

House Bill 361 (AS PASSED HOUSE AND SENATE)

By: Representatives Welch of the 110th, Coomer of the 14th, Weldon of the 3rd, Rogers of the 10th, Dickey of the 140th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 11 of Title 15 of the Official Code of Georgia Annotated, relating to the
2 Juvenile Code, so as to enact reforms as recommended by the Georgia Council on Criminal
3 Justice Reform with respect to juveniles; to revise defined terms; to clarify and harmonize
4 statutory language; to restrict jurisdiction of the Juvenile Court for the prosecution of
5 juvenile traffic offenses to children under 17 years of age; to clarify transfer criteria; to
6 amend Code Section 17-10-14 of the Official Code of Georgia Annotated, relating to
7 committal of person under 17 convicted of felony, so as to correct a cross-reference; to
8 amend Title 15 of the Official Code of Georgia Annotated, relating to courts, so as to provide
9 for prosecuting attorneys to be involved in and prosecute cases wherein a child is alleged to
10 be in need of services; to provide for related matters; to provide for an effective date; to
11 repeal conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 **PART I**
14 **SECTION 1-1.**

15 Chapter 11 of Title 15 of the Official Code of Georgia Annotated, relating to the Juvenile
16 Code, is amended by revising paragraphs (45) and (49) of Code Section 15-11-2, relating to
17 definitions, as follows:

18 "(45) 'Mediation' means the ~~procedure~~ proceeding in which a mediator facilitates
19 communication between the parties concerning the matters in dispute and explores
20 possible solutions to promote ~~reconciliation~~ collaboration, understanding, and settlement."

21 "(49) 'Nonsecure residential facility' means community residential ~~locations operated by~~
22 ~~or on behalf of DJJ and may include group homes, emergency shelters, wilderness or~~
23 ~~outdoor therapeutic programs, or other~~ facilities that provide 24 hour care in a residential
24 setting that are not hardware secured."

SECTION 1-2.

Said chapter is further amended by revising Code Section 15-11-10, relating to exclusive original jurisdiction, as follows:

"15-11-10.

Except as provided in Code Section 15-11-560, the juvenile court shall have exclusive original jurisdiction over juvenile matters and shall be the sole court for initiating action:

(1) Concerning any child who:

(A) Is alleged to be a delinquent child;

(B) Is alleged to be a child in need of services;

(C) Is alleged to be a dependent child;

(D) Is alleged to be in need of treatment or commitment as a mentally ill or developmentally disabled child;

~~(E) Is alleged to have committed a juvenile traffic offense as defined in Code Section 15-11-630;~~

~~(F)~~(E) Has been placed under the supervision of the court or on probation to the court; provided, however, that such jurisdiction shall be for the purpose of completing, effectuating, and enforcing such supervision or a probation begun either prior to such child's seventeenth birthday if the order is entered as a disposition for an adjudication for delinquency or prior to such child's eighteenth birthday if the order is entered for an adjudication for a child in need of services;

~~(G)~~(F) Has remained in foster care after such child's eighteenth birthday or who is receiving independent living services from DFCS after such child's eighteenth birthday; provided, however, that such jurisdiction shall be for the purpose of reviewing the status of such child and the services being provided to such child as a result of such child's independent living plan or status as a child in foster care; or

~~(H)~~(G) Requires a comprehensive services plan in accordance with Code Section 15-11-658; or

(2) Concerning any individual under the age of 17 years alleged to have committed a juvenile traffic offense as defined in Code Section 15-11-630; or

~~(2)~~(3) Involving any proceedings:

(A) For obtaining judicial consent to the marriage, employment, or enlistment in the armed services of any child if such consent is required by law;

(B) For permanent guardianship brought pursuant to the provisions of Article 3 of this chapter;

(C) Under Chapter 4B of Title 49, the Interstate Compact for Juveniles, or any comparable law, enacted or adopted in this state;

(D) For the termination of the legal parent-child relationship and the rights of the biological father who is not the legal father of the child in accordance with Article 4 of this chapter; provided, however, that such jurisdiction shall not affect the superior court's exclusive jurisdiction to terminate the legal parent-child relationship and the rights of a biological father who is not the legal father of the child as set forth in Chapters 6 through 9 of Title 19;

(E) For emancipation brought pursuant to the provisions of Article 10 of this chapter;

(F) Under Article 8 of this chapter, relating to prior notice to a parent, guardian, or legal custodian relative to an unemancipated minor's decision to seek an abortion; or

(G) Brought by a local board of education pursuant to Code Section 20-2-766.1, relating to court orders requiring that a parent, guardian, or legal custodian attend a conference or participate in programs or treatment to improve a student's behavior."

