcontractors shall cause goods to be produced by home workers;

**(3)** if such employee is employed as a seaman on an American vessel, not less than the rate which will provide to the employee, for the period covered by the wage payment, wages equal to compensation at the hourly rate prescribed by paragraph (1) of this subsection for all hours during such period when he was actually on duty (including periods aboard ship when the employee was on watch or was, at the direction of a superior officer, performing work or standing by, but not including off-duty periods which are provided pursuant to the employment agreement); or

## Sec. 206(a)(4)

**(4)** if such employee is employed in agriculture, not less than the minimum wage rate in effect under paragraph (1) after December 31, 1977.

**(5)** Redesignated (4)

### **(b) Additional applicability to employees pursuant to subsequent amendatory provisions**

Every employer shall pay to each of his employees (other than an employee to whom subsection (a)(5) of this section applies) who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, and who in such workweek is brought within the purview of this section by the amendments made to this chapter by the Fair Labor Standards Amendments of 1966, title IX of the Education Amendments of 1972 [20 U.S.C.A. § 1681 et seq.], or the Fair Labor Standards Amendments of 1974, wages at the following rate: Effective after December 31, 1977, not less than the minimum wage rate in effect under subsection (a)(1) of this section.

**(c) Repealed. Pub.L. 104-188, [Title III], § 2104(c), Aug. 20, 1996, 110 Stat. 1929**

### **(d) Prohibition of sex discrimination**

**(1)** No employer having employees subject to any provisions of this section shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to

**(i)** a seniority system;

**(ii)** a merit system;

**(iii)** a system which measures earnings by quantity or quality of production; or

**(iv)** a differential based on any other factor other than sex: *Provided*, That an employer who is paying a wage rate differential in violation of this subsection shall not, in order to comply with the provisions of this subsection, reduce the wage rate of any employee.

**(2)** No labor organization, or its agents, representing employees of an employer having employees subject to any provisions of this section shall cause or attempt to cause such an employer to discriminate against an employee in violation of paragraph (1) of this subsection.

**(3)** For purposes of administration and enforcement, any amounts owing to any employee which have been withheld in violation of this subsection shall

## Sec. 206(d)(3)

be deemed to be unpaid minimum wages or unpaid overtime compensation under this chapter.

**(4)** As used in this subsection, the term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

### **(e) Employees of employers providing contract services to United States**

**(1)** Notwithstanding the provisions of section 213 of this title (except subsections (a)(1) and (f) thereof), every employer providing any contract services (other than linen supply services) under a contract with the United States or any subcontract thereunder shall pay to each of his employees whose rate of pay is not governed by the Service Contract Act of 1965 (41 U.S.C. 351-357) or to whom subsection (a)(1) of this section is not applicable, wages at rates not less than the rates provided for in subsection (b) of this section.

**(2)** Notwithstanding the provisions of section 213 of this title (except subsections (a)(1) and (f) thereof) and the provisions of the Service Contract Act of 1965 [41 U.S.C.A. § 351 et seq.] every employer in an establishment providing linen supply services to the United States under a contract with the United States or any subcontract thereunder shall pay to each of his employees in such establishment wages at rates not less than those prescribed in subsection (b) of this section, except that if more than 50 per centum of the gross annual dollar volume of sales made or business done by such establishment is derived from providing such linen supply services under any such contracts or subcontracts, such employer shall pay to each of his employees in such establishment wages at rates not less than those prescribed in subsection (a)(1) of this section.

### **(f) Employees in domestic service**

Any employee—

**(1)** who in any workweek is employed in domestic service in a household shall be paid wages at a rate not less than the wage rate in effect under subsection (b) of this section unless such employee's compensation for such service would not because of section 209(a)(6) of the Social Security Act [42 U.S.C.A. § 409(a)(6)] constitute wages for the purposes of title II of such Act [42 U.S.C.A. § 401 et seq.], or

**(2)** who in any workweek—

**(A)** is employed in domestic service in one or more households, and

**(B)** is so employed for more than 8 hours in the aggregate,

shall be paid wages for such employment in such workweek at a rate not less than the wage rate in effect under subsection (b) of this section.

## Sec. 206(g)

### **(g) Newly hired employees who are less than 20 years old**

**(1)** In lieu of the rate prescribed by subsection (a)(1) of this section, any employer may pay any employee of such employer, during the first 90 consecutive calendar days after such employee is initially employed by such employer, a wage which is not less than \$4.25 an hour.

**(2)** No employer may take any action to displace employees (including partial displacements such as reduction in hours, wages, or employment benefits) for purposes of hiring individuals at the wage authorized in paragraph (1).

**(3)** Any employer who violates this subsection shall be considered to have violated section 215(a)(3) of this title.

**(4)** This subsection shall only apply to an employee who has not attained the age of 20 years.

## § 207. Maximum hours

### **(a) Employees engaged in interstate commerce; additional applicability to employees pursuant to subsequent amendatory provisions**

**(1)** Except as otherwise provided in this section, no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

**(2)** No employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, and who in such workweek is brought within the purview of this subsection by the amendments made to this chapter by the Fair Labor Standards Amendments of 1966—

**(A)** for a workweek longer than forty-four hours during the first year from the effective date of the Fair Labor Standards Amendments of 1966,

**(B)** for a workweek longer than forty-two hours during the second year from such date, or

**(C)** for a workweek longer than forty hours after the expiration of the second year from such date,

unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

## Sec. 207(b)

### **(b) Employment pursuant to collective bargaining agreement; employment by independently owned and controlled local enterprise engaged in distribution of petroleum products**

No employer shall be deemed to have violated subsection (a) of this section by employing any employee for a workweek in excess of that specified in such subsection without paying the compensation for overtime employment prescribed therein if such employee is so employed—

**(1)** in pursuance of an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that no employee shall be employed more than one thousand and forty hours during any period of twenty-six consecutive weeks; or

**(2)** in pursuance of an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that during a specified period of fifty-two consecutive weeks the employee shall be employed not more than two thousand two hundred and forty hours and shall be guaranteed not less than one thousand eight hundred and forty-hours (or not less than forty-six weeks at the normal number of hours worked per week, but not less than thirty hours per week) and not more than two thousand and eighty hours of employment for which he shall receive compensation for all hours guaranteed or worked at rates not less than those applicable under the agreement to the work performed and for all hours in excess of the guaranty which are also in excess of the maximum workweek applicable to such employee under subsection (a) of this section or two thousand and eighty in such period at rates not less than one and one-half times the regular rate at which he is employed; or

**(3)** by an independently owned and controlled local enterprise (including an enterprise with more than one bulk storage establishment) engaged in the wholesale or bulk distribution of petroleum products if—

**(A)** the annual gross volume of sales of such enterprise is less than \$1,000,000 exclusive of excise taxes,

**(B)** more than 75 per centum of such enterprise's annual dollar volume of sales is made within the State in which such enterprise is located, and

**(C)** not more than 25 per centum of the annual dollar volume of sales of such enterprise is to customers who are engaged in the bulk distribution of such products for resale,

and such employee receives compensation for employment in excess of forty hours in any workweek at a rate not less than one and one-half times the minimum wage rate applicable to him under section 206 of this title,

and if such employee receives compensation for employment in excess of twelve hours in any workday, or for employment in excess of fifty-six hours in



## Sec. 207(b)(3)(C)

any workweek, as the case may be, at a rate not less than one and one-half times the regular rate at which he is employed.

**(c), (d) Repealed. Pub.L. 93-259, § 19(e), Apr. 8, 1974, 88 Stat. 66**

### **(e) "Regular rate" defined**

As used in this section the "regular rate" at which an employee is employed shall be deemed to include all remuneration for employment paid to, or on behalf of, the employee, but shall not be deemed to include—

- (1)** sums paid as gifts; payments in the nature of gifts made at Christmas time or on other special occasions, as a reward for service, the amounts of which are not measured by or dependent on hours worked, production, or efficiency;
- (2)** payments made for occasional periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause; reasonable payments for traveling expenses, or other expenses, incurred by an employee in the furtherance of his employer's interests and properly reimbursable by the employer; and other similar payments to an employee which are not made as compensation for his hours of employment;
- (3)** sums paid in recognition of services performed during a given period if either, (a) both the fact that payment is to be made and the amount of the payment are determined at the sole discretion of the employer at or near the end of the period and not pursuant to any prior contract, agreement, or promise causing the employee to expect such payments regularly; or (b) the payments are made pursuant to a bona fide profit-sharing plan or trust or bona fide thrift or savings plan, meeting the requirements of the Administrator set forth in appropriate regulations which he shall issue, having due regard among other relevant factors, to the extent to which the amounts paid to the employee are determined without regard to hours of work, production, or efficiency; or (c) the payments are talent fees (as such talent fees are defined and delimited by regulations of the Administrator) paid to performers, including announcers, on radio and television programs;
- (4)** contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for providing old-age, retirement, life, accident, or health insurance or similar benefits for employees;
- (5)** extra compensation provided by a premium rate paid for certain hours worked by the employee in any day of workweek because such hours are hours worked in excess of eight in a day or in excess of the maximum workweek applicable to such employee under subsection (a) of this section or in excess of the employee's normal working hours or regular working hours, as the case may be;
- (6)** extra compensation provided by a premium rate paid for work by the employee on Saturdays, Sundays, holidays, or regular days of rest, or on the sixth or seventh day of the workweek, where such premium rate is not less



## Sec. 207(e)(6)

than one and one-half times the rate established in good faith for like work performed in nonovertime hours on other days;

**(7)** extra compensation provided by a premium rate paid to the employee, in pursuance of an applicable employment contract or collective-bargaining agreement, for work outside of the hours established in good faith by the contract or agreement as the basic, normal, or regular workday (not exceeding eight hours) or workweek (not exceeding the maximum workweek applicable to such employee under subsection (a) of this section, where such premium rate is not less than one and one-half times the rate established in good faith by the contract or agreement for like work performed during such workday or workweek; or

**(8)** any value or income derived from employer-provided grants or rights provided pursuant to a stock option, stock appreciation right, or bona fide employee stock purchase program which is not otherwise excludable under any of paragraphs (1) through (7) if—

**(A)** grants are made pursuant to a program, the terms and conditions of which are communicated to participating employees either at the beginning of the employee's participation in the program or at the time of the grant;

**(B)** in the case of stock options and stock appreciation rights, the grant or right cannot be exercisable for a period of at least 6 months after the time of grant (except that grants or rights may become exercisable because of an employee's death, disability, retirement, or a change in corporate ownership, or other circumstances permitted by regulation), and the exercise price is at least 85 percent of the fair market value of the stock at the time of grant;

**(C)** exercise of any grant or right is voluntary; and

**(D)** any determinations regarding the award of, and the amount of, employer-provided grants or rights that are based on performance are—

**(i)** made based upon meeting previously established performance criteria (which may include hours of work, efficiency, or productivity) of any business unit consisting of at least 10 employees or of a facility, except that, any determinations may be based on length of service or minimum schedule of hours or days of work; or

**(ii)** made based upon the past performance (which may include any criteria) of one or more employees in a given period so long as the determination is in the sole discretion of the employer and not pursuant to any prior contract.

### **(f) Employment necessitating irregular hours of work**

No employer shall be deemed to have violated subsection (a) of this section by employing any employee for a workweek in excess of the maximum workweek

## Sec. 207(f)

applicable to such employee under subsection (a) of this section if such employee is employed pursuant to a bona fide individual contract, or pursuant to an agreement made as a result of collective bargaining by representatives of employees, if the duties of such employee necessitate irregular hours of work, and the contract or agreement

**(1)** specifies a regular rate of pay of not less than the minimum hourly rate provided in subsection (a) or (b) of section 206 of this title (whichever may be applicable) and compensation at not less than one and one-half times such rate for all hours worked in excess of such maximum workweek, and

**(2)** provides a weekly guaranty of pay for not more than sixty hours based on the rates so specified.

### **(g) Employment at piece rates**

No employer shall be deemed to have violated subsection (a) of this section by employing any employee for a workweek in excess of the maximum workweek applicable to such employee under such subsection if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, the amount paid to the employee for the number of hours worked by him in such workweek in excess of the maximum workweek applicable to such employee under such subsection—

**(1)** in the case of an employee employed at piece rates, is computed at piece rates not less than one and one-half times the bona fide piece rates applicable to the same work when performed during nonovertime hours; or

**(2)** in the case of an employee performing two or more kinds of work for which different hourly or piece rates have been established, is computed at rates not less than one and one-half times such bona fide rates applicable to the same work when performed during nonovertime hours; or

**(3)** is computed at a rate not less than one and one-half times the rate established by such agreement or understanding as the basic rate to be used in computing overtime compensation thereunder: *Provided*, That the rate so established shall be authorized by regulation by the Administrator as being substantially equivalent to the average hourly earnings of the employee, exclusive of overtime premiums, in the particular work over a representative period of time;

and if

**(i)** the employee's average hourly earnings for the workweek exclusive of payments described in paragraphs (1) through (7) of subsection (e) of this section are not less than the minimum hourly rate required by applicable law, and

**(ii)** extra overtime compensation is properly computed and paid on other forms of additional pay required to be included in computing the regular rate.

## Sec. 207(h)

### **(h) Extra compensation creditable toward overtime compensation**

**(1)** Except as provided in paragraph (2), sums excluded from the regular rate pursuant to subsection (e) of this section shall not be creditable toward wages required under section 6 or overtime compensation required under this section.

**(2)** Extra compensation paid as described in paragraphs (5), (6), and (7) of subsection (e) of this section shall be creditable toward overtime compensation payable pursuant to this section.

### **(i) Employment by retail or service establishment**

No employer shall be deemed to have violated subsection (a) of this section by employing any employee of a retail or service establishment for a workweek in excess of the applicable workweek specified therein, if

**(1)** the regular rate of pay of such employee is in excess of one and one-half times the minimum hourly rate applicable to him under section 206 of this title, and

**(2)** more than half his compensation for a representative period (not less than one month) represents commissions on goods or services. In determining the proportion of compensation representing commissions, all earnings resulting from the application of a bona fide commission rate shall be deemed commissions on goods or services without regard to whether the computed commissions exceed the draw or guarantee.

### **(j) Employment in hospital or establishment engaged in care of sick, aged, or mentally ill**

No employer engaged in the operation of a hospital or an establishment which is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises shall be deemed to have violated subsection (a) of this section if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, a work period of fourteen consecutive days is accepted in lieu of the workweek of seven consecutive days for purposes of overtime computation and if, for his employment in excess of eight hours in any workday and in excess of eighty hours in such fourteen-day period, the employee receives compensation at a rate not less than one and one-half times the regular rate at which he is employed.

### **(k) Employment by public agency engaged in fire protection or law enforcement activities**

No public agency shall be deemed to have violated subsection (a) of this section with respect to the employment of any employee in fire protection activities or any employee in law enforcement activities (including security personnel in correctional institutions) if—

**(1)** in a work period of 28 consecutive days the employee receives for tours of duty which in the aggregate exceed the lesser of

## Sec. 207(k)(1)(A)

**(A)** 216 hours, or

**(B)** the average number of hours (as determined by the Secretary pursuant to section 6(c)(3) of the Fair Labor Standards Amendments of 1974) in tours of duty of employees engaged in such activities in work periods of 28 consecutive days in calendar year 1975; or

**(2)** in the case of such an employee to whom a work period of at least 7 but less than 28 days applies, in his work period the employee receives for tours of duty which in the aggregate exceed a number of hours which bears the same ratio to the number of consecutive days in his work period as 216 hours (or if lower, the number of hours referred to in clause (B) of paragraph (1)) bears to 28 days,

compensation at a rate not less than one and one-half times the regular rate at which he is employed.

### **(l) Employment in domestic service in one or more households**

No employer shall employ any employee in domestic service in one or more households for a workweek longer than forty hours unless such employee receives compensation for such employment in accordance with subsection (a) of this section.

### **(m) Employment in tobacco industry**

For a period or periods of not more than fourteen workweeks in the aggregate in any calendar year, any employer may employ any employee for a workweek in excess of that specified in subsection (a) of this section without paying the compensation for overtime employment prescribed in such subsection, if such employee—

**(1)** is employed by such employer—

**(A)** to provide services (including stripping and grading) necessary and incidental to the sale at auction of green leaf tobacco of type 11, 12, 13, 14, 21, 22, 23, 24, 31, 35, 36, or 37 (as such types are defined by the Secretary of Agriculture), or in auction sale, buying, handling, stemming, redrying, packing, and storing of such tobacco,

**(B)** in auction sale, buying, handling, sorting, grading, packing, or storing green leaf tobacco of type 32 (as such type is defined by the Secretary of Agriculture), or

**(C)** in auction sale, buying, handling, stripping, sorting, grading, sizing, packing, or stemming prior to packing, of perishable cigar leaf tobacco of type 41, 42, 43, 44, 45, 46, 51, 52, 53, 54, 55, 61, or 62 (as such types are defined by the Secretary of Agriculture); and

**(2)** receives for—

**(A)** such employment by such employer which is in excess of ten hours in any workday, and

## Sec. 207(m)(2)(B)

**(B)** such employment by such employer which is in excess of forty-eight hours in any workweek, compensation at a rate not less than one and one-half times the regular rate at which he is employed.

An employer who receives an exemption under this subsection shall not be eligible for any other exemption under this section.

### **(n) Employment by street, suburban or interurban electric railway, or local trolley or motorbus carrier**

In the case of an employee of an employer engaged in the business of operating a street, suburban or interurban electric railway, or local trolley or motorbus carrier (regardless of whether or not such railway or carrier is public or private or operated for profit or not for profit), in determining the hours of employment of such an employee to which the rate prescribed by subsection (a) of this section applies there shall be excluded the hours such employee was employed in charter activities by such employer if

**(1)** the employee's employment in such activities was pursuant to an agreement or understanding with his employer arrived at before engaging in such employment, and

**(2)** if employment in such activities is not part of such employee's regular employment.

### **(o) Compensatory time**

**(1)** Employees of a public agency which is a State, a political subdivision of a State, or an interstate governmental agency may receive, in accordance with this subsection and in lieu of overtime compensation, compensatory time off at a rate not less than one and one-half hours for each hour of employment for which overtime compensation is required by this section.

**(2)** A public agency may provide compensatory time under paragraph (1) only—

**(A)** pursuant to—

**(i)** applicable provisions of a collective bargaining agreement, memorandum of understanding, or any other agreement between the public agency and representatives of such employees; or

**(ii)** in the case of employees not covered by subclause (i), an agreement or understanding arrived at between the employer and employee before the performance of the work; and

**(B)** if the employee has not accrued compensatory time in excess of the limit applicable to the employee prescribed by paragraph (3).

## Sec. 207(o)(2)(B)

In the case of employees described in clause (A)(ii) hired prior to April 15, 1986, the regular practice in effect on April 15, 1986, with respect to compensatory time off for such employees in lieu of the receipt of overtime compensation, shall constitute an agreement or understanding under such clause (A)(ii). Except as provided in the previous sentence, the provision of compensatory time off to such employees for hours worked after April 14, 1986, shall be in accordance with this subsection.

### **(3)**

**(A)** If the work of an employee for which compensatory time may be provided included work in a public safety activity, an emergency response activity, or a seasonal activity, the employee engaged in such work may accrue not more than 480 hours of compensatory time for hours worked after April 15, 1986. If such work was any other work, the employee engaged in such work may accrue not more than 240 hours of compensatory time for hours worked after April 15, 1986. Any such employee who, after April 15, 1986, has accrued 480 or 240 hours, as the case may be, of compensatory time off shall, for additional overtime hours of work, be paid overtime compensation.

**(B)** If compensation is paid to an employee for accrued compensatory time off, such compensation shall be paid at the regular rate earned by the employee at the time the employee receives such payment.

**(4)** An employee who has accrued compensatory time off authorized to be provided under paragraph (1) shall, upon termination of employment, be paid for the unused compensatory time at a rate of compensation not less than—

**(A)** the average regular rate received by such employee during the last 3 years of the employee's employment, or

**(B)** the final regular rate received by such employee,

whichever is higher.

**(5)** An employee of a public agency which is a State, political subdivision of a State, or an interstate governmental agency—

**(A)** who has accrued compensatory time off authorized to be provided under paragraph (1), and

**(B)** who has requested the use of such compensatory time,

shall be permitted by the employee's employer to use such time within a reasonable period after making the request if the use of the compensatory time does not unduly disrupt the operations of the public agency.

**(6)** The hours an employee of a public agency performs court reporting transcript preparation duties shall not be considered as hours worked for the purposes of subsection (a) of this section if—

**(A)** such employee is paid at a per-page rate which is not less than—

## Sec. 207(o)(6)(A)(i)

- (i) the maximum rate established by State law or local ordinance for the jurisdiction of such public agency,
- (ii) the maximum rate otherwise established by a judicial or administrative officer and in effect on July 1, 1995, or
- (iii) the rate freely negotiated between the employee and the party requesting the transcript, other than the judge who presided over the proceedings being transcribed, and

**(B)** the hours spent performing such duties are outside of the hours such employee performs other work (including hours for which the agency requires the employee's attendance) pursuant to the employment relationship with such public agency.

For purposes of this section, the amount paid such employee in accordance with subparagraph (A) for the performance of court reporting transcript preparation duties, shall not be considered in the calculation of the regular rate at which such employee is employed.

**(7)** For purposes of this subsection—

**(A)** the term "overtime compensation" means the compensation required by subsection (a), and

**(B)** the terms "compensatory time" and "compensatory time off" mean hours during which an employee is not working, which are not counted as hours worked during the applicable workweek or other work period for purposes of overtime compensation, and for which the employee is compensated at the employee's regular rate.

### **(p) Special detail work for fire protection and law enforcement employees; occasional or sporadic employment; substitution**

**(1)** If an individual who is employed by a State, political subdivision of a State, or an interstate governmental agency in fire protection or law enforcement activities (including activities of security personnel in correctional institutions) and who, solely at such individual's option, agrees to be employed on a special detail by a separate or independent employer in fire protection, law enforcement, or related activities, the hours such individual was employed by such separate and independent employer shall be excluded by the public agency employing such individual in the calculation of the hours for which the employee is entitled to overtime compensation under this section if the public agency—

**(A)** requires that its employees engaged in fire protection, law enforcement, or security activities be hired by a separate and independent employer to perform the special detail,

**(B)** facilitates the employment of such employees by a separate and independent employer, or



## Sec. 207(p)(1)(C)

**(C)** otherwise affects the condition of employment of such employees by a separate and independent employer.

**(2)** If an employee of a public agency which is a State, political subdivision of a State, or an interstate governmental agency undertakes, on an occasional or sporadic basis and solely at the employee's option, part-time employment for the public agency which is in a different capacity from any capacity in which the employee is regularly employed with the public agency, the hours such employee was employed in performing the different employment shall be excluded by the public agency in the calculation of the hours for which the employee is entitled to overtime compensation under this section.

**(3)** If an individual who is employed in any capacity by a public agency which is a State, political subdivision of a State, or an interstate governmental agency, agrees, with the approval of the public agency and solely at the option of such individual, to substitute during scheduled work hours for another individual who is employed by such agency in the same capacity, the hours such employee worked as a substitute shall be excluded by the public agency in the calculation of the hours for which the employee is entitled to overtime compensation under this section.

### **(q) Maximum hour exemption for employees receiving remedial education**

Any employer may employ any employee for a period or periods of not more than 10 hours in the aggregate in any workweek in excess of the maximum workweek specified in subsection (a) of this section without paying the compensation for overtime employment prescribed in such subsection, if during such period or periods the employee is receiving remedial education that is—

**(1)** provided to employees who lack a high school diploma or educational attainment at the eighth grade level;

**(2)** designed to provide reading and other basic skills at an eighth grade level or below; and

**(3)** does not include job specific training.

### **(r)**

**(1)** An employer shall provide—

(A) a reasonable break time for an employee to express breast milk for her nursing child for 1 year after the child's birth each time such employee has need to express the milk; and

(B) a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.



## Sec. 207(r)(2)

**(2)** An employer shall not be required to compensate an employee receiving reasonable break time under paragraph (1) for any work time spent for such purpose.

**(3)** An employer that employs less than 50 employees shall not be subject to the requirements of this subsection, if such requirements would impose an undue hardship by causing the employer significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the employer's business.

**(4)** Nothing in this subsection shall preempt a State law that provides greater protections to employees than the protections provided for under this subsection.

§ 208. Repealed. Pub.L. 110-28, Title VIII, § 8103(c)(1)(A), May 25, 2007, 121 Stat. 189

## § 209. Attendance of witnesses

For the purpose of any hearing or investigation provided for in this chapter, the provisions of sections 49 and 50 of Title 15 (relating to the attendance of witnesses and the production of books, papers, and documents), are made applicable to the jurisdiction, powers, and duties of the Administrator, the Secretary of Labor, and the industry committees.

## § 210. Court review of wage orders in Puerto Rico and the Virgin Islands

**(a)** Any person aggrieved by an order of the Secretary issued under section 208 of this title may obtain a review of such order in the United States Court of Appeals for any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within 60 days after the entry of such order a written petition praying that the order of the Secretary be modified or set aside in whole or in part. A copy of such petition shall forthwith be transmitted by the clerk of the court to the Secretary, and thereupon the Secretary shall file in the court the record of the industry committee upon which the order complained of was entered, as provided in section 2112 of Title 28. Upon the filing of such petition such court shall have exclusive jurisdiction to affirm, modify (including provision for the payment of an appropriate minimum wage rate), or set aside such order in whole or in part, so far as it is applicable to the petitioner. The review by the court shall be limited to questions of law, and findings of fact by such industry committee when supported by substantial evidence shall be conclusive. No objection to the order of the Secretary shall be considered by the court unless such objection shall have been urged before such industry committee or unless there were reasonable grounds for failure so to do. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that such additional evidence may materially affect the result of the proceeding and that there were reasonable grounds for failure to adduce such

## Sec. 210(a)

evidence in the proceedings before such industry committee, the court may order such additional evidence to be taken before an industry committee and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. Such industry committee may modify the initial findings by reason of the additional evidence so taken, and shall file with the court such modified or new findings which if supported by substantial evidence shall be conclusive, and shall also file its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of Title 28.

**(b)** The commencement of proceedings under subsection (a) of this section shall not, unless specifically ordered by the court, operate as a stay of the Administrator's order. The court shall not grant any stay of the order unless the person complaining of such order shall file in court an undertaking with a surety or sureties satisfactory to the court for the payment to the employees affected by the order, in the event such order is affirmed, of the amount by which the compensation such employees are entitled to receive under the order exceeds the compensation they actually receive while such stay is in effect.

## § 211. Collection of data

### **(a) Investigations and inspections**

The Administrator or his designated representatives may investigate and gather data regarding the wages, hours, and other conditions and practices of employment in any industry subject to this chapter, and may enter and inspect such places and such records (and make such transcriptions thereof), question such employees, and investigate such facts, conditions, practices, or matters as he may deem necessary or appropriate to determine whether any person has violated any provision of this chapter, or which may aid in the enforcement of the provisions of this chapter. Except as provided in section 212 of this title and in subsection (b) of this section, the Administrator shall utilize the bureaus and divisions of the Department of Labor for all the investigations and inspections necessary under this section. Except as provided in section 212 of this title, the Administrator shall bring all actions under section 217 of this title to restrain violations of this chapter.

### **(b) State and local agencies and employees**

With the consent and cooperation of State agencies charged with the administration of State labor laws, the Administrator and the Secretary of Labor may, for the purpose of carrying out their respective functions and duties under this chapter, utilize the services of State and local agencies and their employees and, notwithstanding any other provision of law, may reimburse such State and local agencies and their employees for services rendered for such purposes.

### **(c) Records**

Every employer subject to any provision of this chapter or of any order issued under this chapter shall make, keep, and preserve such records of the persons employed by him and of the wages, hours, and other conditions and practices of employment maintained by him, and shall preserve such records for such periods of time, and

## Sec. 211(c)

shall make such reports therefrom to the Administrator as he shall prescribe by regulation or order as necessary or appropriate for the enforcement of the provisions of this chapter or the regulations or orders thereunder. The employer of an employee who performs substitute work described in section 207(p)(3) of this title may not be required under this subsection to keep a record of the hours of the substitute work.

### **(d) Homework regulations**

The Administrator is authorized to make such regulations and orders regulating, restricting, or prohibiting industrial homework as are necessary or appropriate to prevent the circumvention or evasion of and to safeguard the minimum wage rate prescribed in this chapter, and all existing regulations or orders of the Administrator relating to industrial homework are continued in full force and effect.