SECTION 1-3.

Said chapter is further amended by revising subsection (b) of Code Section 15-11-12, relating to dual designation of children and time limitations, as follows:

"(b) If a child alleged or adjudicated to be a delinquent child or a child in need of services is also alleged or adjudicated to be a dependent child, dependency proceedings may be consolidated with delinquency or child in need of services proceedings to the extent consistent with due process of law as provided in Articles 3, 6 5, and 7 6 of this chapter."

SECTION 1-4.

Said chapter is further amended by revising paragraph (3) of subsection (a) of Code Section 15-11-16, relating to commencement of pleadings, as follows:

"(3) By the filing of a petition for legitimation under Code Section 15-11-11, or in other cases by the filing of a complaint or a petition as provided in Articles 3, 4, 5, 6, 7, 8, and 10 of this chapter."

SECTION 1-5.

Said chapter is further amended by revising subsection (a) of Code Section 15-11-24, relating to termination of mediation, as follows:

"(a) ~~Any~~ Either party in a mediation may withdraw from or terminate further participation in mediation at any time."

SECTION 1-6.

Said chapter is further amended by revising paragraph (1) of subsection (b) of Code Section 15-11-146, relating to preliminary protective hearings and findings, as follows:

SECTION 1-10.

Said chapter is further amended by revising subsection (b) of Code Section 15-11-441, relating to an adjudication hearing, as follows:

"(b) An adjudication hearing for a child alleged to be a child in need of services shall be conducted in accordance with Title 24.

(c) At the conclusion of the adjudication hearing, the court shall determine whether such child is a child in need of services."

SECTION 1-11.

Said chapter is further amended by revising subsections (b) and (c) of Code Section 15-11-506, relating to a detention hearing, as follows:

"(b) If an alleged delinquent child is detained and is not released from preadjudication custody, a detention hearing shall be held promptly and not later than:

(1) Two ~~business~~ days after such child is placed in preadjudication custody if such child is taken into custody without an arrest warrant; or

(2) Five ~~business~~ days after such child is placed in preadjudication custody if such child is taken into custody pursuant to an arrest warrant.

(c) Notwithstanding Code Section 15-11-5, if ~~if~~ the detention hearing cannot be held within two ~~business~~ days in accordance with paragraph (1) of subsection (b) of this Code section because the date for the hearing falls on a weekend or legal holiday, the court shall review the decision to detain such child and make a finding based on probable cause within 48 hours of such child being placed in preadjudication custody."

SECTION 1-12.

Said chapter is further amended by revising subsection (e) of Code Section 15-11-560, relating to concurrent and original jurisdiction of superior court, as follows:

~~"(e)(1)~~ After indictment, the superior court may after investigation ~~and for extraordinary cause~~ transfer to the juvenile court any case involving a child 13 to 17 years of age alleged to have committed voluntary manslaughter, aggravated sodomy, aggravated child molestation, or aggravated sexual battery. In considering the transfer of such case, the court shall consider the criteria set forth in Code Section 15-11-562. Any such transfer shall be appealable by the State of Georgia pursuant to Code Section 5-7-1. Upon such a transfer by the superior court, jurisdiction shall vest in the juvenile court and jurisdiction of the superior court shall terminate.

(2) Except as provided in paragraph (8) of subsection (b) of Code Section 15-11-602, any case transferred by the superior court to the juvenile court pursuant to this subsection shall be subject to the class A designated felony act provisions of Code Section

15-11-602, and the transfer of the case from superior court to juvenile court shall constitute notice to such child that such case is subject to the class A designated felony act provisions of Code Section 15-11-602."

SECTION 1-13.

Said chapter is further amended by revising subsection (c) of Code Section 15-11-561, relating to waiver of juvenile court jurisdiction and transfer to superior court, as follows:

"(c) After consideration of a probation report, risk assessment, and any other evidence the court deems relevant, including any evidence offered by a child, the court may determine that because of the seriousness of the offense or such child's prior record, the welfare of the community requires that criminal proceedings against such child be instituted. The court shall also consider the criteria listed in subsection (a) of Code Section 15-11-562."

SECTION 1-14.