## § 212. Child labor provisions

### **(a) Restrictions on shipment of goods; prosecution; conviction**

No producer, manufacturer, or dealer shall ship or deliver for shipment in commerce any goods produced in an establishment situated in the United States in or about which within thirty days prior to the removal of such goods therefrom any oppressive child labor has been employed: *Provided*, That any such shipment or delivery for shipment of such goods by a purchaser who acquired them in good faith in reliance on written assurance from the producer, manufacturer, or dealer that the goods were produced in compliance with the requirements of this section, and who acquired such goods for value without notice of any such violation, shall not be deemed prohibited by this subsection: *And provided further*, That a prosecution and conviction of a defendant for the shipment or delivery for shipment of any goods under the conditions herein prohibited shall be a bar to any further prosecution against the same defendant for shipments or deliveries for shipment of any such goods before the beginning of said prosecution.

### **(b) Investigations and inspections**

The Secretary of Labor or any of his authorized representatives, shall make all investigations and inspections under section 211(a) of this title with respect to the employment of minors, and, subject to the direction and control of the Attorney General, shall bring all actions under section 217 of this title to enjoin any act or practice which is unlawful by reason of the existence of oppressive child labor, and shall administer all other provisions of this chapter relating to oppressive child labor.

### **(c) Oppressive child labor**

No employer shall employ any oppressive child labor in commerce or in the production of goods for commerce or in any enterprise engaged in commerce or in the production of goods for commerce.

### **(d) Proof of age**

In order to carry out the objectives of this section, the Secretary may by regulation require employers to obtain from any employee proof of age.

## Sec. 213

### § 213. Exemptions

#### **(a) Minimum wage and maximum hour requirements**

The provisions of sections 206 (except subsection (d) in the case of paragraph (1) of this subsection) and section 207 of this title shall not apply with respect to—

**(1)** any employee employed in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of subchapter II of chapter 5 of Title 5, except that an employee of a retail or service establishment shall not be excluded from the definition of employee employed in a bona fide executive or administrative capacity because of the number of hours in his workweek which he devotes to activities not directly or closely related to the performance of executive or administrative activities, if less than 40 per centum of his hours worked in the workweek are devoted to such activities); or

**(2)** Repealed. Pub.L. 101-157, § 3(s)(1), Nov. 17, 1989, 103 Stat. 939

**(3)** any employee employed by an establishment which is an amusement or recreational establishment, organized camp, or religious or non-profit educational conference center, if

**(A)** it does not operate for more than seven months in any calendar year, or

**(B)** during the preceding calendar year, its average receipts for any six months of such year were not more than 33 1/3 per centum of its average receipts for the other six months of such year, except that the exemption from sections 206 and 207 of this title provided by this paragraph does not apply with respect to any employee of a private entity engaged in providing services or facilities (other than, in the case of the exemption from section 206 of this title, a private entity engaged in providing services and facilities directly related to skiing) in a national park or a national forest, or on land in the National Wildlife Refuge System, under a contract with the Secretary of the Interior or the Secretary of Agriculture; or

**(4)** Repealed. Pub.L. 101-157, § 3(c)(1), Nov. 17, 1989, 103 Stat. 939

**(5)** any employee employed in the catching, taking, propagating, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, or in the first processing, canning or packing such marine products at sea as an incident to, or in conjunction with, such fishing operations, including the going to and returning from work and loading and unloading when performed by any such employee; or

**(6)** any employee employed in agriculture

## Sec. 213(6)(A)

- (A)** if such employee is employed by an employer who did not, during any calendar quarter during the preceding calendar year, use more than five hundred man-days of agricultural labor,
- (B)** if such employee is the parent, spouse, child, or other member of his employer's immediate family,
- (C)** if such employee
  - (i)** is employed as a hand harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment,
  - (ii)** commutes daily from his permanent residence to the farm on which he is so employed, and
  - (iii)** has been employed in agriculture less than thirteen weeks during the preceding calendar year,
- (D)** if such employee (other than an employee described in clause (C) of this subsection)
  - (i)** is sixteen years of age or under and is employed as a hand harvest laborer, is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment,
  - (ii)** is employed on the same farm as his parent or person standing in the place of his parent, and
  - (iii)** is paid at the same piece rate as employees over age sixteen are paid on the same farm, or
- (E)** if such employee is principally engaged in the range production of livestock; or
- (7)** any employee to the extent that such employee is exempted by regulations, order, or certificate of the Secretary issued under section 214 of this title; or
- (8)** any employee employed in connection with the publication of any weekly, semiweekly, or daily newspaper with a circulation of less than four thousand the major part of which circulation is within the county where published or counties contiguous thereto; or
- (9)** Repealed. Pub.L. 93-259, § 23(a)(1), Apr. 8, 1974, 88 Stat. 69
- (10)** any switchboard operator employed by an independently owned public telephone company which has not more than seven hundred and fifty stations; or

## Sec. 213(a)(11)

**(11)** Repealed Pub.L. 93-259, § 10(a), Apr. 8, 1974, 88 Stat. 63

**(12)** any employee employed as a seaman on a vessel other than an American vessel; or

**(13), (14)** Repealed Pub.L. 93-259, §§ 9(b)(1), 23(b)(1), Apr. 8, 1974, 88 Stat. 63, 69

**(15)** any employee employed on a casual basis in domestic service employment to provide babysitting services or any employee employed in domestic service employment to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves (as such terms are defined and delimited by regulations of the Secretary); or

**(16)** a criminal investigator who is paid availability pay under section 5545a of Title 5; or

**(17)** any employee who is a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker, whose primary duty is—

**(A)** the application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications;

**(B)** the design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;

**(C)** the design, documentation, testing, creation, or modification of computer programs related to machine operating systems; or

**(D)** a combination of duties described in subparagraphs (A), (B), and (C) the performance of which requires the same level of skills, and

who, in the case of an employee who is compensated on an hourly basis, is compensated at a rate of not less than \$27.63 an hour.

### **(b) Maximum hour requirements**

The provisions of section 207 of this title shall not apply with respect to—

**(1)** any employee with respect to whom the Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of section 31502 of Title 49; or

**(2)** any employee of an employer engaged in the operation of a rail carrier subject to part A of subtitle IV of Title 49; or

## Sec. 213(b)(3)

**(3)** any employee of a carrier by air subject to the provisions of title II of the Railway Labor Act [45 U.S.C.A. § 181 et seq.]; or

**(4)** Repealed. Pub.L. 93-259, § 11(c), Apr. 8, 1974, 88 Stat. 64

**(5)** any individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state; or

**(6)** any employee employed as a seaman; or

**(7)** Repealed. Pub.L. 93-259, § 21(b)(3), Apr. 8, 1974, 88 Stat. 68

**(8)** Repealed. Pub.L. 95-151, § 14(b), Nov. 1, 1977, 91 Stat. 1252

**(9)** any employee employed as an announcer, news editor, or chief engineer by a radio or television station the major studio of which is located

**(A)** in a city or town of one hundred thousand population or less, according to the latest available decennial census figures as compiled by the Bureau of the Census, except where such city or town is part of a standard metropolitan statistical area, as defined and designated by the Office of Management and Budget, which has a total population in excess of one hundred thousand, or

**(B)** in a city or town of twenty-five thousand population or less, which is part of such an area but is at least 40 airline miles from the principal city in such area; or

**(10)**

**(A)** any salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles, trucks, or farm implements, if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles or implements to ultimate purchasers; or

**(B)** any salesman primarily engaged in selling trailers, boats, or aircraft, if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers; or

**(11)** any employee employed as a driver or driver's helper making local deliveries, who is compensated for such employment on the basis of trip rates, or other delivery payment plan, if the Secretary shall find that such plan has the general purpose and effect of reducing hours worked by such employees to, or below, the maximum workweek applicable to them under section 207(a) of this title; or

**(12)** any employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, or operated on a sharecrop basis, and which are used exclusively for supply and storing of water, at least 90 percent of which was ultimately delivered for agricultural purposes during the preceding calendar year; or



## Sec. 213(b)(13)

**(13)** any employee with respect to his employment in agriculture by a farmer, notwithstanding other employment of such employee in connection with livestock auction operations in which such farmer is engaged as an adjunct to the raising of livestock, either on his own account or in conjunction with other farmers, if such employee

**(A)** is primarily employed during his workweek in agriculture by such farmer, and

**(B)** is paid for his employment in connection with such livestock auction operations at a wage rate not less than that prescribed by section 206(a)(1) of this title; or

**(14)** any employee employed within the area of production (as defined by the Secretary) by an establishment commonly recognized as a country elevator, including such an establishment which sells products and services used in the operation of a farm, if no more than five employees are employed in the establishment in such operations; or

**(15)** any employee engaged in the processing of maple sap into sugar (other than refined sugar) or syrup; or

**(16)** any employee engaged

**(A)** in the transportation and preparation for transportation of fruits or vegetables, whether or not performed by the farmer, from the farm to a place of first processing or first marketing within the same State, or

**(B)** in transportation, whether or not performed by the farmer, between the farm and any point within the same State of persons employed or to be employed in the harvesting of fruits or vegetables; or

**(17)** any driver employed by an employer engaged in the business of operating taxicabs; or

**(18), (19)** Repealed. Pub.L. 93-259, §§ 15(c), 16(b), Apr. 8, 1974, 88 Stat. 65

**(20)** any employee of a public agency who in any workweek is employed in fire protection activities or any employee of a public agency who in any workweek is employed in law enforcement activities (including security personnel in correctional institutions), if the public agency employs during the workweek less than 5 employees in fire protection or law enforcement activities, as the case may be; or

**(21)** any employee who is employed in domestic service in a household and who resides in such household; or

**(22)** Repealed. Pub.L. 95-151, § 5, Nov. 1, 1977, 91 Stat. 1249

**(23)** Repealed. Pub.L. 93-259, § 10(b)(3), Apr. 8, 1974, 88 Stat. 64



## Sec. 213(b)(24)

**(24)** any employee who is employed with his spouse by a nonprofit educational institution to serve as the parents of children—

**(A)** who are orphans or one of whose natural parents is deceased, or

**(B)** who are enrolled in such institution and reside in residential facilities of the institution,

while such children are in residence at such institution, if such employee and his spouse reside in such facilities, receive, without cost, board and lodging from such institution, and are together compensated, on a cash basis, at an annual rate of not less than \$10,000; or

**(25), (26)** Repealed. Pub.L. 95-151, §§ 6(a), 7(a), Nov. 1, 1977, 91 Stat. 1249, 1250

**(27)** any employee employed by an establishment which is a motion picture theater; or

**(28)** any employee employed in planting or tending trees, cruising, surveying, or felling timber, or in preparing or transporting logs or other forestry products to the mill, processing plant, railroad, or other transportation terminal, if the number of employees employed by his employer in such forestry or lumbering operations does not exceed eight;

**(29)** any employee of an amusement or recreational establishment located in a national park or national forest or on land in the National Wildlife Refuge System if such employee

**(A)** is an employee of a private entity engaged in providing services or facilities in a national park or national forest, or on land in the National Wildlife Refuge System, under a contract with the Secretary of the Interior or the Secretary of Agriculture, and

**(B)** receives compensation for employment in excess of fifty-six hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed; or

**(30)** a criminal investigator who is paid availability pay under section 5545a of Title 5.

### **(c) Child labor requirements**

**(1)** Except as provided in paragraph (2) or (4), the provisions of section 212 of this title relating to child labor shall not apply to any employee employed in agriculture outside of school hours for the school district where such employee is living while he is so employed, if such employee—

**(A)** is less than twelve years of age and

**(i)** is employed by his parent, or by a person standing in the place of his parent, on a farm owned or operated by such parent or person, or

## Sec. 213(c)(1)(A)(ii)

**(ii)** is employed, with the consent of his parent or person standing in the place of his parent, on a farm, none of the employees of which are (because of subsection (a)(6)(A) of this section) required to be paid at the wage rate prescribed by section 206(a)(5) of this title,

**(B)** is twelve years or thirteen years of age and

**(i)** such employment is with the consent of his parent or person standing in the place of his parent, or

**(ii)** his parent or such person is employed on the same farm as such employee, or

**(C)** is fourteen years of age or older.

**(2)** The provisions of section 212 of this title relating to child labor shall apply to an employee below the age of sixteen employed in agriculture in an occupation that the Secretary of Labor finds and declares to be particularly hazardous for the employment of children below the age of sixteen, except where such employee is employed by his parent or by a person standing in the place of his parent on a farm owned or operated by such parent or person.

**(3)** The provisions of section 212 of this title relating to child labor shall not apply to any child employed as an actor or performer in motion pictures or theatrical productions, or in radio or television productions.

**(4)**

**(A)** An employer or group of employers may apply to the Secretary for a waiver of the application of section 212 of this title to the employment for not more than eight weeks in any calendar year of individuals who are less than twelve years of age, but not less than ten years of age, as hand harvest laborers in an agricultural operation which has been, and is customarily and generally recognized as being, paid on a piece rate basis in the region in which such individuals would be employed. The Secretary may not grant such a waiver unless he finds, based on objective data submitted by the applicant, that—

**(i)** the crop to be harvested is one with a particularly short harvesting season and the application of section 212 of this title would cause severe economic disruption in the industry of the employer or group of employers applying for the waiver;

**(ii)** the employment of the individuals to whom the waiver would apply would not be deleterious to their health or well-being;

**(iii)** the level and type of pesticides and other chemicals used would not have an adverse effect on the health or well-being of the individuals to whom the waiver would apply;

Sec. 213(c)(4)(A)(iv)

**(iv)** individuals age twelve and above are not available for such employment; and

**(v)** the industry of such employer or group of employers has traditionally and substantially employed individuals under twelve years of age without displacing substantial job opportunities for individuals over sixteen years of age.

**(B)** Any waiver granted by the Secretary under subparagraph (A) shall require that—

**(i)** the individuals employed under such waiver be employed outside of school hours for the school district where they are living while so employed;

**(ii)** such individuals while so employed commute daily from their permanent residence to the farm on which they are so employed; and

**(iii)** such individuals be employed under such waiver

**(I)** for not more than eight weeks between June 1 and October 15 of any calendar year, and

**(II)** in accordance with such other terms and conditions as the Secretary shall prescribe for such individuals' protection.

**(5)**

**(A)** In the administration and enforcement of the child labor provisions of this chapter, employees who are 16 and 17 years of age shall be permitted to load materials into, but not operate or unload materials from, scrap paper balers and paper box compactors—

**(i)** that are safe for 16- and 17-year-old employees loading the scrap paper balers or paper box compactors; and

**(ii)** that cannot be operated while being loaded.

**(B)** For purposes of subparagraph (A), scrap paper balers and paper box compactors shall be considered safe for 16- or 17-year-old employees to load only if—

**(i)**

**(I)** the scrap paper balers and paper box compactors meet the American National Standards Institute's Standard ANSI Z245.5-1990 for scrap paper balers and Standard ANSI Z245.2-1992 for paper box compactors; or

## Sec. 213(c)(5)(B)(i)(II)

**(II)** the scrap paper balers and paper box compactors meet an applicable standard that is adopted by the American National Standards Institute after August 6, 1996, and that is certified by the Secretary to be at least as protective of the safety of minors as the standard described in subclause (I);

**(ii)** the scrap paper balers and paper box compactors include an on-off switch incorporating a key-lock or other system and the control of the system is maintained in the custody of employees who are 18 years of age or older;

**(iii)** the on-off switch of the scrap paper balers and paper box compactors is maintained in an off position when the scrap paper balers and paper box compactors are not in operation; and

**(iv)** the employer of 16- and 17-year-old employees provides notice, and posts a notice, on the scrap paper balers and paper box compactors stating that—

**(I)** the scrap paper balers and paper box compactors meet the applicable standard described in clause (i);

**(II)** 16- and 17-year-old employees may only load the scrap paper balers and paper box compactors; and

**(III)** any employee under the age of 18 may not operate or unload the scrap paper balers and paper box compactors.

The Secretary shall publish in the Federal Register a standard that is adopted by the American National Standards Institute for scrap paper balers or paper box compactors and certified by the Secretary to be protective of the safety of minors under clause (i)(II).

### **(C)**

**(i)** Employers shall prepare and submit to the Secretary reports—

**(I)** on any injury to an employee under the age of 18 that requires medical treatment (other than first aid) resulting from the employee's contact with a scrap paper baler or paper box compactor during the loading, operation, or unloading of the baler or compactor; and

**(II)** on any fatality of an employee under the age of 18 resulting from the employee's contact with a scrap paper baler or paper box compactor during the loading, operation, or unloading of the baler or compactor.

## Sec. 213(c)(5)(C)(ii)

**(ii)** The reports described in clause (i) shall be used by the Secretary to determine whether or not the implementation of subparagraph (A) has had any effect on the safety of children.

**(iii)** The reports described in clause (i) shall provide—

**(I)** the name, telephone number, and address of the employer and the address of the place of employment where the incident occurred;

**(II)** the name, telephone number, and address of the employee who suffered an injury or death as a result of the incident;

**(III)** the date of the incident;

**(IV)** a description of the injury and a narrative describing how the incident occurred; and

**(V)** the name of the manufacturer and the model number of the scrap paper baler or paper box compactor involved in the incident.

**(iv)** The reports described in clause (i) shall be submitted to the Secretary promptly, but not later than 10 days after the date on which an incident relating to an injury or death occurred.

**(v)** The Secretary may not rely solely on the reports described in clause (i) as the basis for making a determination that any of the employers described in clause (i) has violated a provision of section 212 of this title relating to oppressive child labor or a regulation or order issued pursuant to section 212 of this title. The Secretary shall, prior to making such a determination, conduct an investigation and inspection in accordance with section 212(b) of this title.

**(vi)** The reporting requirements of this subparagraph shall expire 2 years after August 6, 1996.

**(6)** In the administration and enforcement of the child labor provisions of this chapter, employees who are under 17 years of age may not drive automobiles or trucks on public roadways. Employees who are 17 years of age may drive automobiles or trucks on public roadways only if—

**(A)** such driving is restricted to daylight hours;

**(B)** the employee holds a State license valid for the type of driving involved in the job performed and has no records of any moving violation at the time of hire;

## Sec. 213(c)(6)(C)

**(C)** the employee has successfully completed a State approved driver education course;

**(D)** the automobile or truck is equipped with a seat belt for the driver and any passengers and the employee's employer has instructed the employee that the seat belts must be used when driving the automobile or truck;

**(E)** the automobile or truck does not exceed 6,000 pounds of gross vehicle weight;

**(F)** such driving does not involve—

**(i)** the towing of vehicles;

**(ii)** route deliveries or route sales;

**(iii)** the transportation for hire of property, goods, or passengers;

**(iv)** urgent, time-sensitive deliveries;

**(v)** more than two trips away from the primary place of employment in any single day for the purpose of delivering goods of the employee's employer to a customer (other than urgent, time-sensitive deliveries);

**(vi)** more than two trips away from the primary place of employment in any single day for the purpose of transporting passengers (other than employees of the employer);

**(vii)** transporting more than three passengers (including employees of the employer); or

**(viii)** driving beyond a 30 mile radius from the employee's place of employment; and

**(G)** such driving is only occasional and incidental to the employee's employment.

For purposes of subparagraph (G), the term "occasional and incidental" is no more than one-third of an employee's worktime in any workday and no more than 20 percent of an employee's worktime in any workweek.

**(7)**

**(A)**

**(i)** Subject to subparagraph (B), in the administration and enforcement of the child labor provisions of this chapter, it shall not be considered oppressive child labor for a new entrant into the workforce to be employed inside or outside places of business where machinery is used to process wood products.

## Sec. 213(c)(7)(A)(ii)

**(ii)** In this paragraph, the term “new entrant into the workforce” means an individual who

**(I)** is under the age of 18 and at least the age of 14, and

**(II)** by statute or judicial order is exempt from compulsory school attendance beyond the eighth grade.

**(B)** The employment of a new entrant into the workforce under subparagraph (A) shall be permitted

**(i)** if the entrant is supervised by an adult relative of the entrant or is supervised by an adult member of the same religious sect or division as the entrant;

**(ii)** if the entrant does not operate or assist in the operation of power-driven woodworking machines;

**(iii)** if the entrant is protected from wood particles or other flying debris within the workplace by a barrier appropriate to the potential hazard of such wood particles or flying debris or by maintaining a sufficient distance from machinery in operation; and

**(iv)** if the entrant is required to use personal protective equipment to prevent exposure to excessive levels of noise and saw dust.

### **(d) Delivery of newspapers and wreathmaking**

The provisions of sections 206, 207 and 212 of this title shall not apply with respect to any employee engaged in the delivery of newspapers to the consumer or to any homemaker engaged in the making of wreaths composed principally of natural holly, pine, cedar, or other evergreens (including the harvesting of the evergreens or other forest products used in making such wreaths).

### **(e) Maximum hour requirements and minimum wage employees**

The provisions of section 207 of this title shall not apply with respect to employees for whom the Secretary of Labor is authorized to establish minimum wage rates as provided in section 206(a)(3) of this title, except with respect to employees for whom such rates are in effect; and with respect to such employees the Secretary may make rules and regulations providing reasonable limitations and allowing reasonable variations, tolerances, and exemptions to and from any or all of the provisions of section 207 of this title if he shall find, after a public hearing on the matter, and taking into account the factors set forth in section 206(a)(3) of this title, that economic conditions warrant such action.

### **(f) Employment in foreign countries and certain United States territories**

The provisions of sections 206, 207, 211, and 212 of this title shall not apply with respect to any employee whose services during the workweek are performed in a

## Sec. 213(f)

workplace within a foreign country or within territory under the jurisdiction of the United States other than the following: a State of the United States; the District of Columbia; Puerto Rico; the Virgin Islands; outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (ch. 345, 67 Stat. 462) [43 U.S.C.A. § 1331 et seq.]; American Samoa; Guam; Wake Island; Eniwetok Atoll; Kwajalein Atoll; and Johnston Island.

### **(g) Certain employment in retail or service establishments, agriculture**

The exemption from section 206 of this title provided by paragraph (6) of subsection (a) of this section shall not apply with respect to any employee employed by an establishment

**(1)** which controls, is controlled by, or is under common control with, another establishment the activities of which are not related for a common business purpose to, but materially support the activities of the establishment employing such employee; and

**(2)** whose annual gross volume of sales made or business done, when combined with the annual gross volume of sales made or business done by each establishment which controls, is controlled by, or is under common control with, the establishment employing such employee, exceeds \$10,000,000 (exclusive of excise taxes at the retail level which are separately stated).

### **(h) Maximum hour requirement: fourteen workweek limitation**

The provisions of section 207 of this title shall not apply for a period or periods of not more than fourteen workweeks in the aggregate in any calendar year to any employee who—

**(1)** is employed by such employer—

**(A)** exclusively to provide services necessary and incidental to the ginning of cotton in an establishment primarily engaged in the ginning of cotton;

**(B)** exclusively to provide services necessary and incidental to the receiving, handling, and storing of raw cotton and the compressing of raw cotton when performed at a cotton warehouse or compress-warehouse facility, other than one operated in conjunction with a cotton mill, primarily engaged in storing and compressing;

**(C)** exclusively to provide services necessary and incidental to the receiving, handling, storing, and processing of cottonseed in an establishment primarily engaged in the receiving, handling, storing, and processing of cottonseed; or

**(D)** exclusively to provide services necessary and incidental to the processing of sugar cane or sugar beets in an establishment primarily engaged in the processing of sugar cane or sugar beets; and

**(2)** receives for—



## Sec. 213(h)(2)(A)

(A) such employment by such employer which is in excess of ten hours in any workday, and

(B) such employment by such employer which is in excess of forty-eight hours in any workweek,

compensation at a rate not less than one and one-half times the regular rate at which he is employed.

Any employer who receives an exemption under this subsection shall not be eligible for any other exemption under this section or section 207 of this title.

### (i) Cotton ginning

The provisions of section 207 of this title shall not apply for a period or periods of not more than fourteen workweeks in the aggregate in any period of fifty-two consecutive weeks to any employee who—

(1) is engaged in the ginning of cotton for market in any place of employment located in a county where cotton is grown in commercial quantities; and

(2) receives for any such employment during such workweeks—

(A) in excess of ten hours in any workday, and

(B) in excess of forty-eight hours in any workweek,

compensation at a rate not less than one and one-half times the regular rate at which he is employed. No week included in any fifty-two week period for purposes of the preceding sentence may be included for such purposes in any other fifty-two week period.

### (j) Processing of sugar beets, sugar beet molasses, or sugar cane

The provisions of section 207 of this title shall not apply for a period or periods of not more than fourteen workweeks in the aggregate in any period of fifty-two consecutive weeks to any employee who—

(1) is engaged in the processing of sugar beets, sugar beet molasses, or sugar cane into sugar (other than refined sugar) or syrup; and

(2) receives for any such employment during such workweeks—

(A) in excess of ten hours in any workday, and

(B) in excess of forty-eight hours in any workweek,

compensation at a rate not less than one and one-half times the regular rate at which he is employed. No week included in any fifty-two week period for purposes of the preceding sentence may be included for such purposes in any other fifty-two week period.

## Sec. 214

### § 214. Employment under special certificates

#### **(a) Learners, apprentices, messengers**

The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulations or by orders provide for the employment of learners, of apprentices, and of messengers employed primarily in delivering letters and messages, under special certificates issued pursuant to regulations of the Secretary, at such wages lower than the minimum wage applicable under section 206 of this title and subject to such limitations as to time, number, proportion, and length of service as the Secretary shall prescribe.

#### **(b) Students**

##### **(1)**

**(A)** The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by special certificate issued under a regulation or order provide, in accordance with subparagraph (B), for the employment, at a wage rate not less than 85 per centum of the otherwise applicable wage rate in effect under section 206 of this title or not less than \$1.60 an hour, whichever is the higher, of full-time students (regardless of age but in compliance with applicable child labor laws) in retail or service establishments.

**(B)** Except as provided in paragraph (4)(B), during any month in which full-time students are to be employed in any retail or service establishment under certificates issued under this subsection the proportion of student hours of employment to the total hours of employment of all employees in such establishment may not exceed—

**(i)** in the case of a retail or service establishment whose employees (other than employees engaged in commerce or in the production of goods for commerce) were covered by this chapter before the effective date of the Fair Labor Standards Amendments of 1974—

**(I)** the proportion of student hours of employment to the total hours of employment of all employees in such establishment for the corresponding month of the immediately preceding twelve-month period,

**(II)** the maximum proportion for any corresponding month of student hours of employment to the total hours of employment of all employees in such establishment applicable to the issuance of certificates under this section at any time before the effective date of the Fair Labor Standards Amendments of 1974 for the employment of students by such employer, or

**(III)** a proportion equal to one-tenth of the total hours of employment of all employees in such establishment,

## Sec. 214(b)(1)(B)(i)(III)

whichever is greater;

**(ii)** in the case of retail or service establishment whose employees (other than employees engaged in commerce or in the production of goods for commerce) are covered for the first time on or after the effective date of the Fair Labor Standards Amendments of 1974—

**(I)** the proportion of hours of employment of students in such establishment to the total hours of employment of all employees in such establishment for the corresponding month of the twelve-month period immediately prior to the effective date of such Amendments,

**(II)** the proportion of student hours of employment to the total hours of employment of all employees in such establishment for the corresponding month of the immediately preceding twelve-month period, or

**(III)** a proportion equal to one-tenth of the total hours of employment of all employees in such establishment,

whichever is greater; or

**(iii)** in the case of a retail or service establishment for which records of student hours worked are not available, the proportion of student hours of employment to the total hours of employment of all employees based on the practice during the immediately preceding twelve-month period in

**(I)** similar establishments of the same employer in the same general metropolitan area in which such establishment is located,

**(II)** similar establishments of the same or nearby communities if such establishment is not in a metropolitan area, or

**(III)** other establishments of the same general character operating in the community or the nearest comparable community.

For purpose of clauses (i), (ii), and (iii) of this subparagraph, the term "student hours of employment" means hours during which students are employed in a retail or service establishment under certificates issued under this subsection.

**(2)** The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by special certificate issued under a regulation or order provide for the employment, at a wage rate not less than 85 per centum of the wage rate in effect under section 206(a)(5) of this title

## Sec. 214(b)(2)

or not less than \$1.30 an hour, whichever is the higher, of full-time students (regardless of age but in compliance with applicable child labor laws) in any occupation in agriculture.

**(3)** The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by special certificate issued under a regulation or order provide for the employment by an institution of higher education, at a wage rate not less than 85 per centum of the otherwise applicable wage rate in effect under section 206 of this title or not less than \$1.60 an hour, whichever is the higher, of full-time students (regardless of age but in compliance with applicable child labor laws) who are enrolled in such institution. The Secretary shall by regulation prescribe standards and requirements to insure that this paragraph will not create a substantial probability of reducing the full-time employment opportunities of persons other than those to whom the minimum wage rate authorized by this paragraph is applicable.

**(4)**

**(A)** A special certificate issued under paragraph (1), (2), or (3) shall provide that the student or students for whom it is issued shall, except during vacation periods, be employed on a part-time basis and not in excess of twenty hours in any workweek.

**(B)** If the issuance of a special certificate under paragraph (1) or (2) for an employer will cause the number of students employed by such employer under special certificates issued under this subsection to exceed six, the Secretary may not issue such a special certificate for the employment of a student by such employer unless the Secretary finds employment of such student will not create a substantial probability of reducing the full-time employment opportunities of persons other than those employed under special certificates issued under this subsection. If the issuance of a special certificate under paragraph (1) or (2) for an employer will not cause the number of students employed by such employer under special certificates issued under this subsection to exceed six—

**(i)** the Secretary may issue a special certificate under paragraph (1) or (2) for the employment of a student by such employer if such employer certifies to the Secretary that the employment of such student will not reduce the full-time employment opportunities of persons other than those employed under special certificates issued under this subsection, and

**(ii)** in the case of an employer which is a retail or service establishment, subparagraph (B) of paragraph (1) shall not apply with respect to the issuance of special certificates for such employer under such paragraph.

The requirement of this subparagraph shall not apply in the case of the issuance of special certificates under paragraph (3) for the employment of full-time students by institutions of higher education; except that if the Secretary determines that an institution of higher

## Sec. 214(b)(4)(B)(ii)

education is employing students under certificates issued under paragraph (3) but in violation of the requirements of that paragraph or of regulations issued thereunder, the requirements of this subparagraph shall apply with respect to the issuance of special certificates under paragraph (3) for the employment of students by such institution.

**(C)** No special certificate may be issued under this subsection unless the employer for whom the certificate is to be issued provides evidence satisfactory to the Secretary of the student status of the employees to be employed under such special certificate.

**(D)** To minimize paperwork for, and to encourage, small businesses to employ students under special certificates issued under paragraphs (1) and (2), the Secretary shall, by regulation or order, prescribe a simplified application form to be used by employers in applying for such a certificate for the employment of not more than six full-time students. Such an application shall require only—

**(i)** a listing of the name, address, and business of the applicant employer,

**(ii)** a listing of the date the applicant began business, and

**(iii)** the certification that the employment of such full-time students will not reduce the full-time employment opportunities of persons other than persons employed under special certificates.

### **(c) Handicapped workers**

**(1)** The Secretary, to the extent necessary to prevent curtailment of opportunities for employment, shall by regulation or order provide for the employment, under special certificates, of individuals (including individuals employed in agriculture) whose earning or productive capacity is impaired by age, physical or mental deficiency, or injury, at wages which are—

**(A)** lower than the minimum wage applicable under section 206 of this title,

**(B)** commensurate with those paid to nonhandicapped workers, employed in the vicinity in which the individuals under the certificates are employed, for essentially the same type, quality, and quantity of work, and

**(C)** related to the individual's productivity.

**(2)** The Secretary shall not issue a certificate under paragraph (1) unless the employer provides written assurances to the Secretary that—

**(A)** in the case of individuals paid on an hourly rate basis, wages paid in accordance with paragraph (1) will be reviewed by the employer at periodic intervals at least once every six months, and

## Sec. 214(c)(2)(B)

**(B)** wages paid in accordance with paragraph (1) will be adjusted by the employer at periodic intervals, at least once each year, to reflect changes in the prevailing wage paid to experienced nonhandicapped individuals employed in the locality for essentially the same type of work.

**(3)** Notwithstanding paragraph (1), no employer shall be permitted to reduce the hourly wage rate prescribed by certificate under this subsection in effect on June 1, 1986, of any handicapped individual for a period of two years from such date without prior authorization of the Secretary.

**(4)** Nothing in this subsection shall be construed to prohibit an employer from maintaining or establishing work activities centers to provide therapeutic activities for handicapped clients.

**(5)**

**(A)** Notwithstanding any other provision of this subsection, any employee receiving a special minimum wage at a rate specified pursuant to this subsection or the parent or guardian of such an employee may petition the Secretary to obtain a review of such special minimum wage rate. An employee or the employee's parent or guardian may file such a petition for and in behalf of the employee or in behalf of the employee and other employees similarly situated. No employee may be a party to any such action unless the employee or the employee's parent or guardian gives consent in writing to become such a party and such consent is filed with the Secretary.

**(B)** Upon receipt of a petition filed in accordance with subparagraph (A), the Secretary within ten days shall assign the petition to an administrative law judge appointed pursuant to section 3105 of Title 5. The administrative law judge shall conduct a hearing on the record in accordance with section 554 of Title 5 with respect to such petition within thirty days after assignment.

**(C)** In any such proceeding, the employer shall have the burden of demonstrating that the special minimum wage rate is justified as necessary in order to prevent curtailment of opportunities for employment.

**(D)** In determining whether any special minimum wage rate is justified pursuant to subparagraph (C), the administrative law judge shall consider—

**(i)** the productivity of the employee or employees identified in the petition and the conditions under which such productivity was measured; and

**(ii)** the productivity of other employees performing work of essentially the same type and quality for other employers in the same vicinity.

## Sec. 214(c)(5)(E)

**(E)** The administrative law judge shall issue a decision within thirty days after the hearing provided for in subparagraph (B). Such action shall be deemed to be a final agency action unless within thirty days the Secretary grants a request to review the decision of the administrative law judge. Either the petitioner or the employer may request review by the Secretary within fifteen days of the date of issuance of the decision by the administrative law judge.

**(F)** The Secretary, within thirty days after receiving a request for review, shall review the record and either adopt the decision of the administrative law judge or issue exceptions. The decision of the administrative law judge, together with any exceptions, shall be deemed to be a final agency action.

**(G)** A final agency action shall be subject to judicial review pursuant to chapter 7 of Title 5. An action seeking such review shall be brought within thirty days of a final agency action described in subparagraph (F).

### **(d) Employment by schools**

The Secretary may by regulation or order provide that sections 206 and 207 of this title shall not apply with respect to the employment by any elementary or secondary school of its students if such employment constitutes, as determined under regulations prescribed by the Secretary, an integral part of the regular education program provided by such school and such employment is in accordance with applicable child labor laws.

## § 215. Prohibited acts; prima facie evidence

**(a)** After the expiration of one hundred and twenty days from June 25, 1938, it shall be unlawful for any person—

**(1)** to transport, offer for transportation, ship, deliver, or sell in commerce, or to ship, deliver, or sell with knowledge that shipment or delivery or sale thereof in commerce is intended, any goods in the production of which any employee was employed in violation of section 206 or section 207 of this title, or in violation of any regulation or order of the Secretary issued under section 214 of this title; except that no provision of this chapter shall impose any liability upon any common carrier for the transportation in commerce in the regular course of its business of any goods not produced by such common carrier, and no provision of this chapter shall excuse any common carrier from its obligation to accept any goods for transportation; and except that any such transportation, offer, shipment, delivery, or sale of such goods by a purchaser who acquired them in good faith in reliance on written assurance from the producer that the goods were produced in compliance with the requirements of this chapter, and who acquired such goods for value without notice of any such violation, shall not be deemed unlawful;



## Sec. 215(a)(2)

**(2)** to violate any of the provisions of section 206 or section 207 of this title, or any of the provisions of any regulation or order of the Secretary issued under section 214 of this title;

**(3)** to discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter, or has testified or is about to testify in any such proceeding, or has served or is about to serve on an industry committee;

**(4)** to violate any of the provisions of section 212 of this title;

**(5)** to violate any of the provisions of section 211(c) of this title, or any regulation or order made or continued in effect under the provisions of section 211(d) of this title, or to make any statement, report, or record filed or kept pursuant to the provisions of such section or of any regulation or order thereunder, knowing such statement, report, or record to be false in a material respect.

**(b)** For the purposes of subsection (a)(1) of this section proof that any employee was employed in any place of employment where goods shipped or sold in commerce were produced, within ninety days prior to the removal of the goods from such place of employment, shall be prima facie evidence that such employee was engaged in the production of such goods.

## § 216. Penalties

### **(a) Fines and imprisonment**

Any person who willfully violates any of the provisions of section 215 of this title shall upon conviction thereof be subject to a fine of not more than \$10,000, or to imprisonment for not more than six months, or both. No person shall be imprisoned under this subsection except for an offense committed after the conviction of such person for a prior offense under this subsection.

### **(b) Damages; right of action; attorney's fees and costs; termination of right of action**

Any employer who violates the provisions of section 206 or section 207 of this title shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages. Any employer who violates the provisions of section 215(a)(3) of this title shall be liable for such legal or equitable relief as may be appropriate to effectuate the purposes of section 215(a)(3) of this title, including without limitation employment, reinstatement, promotion, and the payment of wages lost and an additional equal amount as liquidated damages. An action to recover the liability prescribed in either of the preceding sentences may be maintained against any employer (including a public agency) in any Federal or State court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated. No employee shall be a party plaintiff to any such action unless he gives his consent in writing to become



## Sec. 216(b)

such a party and such consent is filed in the court in which such action is brought. The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action. The right provided by this subsection to bring an action by or on behalf of any employee, and the right of any employee to become a party plaintiff to any such action, shall terminate upon the filing of a complaint by the Secretary of Labor in an action under section 217 of this title in which

(1) restraint is sought of any further delay in the payment of unpaid minimum wages, or the amount of unpaid overtime compensation, as the case may be, owing to such employee under section 206 or section 207 of this title by an employer liable therefore under the provisions of this subsection or

(2) legal or equitable relief is sought as a result of alleged violations of section 215(a)(3) of this title.

### **(c) Payment of wages and compensation; waiver of claims; actions by the Secretary; limitation of actions**

The Secretary is authorized to supervise the payment of the unpaid minimum wages or the unpaid overtime compensation owing to any employee or employees under section 206 or section 207 of this title, and the agreement of any employee to accept such payment shall upon payment in full constitute a waiver by such employee of any right he may have under subsection (b) of this section to such unpaid minimum wages or unpaid overtime compensation and an additional equal amount as liquidated damages. The Secretary may bring an action in any court of competent jurisdiction to recover the amount of unpaid minimum wages or overtime compensation and an equal amount as liquidated damages. The right provided by subsection (b) of this section to bring an action by or on behalf of any employee to recover the liability specified in the first sentence of such subsection and of any employee to become a party plaintiff to any such action shall terminate upon the filing of a complaint by the Secretary in an action under this subsection in which a recovery is sought of unpaid minimum wages or unpaid overtime compensation under sections 206 and 207 of this title or liquidated or other damages provided by this subsection owing to such employee by an employer liable under the provisions of subsection (b) of this section, unless such action is dismissed without prejudice on motion of the Secretary. Any sums thus recovered by the Secretary of Labor on behalf of an employee pursuant to this subsection shall be held in a special deposit account and shall be paid, on order of the Secretary of Labor, directly to the employee or employees affected. Any such sums not paid to an employee because of inability to do so within a period of three years shall be covered into the Treasury of the United States as miscellaneous receipts. In determining when an action is commenced by the Secretary of Labor under this subsection for the purposes of the statutes of limitations provided in section 255(a) of this title, it shall be considered to be commenced in the case of any individual claimant on the date when the complaint is filed if he is specifically named as a party plaintiff in the complaint, or if his name did not so appear, on the subsequent date on which his name is added as a party plaintiff in such action.

## Sec. 216(d)

### **(d) Savings provisions**

In any action or proceeding commenced prior to, on, or after August 8, 1956, no employer shall be subject to any liability or punishment under this chapter or the Portal-to-Portal Act of 1947, 29 U.S.C.A. § 251 et seq.] on account of his failure to comply with any provision or provisions of this chapter or such Act

**(1)** with respect to work heretofore or hereafter performed in a workplace to which the exemption in section 213(f) of this title is applicable,

**(2)** with respect to work performed in Guam, the Canal Zone or Wake Island before the effective date of this amendment of subsection (d), or

**(3)** with respect to work performed in a possession named in section 206(a)(3) of this title at any time prior to the establishment by the Secretary, as provided therein, of a minimum wage rate applicable to such work.

### **(e)**

#### **(1)**

**(A)** Any person who violates the provisions of sections 212 or 213(c) of this title, relating to child labor, or any regulation issued pursuant to such sections, shall be subject to a civil penalty not to exceed—

**(i)** \$11,000 for each employee who was the subject of such a violation; or

**(ii)** \$50,000 with regard to each such violation that causes the death or serious injury of any employee under the age of 18 years, which penalty may be doubled where the violation is a repeated or willful violation.

**(B)** For purposes of subparagraph (A), the term “serious injury” means—

**(i)** permanent loss or substantial impairment of one of the senses (sight, hearing, taste, smell, tactile sensation);

**(ii)** permanent loss or substantial impairment of the function of a bodily member, organ, or mental faculty, including the loss of all or part of an arm, leg, foot, hand or other body part; or

**(iii)** permanent paralysis or substantial impairment that causes loss of movement or mobility of an arm, leg, foot, hand or other body part.

**(2)** Any person who repeatedly or willfully violates section 206 or 207, relating to wages, shall be subject to a civil penalty not to exceed \$1,100 for each such violation.

**(3)** In determining the amount of any penalty under this subsection, the appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered. The amount of any penalty under this subsection, when finally determined, may be—

## Sec. 216(e)(3)(A)

**(A)** deducted from any sums owing by the United States to the person charged;

**(B)** recovered in a civil action brought by the Secretary in any court of competent jurisdiction, in which litigation the Secretary shall be represented by the Solicitor of Labor; or

**(C)** ordered by the court, in an action brought for a violation of section 215(a)(4) of this title or a repeated or willful violation of section 215(a)(2) of this title, to be paid to the Secretary.

**(4)** Any administrative determination by the Secretary of the amount of any penalty under this subsection shall be final, unless within 15 days after receipt of notice thereof by certified mail the person charged with the violation takes exception to the determination that the violations for which the penalty is imposed occurred, in which event final determination of the penalty shall be made in an administrative proceeding after opportunity for hearing in accordance with section 554 of Title 5, and regulations to be promulgated by the Secretary.

**(5)** Except for civil penalties collected for violations of section 212 of this title, sums collected as penalties pursuant to this section shall be applied toward reimbursement of the costs of determining the violations and assessing and collecting such penalties, in accordance with the provision of section 9a of this title. Civil penalties collected for violations of section 212 of this title shall be deposited in the general fund of the Treasury.

§ 216a. Repealed. Oct. 26, 1949, c. 736, § 16(f), 63 Stat. 920

§ 216b. Liability for overtime work performed prior to July 20, 1949

No employer shall be subject to any liability or punishment under this chapter (in any action or proceeding commenced prior to or on or after January 24, 1950), on account of the failure of said employer to pay an employee compensation for any period of overtime work performed prior to July 20, 1949, if the compensation paid prior to July 20, 1949, for such work was at least equal to the compensation which would have been payable for such work had subsections (d)(6), (7), and (g) of section 207 of this title been in effect at the time of such payment.

§ 217. Injunction proceedings

The district courts, together with the United States District Court for the District of the Canal Zone, the District Court of the Virgin Islands, and the District Court of Guam shall have jurisdiction, for cause shown, to restrain violations of section 215 of this title, including in the case of violations of section 215(a)(2) of this title the restraint of any withholding of payment of minimum wages or overtime compensation found by the court to be due to employees under this chapter (except

## Sec. 217

sums which employees are barred from recovering, at the time of the commencement of the action to restrain the violations, by virtue of the provisions of section 255 of this title).

## § 218. Relation to other laws

**(a)** No provision of this chapter or of any order thereunder shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a minimum wage higher than the minimum wage established under this chapter or a maximum work week lower than the maximum workweek established under this chapter, and no provision of this chapter relating to the employment of child labor shall justify noncompliance with any Federal or State law or municipal ordinance establishing a higher standard than the standard established under this chapter. No provision of this chapter shall justify any employer in reducing a wage paid by him which is in excess of the applicable minimum wage under this chapter, or justify any employer in increasing hours of employment maintained by him which are shorter than the maximum hours applicable under this chapter.

**(b)** Notwithstanding any other provision of this chapter (other than section 213(f) of this title) or any other law—

**(1)** any Federal employee in the Canal Zone engaged in employment of the kind described in section 5102(c)(7) of Title 5, or

**(2)** any employee employed in a nonappropriated fund instrumentality under the jurisdiction of the Armed Forces,

shall have his basic compensation fixed or adjusted at a wage rate that is not less than the appropriate wage rate provided for in section 206(a)(1) of this title (except that the wage rate provided for in section 206(b) of this title shall apply to any employee who performed services during the workweek in a work place within the Canal Zone), and shall have his overtime compensation set at an hourly rate not less than the overtime rate provided for in section 207(a)(1) of this title.

## § 218a. Automatic enrollment for employees of large employers

In accordance with regulations promulgated by the Secretary, an employer to which this chapter applies that has more than 200 full-time employees and that offers employees enrollment in 1 or more health benefits plans shall automatically enroll new full-time employees in one of the plans offered (subject to any waiting period authorized by law) and to continue the enrollment of current employees in a health benefits plan offered through the employer. Any automatic enrollment program shall include adequate notice and the opportunity for an employee to opt out of any coverage the individual or employee were automatically enrolled in. Nothing in this section shall be construed to supersede any State law which establishes, implements, or continues in effect any standard or requirement relating to employers in connection with payroll except to the extent that such standard or requirement prevents an employer from instituting the automatic enrollment program under this section.

## Sec. 218b

### § 218b. Notice to employees

#### (a) In general

In accordance with regulations promulgated by the Secretary, an employer to which this chapter applies, shall provide to each employee at the time of hiring (or with respect to current employees, not later than March 1, 2013), written notice—

- (1) informing the employee of the existence of an Exchange, including a description of the services provided by such Exchange, and the manner in which the employee may contact the Exchange to request assistance;
- (2) if the employer plan's share of the total allowed costs of benefits provided under the plan is less than 60 percent of such costs, that the employee may be eligible for a premium tax credit under section 36B of the Internal Revenue Code of 1986 and a cost sharing reduction under section 18071 of Title 42 if the employee purchases a qualified health plan through the Exchange; and
- (3) if the employee purchases a qualified health plan through the Exchange, and the employer does not offer a free choice voucher, the employee may lose the employer contribution (if any) to any health benefits plan offered by the employer and that all or a portion of such contribution may be excludable from income for Federal income tax purposes.

#### (b) Effective date

Subsection (a) shall take effect with respect to employers in a State beginning on March 1, 2013.

### § 218c. Protections for employees

#### (a) Prohibition

No employer shall discharge or in any manner discriminate against any employee with respect to his or her compensation, terms, conditions, or other privileges of employment because the employee (or an individual acting at the request of the employee) has—

- (1) received a credit under section 36B of the Internal Revenue Code of 1986 or a subsidy under section 18071 of Title 42;
- (2) provided, caused to be provided, or is about to provide or cause to be provided to the employer, the Federal Government, or the attorney general of a State information relating to any violation of, or any act or omission the employee reasonably believes to be a violation of, any provision of this title (or an amendment made by this title);
- (3) testified or is about to testify in a proceeding concerning such violation;
- (4) assisted or participated, or is about to assist or participate, in such a proceeding; or

## Sec. 218c(a)(5)

**(5)** objected to, or refused to participate in, any activity, policy, practice, or assigned task that the employee (or other such person) reasonably believed to be in violation of any provision of this title (or amendment), or any order, rule, regulation, standard, or ban under this title (or amendment).

### **(b)** Complaint procedure

#### **(1)** In general

An employee who believes that he or she has been discharged or otherwise discriminated against by any employer in violation of this section may seek relief in accordance with the procedures, notifications, burdens of proof, remedies, and statutes of limitation set forth in section 2087(b) of Title 15.

#### **(2)** No limitations on rights

Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any employee under any Federal or State law or under any collective bargaining agreement. The rights and remedies in this section may not be waived by any agreement, policy, form, or condition of employment.

## § 219. Separability

If any provision of this chapter or the application of such provision to any person or circumstance is held invalid, the remainder of this chapter and the application of such provision to other persons or circumstances shall not be affected thereby

**Pertinent Provisions Affecting the Fair Labor Standards Act from the Portal-To-Portal Act of 1947 (61 Stat. 84)  
[Public Law 49 – 80<sup>th</sup> Congress]  
[Chapter 52 – First Session]  
[H.R. 2157]**

An Act

To relieve employers from certain liabilities and punishments under the Fair Labor Standards Act of 1938, as amended, the Walsh-Healey Act, and the Bacon-Davis Act,<sup>1</sup> and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

**Part 1 Findings and Policy**

**Section 1**

**(a)** The Congress finds that the Fair Labor Standards Act of 1938, as amended [29 U.S.C.A. § 201 et seq.], has been interpreted judicially in disregard of long-established customs, practices, and contract between employers and employees, thereby creating wholly unexpected liabilities, immense in amount and retroactive in operation, upon employers with the results that, if said Act as so interpreted or claims arising under such interpretations were permitted to stand,

**(1)** the payment of such liabilities would bring about financial ruin of many employers and seriously impair the capital resources of many others, thereby resulting in the reduction of industrial operations, halting of expansion and development, curtailing employment, and the earning power of employees;

**(2)** the credit of many employers would be seriously impaired;

**(3)** there would be created both an extended and continuous uncertainty on the part of industry, both employer and employee, as to the financial condition of productive establishments and a gross inequality of competitive conditions between employers and between industries;

**(4)** employees would receive windfall payments, including liquidated damages, of sums for activities performed by them without any expectation of reward beyond that included in their agreed rates of pay;

**(5)** there would occur the promotion of increasing demands for payment to employees for engaging in activities no compensation for which had been contemplated by either the employer or employee at the time they were engaged in;

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<sup>1</sup> The Fair Labor Standards Act of 1938, as amended, contains several references to the “Bacon-Davis Act.” “This Act” was recodified to 40 U.S.C.A. §§ 3141-3144, 3146, and 3147, following its repeal by Pub.L. 107-217, § 6(b), Aug. 21, 2002, 116 Stat. 1308.

**(6)** voluntary collective bargaining would be interfered with and industrial disputes between employees and employers and between employees and employees would be created;

**(7)** the courts of the country would be burdened with excessive and needless litigation and champertous practices would be encouraged;

**(8)** the Public Treasury would be deprived of large sums of revenues and public finances would be seriously deranged by claims against the Public Treasury for refunds of taxes already paid;

**(9)** the cost to the Government of goods and services heretofore and hereafter purchased by its various departments and agencies would be unreasonably increased and the Public Treasury would be seriously affected by consequent increased cost of war contracts; and

**(10)** serious and adverse effects upon the revenues of Federal, State, and local governments would occur.

The Congress further finds that all of the foregoing constitutes a substantial burden on commerce and a substantial obstruction to the free flow of goods in commerce.

The Congress, therefore, further finds and declares that it is in the national public interest and for the general welfare, essential to national defense, and necessary to aid, protect, and foster commerce, that this chapter be enacted.

The Congress further finds that the varying and extended periods of time for which, under the laws of the several States, potential retroactive liability may be imposed upon employers, have given and will give rise to great difficulties in the sound and orderly conduct of business and industry.

The Congress further finds and declares that all of the results which have arisen or may arise under the Fair Labor Standards Act of 1938, as amended, as aforesaid, may (except as to liability for liquidated damages) arise with respect to the Walsh-Healey [41 U.S.C.A. § 35 et seq.] and Bacon-Davis [40 U.S.C.A. § 276a et seq.] Acts and that it is, therefore, in the national public interest and for the general welfare, essential to national defense, and necessary to aid, protect, and foster commerce, that this chapter shall apply to the Walsh-Healey Act and the Bacon-Davis Act.

**(b)** It is declared to be the policy of the Congress in order to meet the existing emergency and to correct existing evils

**(1)** to relieve and protect interstate commerce from practices which burden and obstruct it;

**(2)** to protect the right of collective bargaining; and

**(3)** to define and limit the jurisdiction of the courts.

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### **Part III Future Claims**

#### **Sec. 4 Relief From Liability and Punishment Under the Fair Labor Standards Act of 1938, the Walsh-Healey Act, and the Bacon-Davis Act For Failure to Pay Minimum Wage or overtime compensation**

##### **(a) Activities not compensable**

Except as provided in subsection (b) of this section, no employer shall be subject to any liability or punishment under the Fair Labor Standards Act of 1938, as amended [29 U.S.C.A. § 201 et seq.], the Walsh-Healey Act [41 U.S.C.A. § 35 et seq.], or the Bacon-Davis Act [40 U.S.C.A. § 276a et seq.], on account of the failure of such employer to pay an employee minimum wages, or to pay an employee overtime compensation, for or on account of any of the following activities of such employee engaged in on or after May 14, 1947-

- (1)** walking, riding, or traveling to and from the actual place of performance of the principal activity or activities which such employee is employed to perform, and
- (2)** activities which are preliminary to or postliminary to said principal activity or activities,

which occur either prior to the time on any particular workday at which such employee commences, or subsequent to the time on any particular workday at which he ceases, such principal activity or activities. For purposes of this subsection, the use of an employer's vehicle for travel by an employee and activities performed by an employee which are incidental to the use of such vehicle for commuting shall not be considered part of the employee's principal activities if the use of such a vehicle for travel is within the normal commuting area for the employer's business or establishment and the use of the employer's vehicle is subject to an agreement on the part of the employer and the employee or representative of such employee.

##### **(b) Compensability by contract or custom**

Notwithstanding the provisions of subsection (a) of this section which relieve an employer from liability and punishment with respect to an activity, the employer shall not be so relieved if such activity is compensable by either-

- (1)** an express provision of a written or nonwritten contract in effect, at the time of such activity, between such employee, his agent, or collective-bargaining representative and his employer; or
- (2)** a custom or practice in effect, at the time of such activity, at the establishment or other place where such employee is employed, covering such activity, not inconsistent with a written or nonwritten contract, in effect, at the time of such activity, between such employee, his agent, or collective-bargaining representative and his employer.

##### **(c) Restriction on activities compensable under contract or custom**

For the purposes of subsection (b) of this section, an activity shall be considered as compensable under such contract provision or such custom or practice only when it

is engaged in during the portion of the day with respect to which it is so made compensable.

**(d) Determination of time employed with respect to activities**

In the application of the minimum wage and overtime compensation provisions of the Fair Labor Standards Act of 1938, as amended [29 U.S.C.A. § 201 et seq.], of the Walsh-Healey Act [41 U.S.C.A. § 35 et seq.], or of the Bacon-Davis Act [40 U.S.C.A. § 276a et seq.], in determining the time for which an employer employs an employee with respect to walking, riding, traveling or other preliminary or post-preliminary activities described in subsection (a) of this section, there shall be counted all that time, but only that time, during which the employee engages in any such activity which is compensable within the meaning of subsections (b) and (c) of this section.

**Part IV Miscellaneous**

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**§ 255. Statute of Limitations**

Any action commenced on or after May 14, 1947, to enforce any cause of action for unpaid minimum wages, unpaid overtime compensation, or liquidated damages, under the Fair Labor Standards Act of 1938, as amended [29 U.S.C.A. § 201 et seq.], the Walsh-Healey Act [41 U.S.C.A. § 35 et seq.], or the Bacon-Davis Act [40 U.S.C.A. § 276a et seq.]-

**(a)** if the cause of action accrues on or after the date of the enactment of this Act – may be commenced within two years after the cause of action accrued, and every such action shall be forever barred unless commenced within two years after the cause of action accrued, except that a cause of action arising out of a willful violation may be commenced within three years after the cause of action accrued;

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**(d)** with respect to any cause of action brought under section 216(b) of this title against a State or a political subdivision of a State in a district court of the United States on or before April 18, 1973, the running of the statutory periods of limitation shall be deemed suspended during the period beginning with the commencement of any such action and ending one hundred and eighty days after the effective date of the Fair Labor Standards Amendments of 1974, except that such suspension shall not be applicable if in such action judgment has been entered for the defendant on the grounds other than State immunity from Federal jurisdiction.

**§ 256. Determination of Commencement of Future Actions**

In determining when an action is commenced for the purposes of section 255 of this title, an action commenced on or after May 14, 1947 under the Fair Labor Standards Act of 1938, as amended [29 U.S.C.A. § 201 et seq.], the Walsh-Healey Act [41 U.S.C.A. § 35 et seq.], or the Bacon-Davis Act [40 U.S.C.A. § 276a et seq.], shall be considered to be commenced on the date when the complaint is filed; except that in the case of a collective or class action instituted under the Fair Labor Standards Act

of 1938, as amended, or the Bacon-Davis Act, it shall be considered to be commenced in the case of any individual claimant-

**(a)** on the date when the complaint is filed, if he is specifically named as a party plaintiff in the complaint and his written consent to become a party plaintiff is filed on such date in the court in which the action is brought; or

**(b)** if such written consent was not so filed or if his name did not so appear – on the subsequent date on which such written consent is filed in the court in which the action was commenced.

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**§ 259. Reliance in Future on Administrative Rulings, Etc.**

**(a)** In any action or proceeding based on any act or omission on or after May 14, 1947, no employer shall be subject to any liability or punishment for or on account of the failure of the employer to pay minimum wages or overtime compensation under the Fair Labor Standards Act of 1938, as amended [29 U.S.C.A. § 201 et seq.], the Walsh-Healey Act [41 U.S.C.A. § 35 et seq.], or the Bacon-Davis Act [40 U.S.C.A. § 276a et seq.], if he pleads and proves that the act or omission complained of was in good faith in conformity with and in reliance on any written administrative regulation, order, ruling, approval, or interpretation, of the agency of the United States specified in subsection (b) of this section, or any administrative practice or enforcement policy of such agency with respect to the class of employers to which he belonged. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that after such act or omission, such administrative regulation, order, ruling, approval, interpretation, practice, or enforcement policy is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect.

**(b)** The agency referred to in subsection (a) shall be –

**(1)** in the case of the Fair Labor Standards Act of 1938, as amended [29 U.S.C.A. § 201 et seq.] – the Administrator of the Wage and Hour Division of the Department of Labor;

\*\*\*\*\*

**§ 260. Liquidated Damages**

In any action commenced prior to or on or after May 14, 1947 to recover unpaid minimum wages, unpaid overtime compensation, or liquidated damages, under the Fair Labor Standards Act of 1938, as amended [29 U.S.C.A. § 201 et seq.], if the employer shows to the satisfaction of the court that the act or omission giving rise to such action was in good faith and that he had reasonable grounds for believing that his act or omission was not a violation of the Fair Labor Standards Act of 1938, as amended, the court may, in its sound discretion, award no liquidated damages or award any amount thereof not to exceed the amount specified in section 216 of such title.

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**§ 262. Definitions**

**(a)** When the terms "employer", "employee", and "wage" are used in this chapter in relation to the Fair Labor Standards Act of 1938, as amended [29 U.S.C.A. § 201 et seq.], they shall have the same meaning as when used in such Act of 1938.

\*\*\*\*\*

**(e)** As used in section 255 of the term "State" means any State of the United States or the District of Columbia or any Territory or possession of the United States.  
.....



**GEORGIA DEPARTMENT OF CORRECTIONS**

**IMPORTANT NOTICE TO EMPLOYEES**

The Georgia Department of Corrections wishes to reaffirm that it requires all non-exempt employees to:

**REPORT ALL TIME WORKED**

**This means that you must:**

- \* record the exact hour and minute that you begin any work
- \* record the exact hour and minute that you stop all work
- \* make these entries on each day you work
- \* be absolutely certain that you have recorded all work time
- \* personally make and initial any changes in your timesheet or timecard which might occasionally be necessary

The Georgia Department of Corrections relies upon your personal time entries in calculating your pay and in maintaining your payroll records. Thus, a failure to accurately record all time worked will mislead the Department and can result in discipline or discharge. It is a violation of these policies either to under-report or to over-report your work time. Remember: accuracy is the key -- not just the appearance of accuracy.

No deviation from these instructions is permitted. No one may ask or direct that a non-exempt employee work "off the clock", "for free", or "on his or her own time". Any non-exempt employee who is not being paid in accordance with these policies or who has knowledge that the policies are being violated should immediately report this to the Department Personnel Director at (404) 656-4730. Your report will remain confidential, and you will not be punished for making such a report.

## GEORGIA DEPARTMENT OF CORRECTIONS

### Standard Operating Procedures

<b>Functional Area:</b> Support Services/Human Resources	<b>Reference Number:</b> IVO14-0001 104.47	<b>Revises Previous Effective Date:</b>  01/15/12
<b>Subject:</b> Employee Standards of Conduct		
<b>Authority:</b> Owens/Dozier	<b>Effective Date:</b> 12/12/14	Page 1 of 12

#### **I. POLICY:**

- A. Employees of the Georgia Department of Corrections (GDC) are required to adhere to higher standards of conduct than normally found in the general community due to the important security mission of GDC and its inherent responsibility to provide an appropriate model of public safety to the citizens of Georgia. As such, all Department employees are herein given notification of the work rules and standards of behavior by which they will be governed.
- B. Appointing Authorities will ensure all current and new employees read these Standards of Conduct and complete the Employee Standards of Conduct Acknowledgment Statement (Attachment 1) and the Employee Communications Device Acknowledgement & Agreement Statement (Attachment 2). The completed acknowledgment forms will be placed in each employee's Human Resources file.

#### **II. APPLICABILITY:**

- A. All employees of the Georgia Department of Corrections, and,
- B. All employees of any vendor or contractor of GDC who work on any property under authority of the Board of Corrections.

#### **III. RELATED DIRECTIVES:**

- A. Governor's Executive Order, dated 01-10-11, [Establishing a Code of Ethics for Executive Branch Officers and Employees](#)
- B. Governor's Executive Order, dated 01-13-03, [Creating the Office of State Inspector General](#)
- C. [O.C.G.A.](#)
  - 16-6-5.1 Sexual Assault of Person in Custody
  - 40-6-391 Driving Under the Influence
  - 42-5-15 Crossing of Guard Lines with Weapons, Intoxicants or Drugs without Consent

Functional Area: Support Services	Prev. Eff. Date 12/15/06	Page <b>2</b> of <b>12</b>
	Effective Date: 12/12/14	Reference Number: IVO14-0001 (104.47)

- 42-5-16 Trading With Inmates without Consent
- 42-5-18 Items Prohibited for Possession by Inmates
- 45-10-1 Code of Ethics and Conflicts of Interest
- 45-11-1 Offenses Concerning Public Officers and Employees

D. Department of Corrections Board Rules

- 125-2-1.02 Employment
- 125-2-1.07 Performance of Duty

E. Rules of the State Personnel Board

- 478-1-.03 [Antidiscrimination](#)
- 478-1-.07 [Outside Employment](#)
- 478-1-.08 [Political Activity](#)
- 478-1-.15 [Changes to Employment Status](#)
- 478-1-.20 [Employee Grievance Procedure](#)
- 478-1-.21 [Drugs and Alcohol Free Workplace Program](#)
- 478-1-.24 [Rules for Classified Employees](#)

F. GDC Standard Operating Procedures (SOPs)

- IIA07-0001 Fitness for Duty
- IIA07-0002 Contact or Business Dealings with Inmates/ Probationers
- IIA21-0001 Prison Rape Elimination Act (PREA) – Sexual Assault of/Sexual Misconduct with Offenders
- IIIA02-0007 Probation Operations Fitness for Duty
- IVO03-0012 Obtaining and Using Records for Criminal Justice Employment
- IVO13-0003 Unlawful Harassment (including Sexual Harassment)
- IVO14-0005 Appearance and Dress



Functional Area: Support Services	Prev. Eff. Date 12/15/06	Page <b>3</b> of <b>12</b>
	Effective Date: 12/12/14	Reference Number: IVO14-0001 (104.47)

IVO14-0008 Surreptitious Recording of Department Personnel and/or Contractors

IVO15-0001 Secondary Employment

IVO15-0002 Employment of Relatives/Special Relationships

IVO15-0004 Designation of Jobs Requiring Peace Officer Certification  
IVO16-0001 Performance Management

IVO19-0001 Privacy of Personnel Records

IVO20-0001 Adverse Actions (Classified Employees)

IVO20-0002 Adverse Actions (Unclassified Employees)

#### IV. **DEFINITIONS:**

**The following definitions are for purposes of this standard operating procedure:**

A. Close Personal Relationship means:

1. A familial relationship with a spouse, parent or child, step-parent or step-child, grandparent or grandchild, brother or sister, niece or nephew, aunt or uncle, guardian or ward, and including persons related by marriage within the same classes enumerated, or,
2. Any relationship that involves cohabitation, dating, or consensual sexual contact of any kind.

B. Communications Device: Any mobile or cellular phones, smart phones, electronic readers or any other device that allows for the transfer of information from one person to another by means of transmission via internet, satellite, tower, air waves or data line.

C. Contraband: Includes electronic games, radios, recording devices, cameras, mobile or cellular phones, smart phones, electronic readers or any other device that allows for the transfer of information from one person to another by means of transmission via internet, satellite, tower, air waves or data line, or any other property that is prohibited from being brought into a facility or across a guard line by statute, rule, standard operating procedure, local operating procedure or direction of the Warden or Superintendent, unless specifically approved in writing by the Warden, Superintendent or their Designee.

D. Employee: Means any of the following:

1. Any full-time or part-time employee of GDC,
2. Any independent contractor providing services to GDC, or

Functional Area: Support Services	Prev. Eff. Date 12/15/06	Page <b>4</b> of <b>12</b>
	Effective Date: 12/12/14	Reference Number: IVO14-0001 (104.47)

3. Any employee of any vendor or contractor of GDC who works on any property under the authority of the Board of Corrections.

- E. Ethics Officer: Employee designated to take appropriate measures to ensure that the Department's employees become familiar with applicable ethics laws and policies, including the policies set forth in the Governor's Executive Order Establishing a Code of Ethics for Executive Branch Officers and Employees. The Ethics Officer is the General Counsel for the Department.
- F. Gift: Anything of value exceeding \$25, including, but not limited to, food, lodging, transportation, personal services, gratuities, subscriptions, memberships, trips, loans, extensions of credit, forgiveness of debts, or advances or deposits of money.
- G. Offender: Any probationer, inmate or other detainee, or other person under the supervision of the Departments of Corrections, Juvenile Justice, or Pardons and Paroles.
- H. Parolee: Any person who is on parole for a disposition from any jurisdiction.
- I. Personal or Unauthorized Business Dealings: Any unofficial personal transactions, dealings, relationships or contacts or any unofficial business transactions, dealings, relationships or contacts with an offender that have not been properly approved in writing by the appropriate Division Director or their Designee.
- J. Probation: Any felony disposition or treatment in any jurisdiction, including first offender treatment and pre-trial interdiction programs, or otherwise under probation supervision of GDC.
- K. Probationer: Any person who is on probation.
- L. Relevant Civil Action: Any action which is brought against an employee that potentially impacts on the employee's duties or on GDC. Relevant civil actions would include, but are not limited to, lawsuits alleging that an employee has engaged in any activity which violates the policies and procedures of this Department, has violated 42 U.S.C. § 1983, or has violated any law or standard arising out of any law enforcement activity. This would include any actions initiated by the Peace Officers Standards and Training (P.O.S.T.) Council.
- M. Under the influence of alcohol: An employee shall be deemed under the influence of alcohol if he or she:
  1. Is on duty or reporting for duty with a blood alcohol concentration (BAC) level of .02 or greater;
  2. Has a BAC level of .02 or greater while off duty and is in uniform, inside a guard line, or driving a state vehicle; or

Functional Area: Support Services	Prev. Eff. Date 12/15/06	Page <b>5</b> of <b>12</b>
	Effective Date: 12/12/14	Reference Number: IVO14-0001 (104.47)

3. Consumes alcohol and drives a personal vehicle while off duty with a BAC level of .08 or greater.

N. Value: Actual retail price or cost attributable to a gift, less applicable taxes and gratuities or a reasonable estimate based upon customary charges for like goods or services in the locality. A series of tickets to sporting, entertainment, or similar events shall be valued as one gift. Entrance fees, admission fees, or other tickets shall be valued at the face value of the ticket or fee, excluding any portion attributable to a charitable contribution, if provided by a charitable organization.

**V. ATTACHMENTS:**

Attachment 1 – [Employee Standards of Conduct Acknowledgement Statement](#)

Attachment 2 – [Employee Communications Device Acknowledgement & Agreement](#)

**VI. PROCEDURE:**

A. Employees' Standards of Conduct

1. Employees shall not have personal or unauthorized business dealings with offenders.
2. Employee Conduct
  - a. Employees must conduct themselves in a manner which reflects credit upon themselves, their co-workers, and the Department. Employees shall not engage in any activity, either while on-duty or off-duty, which would reflect discredit on the Department, undermine public trust or which would call into question the fitness of the employee to perform services for the Department.
  - b. Employees shall not engage in any illegal activity, or any other activity, which would violate public safety or public trust. Such prohibited activity would include, but is not limited to:
    1. Driving any motorized vehicle (including but not limited to, motorcycles, automobiles, vans, trucks, all-terrain vehicles, boats, etc.) under the influence of alcohol;
    2. Driving any motorized vehicle (including but not limited to, motorcycles, automobiles, vans, trucks, all-terrain vehicles, etc.) under the influence of Marijuana, any other drug (whether legal or illegal), or other prohibited substance;

Functional Area: Support Services	Prev. Eff. Date 12/15/06	Page <b>6</b> of <b>12</b>
	Effective Date: 12/12/14	Reference Number: IVO14-0001 (104.47)

3. Refusal to submit to tests for alcohol or other substance under O.C.G.A. § 40-5-55 or O.C.G.A. § 40-5-67.1;
4. The manufacture, possession, use or distribution of Marijuana or any other illegal drug;
5. Any offense involving a minor;
6. Any illegal homicide;
7. Any theft;
8. Any sex offense, including solicitation of sex;
9. Any assault or battery;
10. Any offense pertaining to any illegal gambling activity; or
11. Any other offense which involves moral turpitude.

A conviction, plea of guilty, or nolo contendere to any offense covered in this procedure shall be conclusive proof of its violation; however, a conviction or even prosecution for any such offense is not necessary to prove a violation of this standard of conduct, if, in the opinion of the employee's Appointing Authority, the employee engaged in the activity and brought discredit on the Department.

- c. Employees shall not engage in any conduct which results in a court imposing incarceration or probation of any type or any duration. Incarceration or probation may result in dismissal from employment.
3. Employees shall not use state property or resources for personal business. State property and resources shall only be used for official business. Such prohibitions include, but are not limited to:
    - a. State credit cards and fuel cards shall not be used for personal purchases.
    - b. State vehicles shall not be used for personal purposes.
    - c. Personal long-distance telephone calls shall not be charged to State telephones or to State calling cards.
    - d. State-provided internet access is intended for public business. Employee use of the internet may be recorded and monitored. No employee is

Functional Area: Support Services	Prev. Eff. Date 12/15/06	Page <b>7</b> of <b>12</b>
	Effective Date: 12/12/14	Reference Number: IVO14-0001 (104.47)

permitted to use or access the internet for pornographic, obscene, or other improper purposes.

- e. State-owned or leased cameras, fax machines, copiers and other reproduction equipment should be used only to accomplish official business tasks.

4. Policies, Procedures, and Orders

- a. Employees shall acquaint themselves with and comply with the rules of the Board of Corrections, the Commissioner's directives, the Department's policies and procedures and the post orders of the unit to which they are assigned.
- b. Employees shall comply with all lawful orders and directives issued by one of their superiors in their chain of command.

5. Employees shall not use excessive or unnecessary force against an offender.

6. Employee Language

- a. Employees shall not use profanity or abusive language against an offender.
- b. Employees shall not refer to an offender by the use of any slang name.

7. Employees shall not use illegal drugs or abuse legal drugs at any time. Employees also shall not consume alcohol while on duty or immediately prior to reporting for duty (for at least eight (8) hours). Employees shall be subject to disciplinary action if found to possess a blood alcohol concentration of .02 grams or greater while on duty.

8. Employees shall not proceed inside the guard line of a prison or other facility with or under the influence of alcohol or any illegal drug. Prescription drugs are prohibited inside a guard line without the express approval of the Appointing Authority.

9. Employees shall not purchase, handle, transport, consume nor be under the influence of alcohol while traveling (either driving or riding) in a state vehicle. Employees shall not drive a state vehicle while under the influence of alcohol.

10. Employees shall not purchase, handle, or consume alcoholic beverages while in uniform.

11. Employees shall be present for scheduled duty and remain alert while on duty.

12. Employees shall not use threats, intimidation, profanity, or abusive language against other employees or visitors.

Functional Area: Support Services	Prev. Eff. Date 12/15/06	Page <b>8</b> of <b>12</b>
	Effective Date: 12/12/14	Reference Number: IVO14-0001 (104.47)

13. Employees shall not abuse arrest authority or give the impression of having an independent arrest authority. Employees shall only make arrests while in performance of their official duties or as otherwise specifically permitted.
14. Employee Finances
  - a. Employees shall not engage in financial dealings that conflict with the interests of the Department. They also shall not take official actions that give the appearance of benefiting their private or personal interests.
  - b. Employees must meet their personal financial obligations, to include complying with all applicable laws regarding the filing of state or federal tax returns. Employees shall manage their personal finances in a manner that does not bring discredit upon the Department nor make them susceptible to compromise their public duties.
15. Conflicts of Interest
  - a. Employees shall not engage in any activity which creates a conflict of interest with their public duties or responsibilities. This prohibition applies to actual conflicts of interest and to any other action or transaction, which could create an appearance of a conflict of interest in the mind of a reasonable person. This prohibition includes, but is not limited to, the following examples:
    - 1) Employees shall not use their status as a member of this Department to seek favor, to coerce, intimidate, or deceive others, or to receive any privilege not otherwise authorized by the performance of their duties.
    - 2) Employees shall not solicit or accept employment from a contractor, supplier, or consultant or their representative or agent during the conduct of procurement.
    - 3) Employees may serve for compensation as a corporate officer or director of any for-profit or publicly held company or perform voluntary, pro bono services on behalf of non-profit organizations, when services to such organizations would not have the potential to create a conflict and do not impair the employee's ability to discharge his or her public duties fully, faithfully, and impartially.
    - 4) No employee may accept any payment whatsoever for services for which fees are not legally or traditionally required, except employees may accept honoraria not related to their employment.

Functional Area: Support Services	Prev. Eff. Date 12/15/06	Page <b>9</b> of <b>12</b>
	Effective Date: 12/12/14	Reference Number: IVO14-0001 (104.47)

- 5) No employee shall directly or indirectly accept gift(s) from any person with whom the employee interacts on official state business. Regardless of the value, no employee may accept any money or “gift certificates,” nor may any employee accept any kickbacks, points or items tied to purchases by the Department. If a gift has been personally accepted by an employee, the Department Ethics Officer (478-992-5240) must immediately be notified to make the final determination as to the status of the gift.
  - b. An employee on whose behalf actual and reasonable expenses for food, beverages, travel, lodging, and registration are paid by a third party to permit the employee’s participation in a meeting related to official or professional duties of the employee shall file a report with the Department Ethics Officer (478-992-5240) no later than the 30-days after such expenses are paid.
  - c. Any exceptions or waivers from this Standard of Conduct, in certain individual cases due to unique or compelling circumstances, require the prior written approval of the designated Department Ethics Officer (478-992-5240). Questions regarding interpretation of this policy provision should also be directed to the Department Ethics Officer.
16. Employees shall not show favoritism to other employees based on familial or personal relationships.
17. Employees shall refrain from "close personal relationships" with other employees within the chain of command.
18. Notification of Citations, Arrests or Convictions
  - a. Employees shall notify their immediate supervisor of all traffic citations (excluding parking citations), all arrests, all convictions, and all final dispositions of criminal cases including nolo contendere by the next business day after its occurrence. Supervisors are responsible for transmitting this notification to the appropriate individuals in the chain of command, including the duty officer and the Appointing Authority. Within seventy-two (72) hours of the event, the employee shall provide the Appointing Authority with a signed written explanation of the underlying facts.
  - b. Employees shall provide written notification to their Appointing Authority of any relevant civil action which has been filed against them or of any administrative action to which they are a party, including any action initiated by the Peace Officers Standards and Training (P.O.S.T.) Council,

Functional Area: Support Services	Prev. Eff. Date 12/15/06	Page <b>10</b> of <b>12</b>
	Effective Date: 12/12/14	Reference Number: IVO14-0001 (104.47)

for certified employees. This notice must be provided within seventy-two (72) hours of being served or otherwise becoming a party to the action.

19. Employees shall not bring any unauthorized weapons into any work area.
20. Employees shall not bring any communications devices into any facility, any State of Georgia vehicle that is transporting offenders, any outside detail location or place of employment of an offender, or into any perimeter vehicle. These devices, personally owned by an employee, must be kept secured in the employee's personal vehicle at all times while the employee is on duty. The singular exception to this rule is a communications device issued by the Department to an employee for the specific purpose of performing his or her job duties and is utilized and maintained according to the rules governing these devices.
21. Employees shall not bring any contraband into any facility, any vehicle that is transporting offenders, or to any outside detail location or place of employment of an offender.
22. Employees shall report any violation or attempted violation of any law, regulation, policy, or procedure that could result in a breach of the Department's security to their supervisor or other responsible authority immediately upon becoming aware of such a violation.
23. Any employee who knows or has reasonable cause to believe that any other state employee has committed, or is in the process of committing an act or omission of fraud, waste, abuse or corruption shall file a report with the State Inspector General.
24. No Department employee shall retaliate against any employee for disclosing or threatening to disclose a violation of or noncompliance with a law, rule, or regulation to the appropriate Department personnel or to the State Inspector General.
25. Employees shall cooperate fully with any official investigation carried out by any law enforcement or administrative agency (including the State Inspector General). In cooperating with an official investigation, employees shall provide all information requested, respond truthfully to all questions asked, submit to any required polygraph, and provide a signed affidavit if requested, and follow any lawful orders unless officially notified that employee is the subject of a criminal investigation.
26. Employees shall protect and prevent improper release of confidential information.
27. Employees are prohibited from engaging in any illegal political activity. Employees taking part in political activities are responsible for complying with



Functional Area: Support Services	Prev. Eff. Date 12/15/06	Page <b>11</b> of <b>12</b>
	Effective Date: 12/12/14	Reference Number: IVO14-0001 (104.47)

applicable federal and state laws, and State Personnel Board Rules. Employees may not solicit or knowingly accept a personal hand-delivered campaign contribution in a governmental building or office. Employees may express opinions on political subjects and candidates, and take an active part in political campaigns outside of working hours, including the wearing of badges or buttons and displaying of bumper stickers and posters. Employees are encouraged to vote. Employees who wish to seek office must comply with the applicable federal and state laws. Employees must notify the Department Ethics Officer (478-992-5240) prior to announcing or qualifying for any elected position or office.

28. Employees shall not represent the Department as a spokesperson regarding any Department policy, procedure, plan, program, or activity or regarding any rule or policy of the Board of Corrections without express authorization.
  29. Supervisors will maintain accurate personnel records to document employees' positive and negative performances.
  30. Employees shall adhere to professional standards of neatness, cleanliness, safety, and dress, which will reflect credit upon themselves and the Department.
  31. The unofficial circulation of scandalous or slanderous gossip (rumors) shall not be tolerated. Rumors create unnecessary distractions and are a threat to the security and efficient operation of the Department. A statement made to a superior in the chain of command or to an investigator while conducting an official investigation is not a violation of this standard.
  32. All employees shall treat all citizens equally in a professional and fair manner without regard to the citizen's race, gender, creed, color, national origin, religion, age, disability, political affiliation, sophistication, or affluence in conjunction with the Governors' Customer Service Initiative.
- B. These standards are a representative and not an exhaustive list. Employees who violate these standards may be subject to disciplinary action, including dismissal, even on the first offense.
- C. These are minimum standards of conduct for all employees of the Department of Corrections. Divisions, institutions, facilities, centers, offices or other units of the Department may have additional or more specific standards for its staff.

**VII. RECORD RETENTION:**

Attachment 1 – Employee Standards of Conduct Acknowledgment Statement

Retain permanently in the local and official personnel file.

Functional Area: Support Services	Prev. Eff. Date 12/15/06	Page <b>12</b> of <b>12</b>
	Effective Date: 12/12/14	Reference Number: IVO14-0001 (104.47)

Attachment 2 – Employee Communications Device Acknowledgement & Agreement Statement

Retain permanently in the local and official personnel file.

**2010 Georgia Code**  
**TITLE 45 - PUBLIC OFFICERS AND**  
**EMPLOYEES**  
**CHAPTER 10 - CODES OF ETHICS AND**  
**CONFLICTS OF INTEREST**  
**ARTICLE 1 - CODES OF ETHICS**  
**§ 45-10-1 - Establishment and text of code of**  
**ethics for government service generally**

O.C.G.A. 45-10-1 (2010)

45-10-1. Establishment and text of code of ethics for government service generally

There is established for and within the state and for and in all governments therein a code of ethics for government service which shall read as follows:

CODE OF ETHICS FOR GOVERNMENT SERVICE

Any person in government service should:

- I. Put loyalty to the highest moral principles and to country above loyalty to persons, party, or government department.
- II. Uphold the Constitution, laws, and legal regulations of the United States and the State of Georgia and of all governments therein and never be a party to their evasion.
- III. Give a full day's labor for a full day's pay and give to the performance of his duties his earnest effort and best thought.
- IV. Seek to find and employ more efficient and economical ways of getting tasks accomplished.
- V. Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not, and never accept, for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.
- VI. Make no private promises of any kind binding upon the duties of office, since a government employee has no private word which can be binding on public duty.
- VII. Engage in no business with the government, either directly or indirectly, which is inconsistent with the conscientious performance of his governmental duties.
- VIII. Never use any information coming to him confidentially in the performance of governmental duties

as a means for making private profit.

IX. Expose corruption wherever discovered.

X. Uphold these principles, ever conscious that public office is a public trust.

**2010 Georgia Code**  
**TITLE 45 - PUBLIC OFFICERS AND**  
**EMPLOYEES**  
**CHAPTER 20 - PERSONNEL**  
**ADMINISTRATION**  
**ARTICLE 5 - RANDOM DRUG TESTING**  
**OF EMPLOYEES IN HIGH-RISK JOBS**  
**§ 45-20-90 - Definitions**

O.C.G.A. 45-20-90 (2010)  
45-20-90. Definitions

As used in this article, the term:

(1) "Employee" means any employee required to be certified under the provisions of Chapter 8 of Title 35 receiving a salary or hourly wage from any state agency, department, commission, bureau, board, or authority. "Employee" shall also include any certified employee working under a personnel contract to provide personnel services, including but not limited to medical, security, or transportation services to a state or other public agency.

(2) "Established drug test" means the collection and testing of bodily fluids administered in a manner equivalent to that required by the Mandatory Guidelines for Federal Workplace Drug Testing Programs (HHS Regulations 53 Fed. Reg. 11979, et seq., as amended) or other professionally valid procedures approved by the State Personnel Board.

(3) "High-risk work" means those duties where inattention to duty or errors in judgment while on duty will have the potential for significant risk of harm to the employee, other employees, or the general public.

(4) "Illegal drug" means marijuana as defined in paragraph (16) of Code Section 16-13-21, as amended; a controlled substance as defined in paragraph (4) of Code Section 16-13-21, as amended; a dangerous drug as defined in Code Section 16-13-71, as amended; or any other controlled substance or dangerous drug that persons are prohibited from using. The term "illegal drug" shall not include any drug when used pursuant to a valid medical prescription or when used as otherwise authorized by state or federal law.

## 2010 Georgia Code

### TITLE 35 - LAW ENFORCEMENT OFFICERS AND AGENCIES

#### CHAPTER 8 - EMPLOYMENT AND TRAINING OF PEACE OFFICERS

##### § 35-8-8 - Requirements for appointment or certification of persons as peace officers and pre-employment attendance at basic training course

O.C.G.A. 35-8-8 (2010)

35-8-8. Requirements for appointment or certification of persons as peace officers and pre-employment attendance at basic training course

(a) Any person employed or certified as a peace officer shall:

(1) Be at least 18 years of age;

(2) Be a citizen of the United States;

(3) Have a high school diploma or its recognized equivalent;

(4) Not have been convicted by any state or by the federal government of any crime the punishment for which could have been imprisonment in the federal or state prison or institution nor have been convicted of sufficient misdemeanors to establish a pattern of disregard for the law, provided that, for purposes of this paragraph, violations of traffic laws and other offenses involving the operation of motor vehicles when the applicant has received a pardon shall not be considered;

(5) Be fingerprinted for the purpose of conducting a fingerprint based search at the Georgia Bureau of Investigation and the Federal Bureau of Investigation to determine the existence of any criminal record;

(6) Possess good moral character as determined by investigation under procedure established by the council;

(7) Be found, after examination by a licensed physician or surgeon, to be free from any physical, emotional, or mental conditions which might adversely affect his or her exercising the powers or duties of a peace officer; and

(8) Successfully complete a job related academy entrance examination provided for and administered by the council in conformity with state and federal law. Such examination shall be administered prior to entrance to the basic course provided for in Code Sections 35-8-9 and 35-8-11. The council may change or modify such examination and shall establish the criteria for determining satisfactory performance on such examination. Peace officers who do not perform satisfactorily on the examination shall be ineligible to retake such examination for a period of six months after an unsuccessful attempt. The provisions of this paragraph establish only the minimum requirements of academy entrance examinations for peace

officer candidates in this state; each law enforcement unit is encouraged to provide such additional requirements and any preemployment examination as it deems necessary and appropriate.

(b) Any person authorized to attend the basic training course prior to employment as a peace officer shall meet the requirements of this Code section.