Said chapter is further amended by revising subsection (a) of Code Section 15-11-562, relating to transfer criteria, as follows:

"(a) The criteria ~~which~~ that the juvenile court shall consider in determining whether to transfer an alleged delinquent child as set forth in subsection ~~(b)~~ (a) of Code Section ~~15-11-560~~ 15-11-561 to superior court and the criteria that the superior court shall consider in determining whether to transfer any case involving a child 13 to 17 years of age alleged to have committed voluntary manslaughter, aggravated sodomy, aggravated child molestation, or aggravated sexual battery to juvenile court as set forth in subsection (e) of Code Section 15-11-560 includes, but shall not be limited to:

(1) The age of such child;

(2) The seriousness of the alleged offense, especially if personal injury resulted;

(3) Whether the protection of the community requires transfer of jurisdiction;

(4) Whether the alleged offense involved violence or was committed in an aggressive or premeditated manner;

(5) The impact of the alleged offense on the alleged victim, including the permanence of any physical or emotional injury sustained, health care expenses incurred, and lost earnings suffered;

~~(5)(6)~~ (6) The culpability of such child including such child's level of planning and participation in the alleged offense;

~~(6)(7)~~ (7) Whether the alleged offense is a part of a repetitive pattern of offenses which indicates that such child may be beyond rehabilitation in the juvenile justice system;

(7)(8) The record and history of such child, including experience with the juvenile justice system, other courts, supervision, commitments to juvenile institutions, and other placements;

(8)(9) The sophistication and maturity of such child as determined by consideration of his or her home and environmental situation, emotional condition, and pattern of living;

(9)(10) The program and facilities available to the juvenile court in considering disposition; and

(10)(11) Whether or not a child can benefit from the treatment or rehabilitative programs available to the juvenile court."

SECTION 1-15.

Said chapter is further amended by revising Code Section 15-11-630, relating to juvenile traffic offenses, as follows:

"15-11-630.

(a) As used in this Code section, the term 'child' means an individual under 17 years of age.

(a)(b) A juvenile traffic offense consists of a violation by a child of:

(1) A law or local ordinance governing the operation of a moving motor vehicle upon the streets or highways of this state or upon the waterways within or adjoining this state; or

(2) Any other motor vehicle traffic law or local ordinance if a child is taken into custody and detained for its violation or is transferred to the juvenile court by the court hearing the charge.

(b)(c) The following offenses shall be acts of delinquency and shall not be handled as juvenile traffic offenses: aggressive driving, reckless driving, a ~~four-point~~ speeding offense punishable by four or more points, homicide by vehicle, manslaughter resulting from the operation of a vehicle, any felony in the commission of which a motor vehicle is used, racing on highways and streets, using a motor vehicle in fleeing or attempting to elude an officer, fraudulent or fictitious use of a driver's license, hit and run or leaving the scene of an accident, driving under the influence of alcohol or drugs, and any offense committed by an unlicensed driver under 16 years of age.

(c)(d) A juvenile traffic offense shall not be an act of delinquency unless the case is transferred to the delinquency calendar.

(d)(e) The summons, notice to appear, or other designation of a citation accusing a child of committing a juvenile traffic offense constitutes the commencement of the proceedings in the court of the county in which the alleged violation occurred and serves in place of a summons and petition under this article. These cases shall be filed and heard separately from other proceedings of the court. If a child is taken into custody on the charge, Code

Sections 15-11-503 and 15-11-505 shall apply. If a child is, or after commencement of the proceedings becomes, a resident of another county of this state, the court in the county where the alleged traffic offense occurred may retain jurisdiction over the entire case.

~~(e)~~(f) The court shall fix a time for a hearing and shall give reasonable notice thereof to the child accused of committing a juvenile traffic offense and, if his or her address is known, to his or her parent, guardian, or legal custodian. If the accusation made in the summons, notice to appear, or other designation of a citation is denied, a hearing shall be held at which the parties shall have the right to subpoena witnesses, present evidence, cross-examine witnesses, and appear with their attorney. The hearing shall be open to the public.

~~(f)~~(g) If the court finds on the admission of a child or upon the evidence that a child committed the offense charged, it may make one or more of the following orders:

(1) Reprimand, counsel, or warn such child and his or her parent, guardian, or legal custodian; provided, however, that this disposition order shall not be available for any act of delinquency;

(2) As a matter of supervised or unsupervised probation, order the Department of Driver Services to suspend such child's privilege to drive under stated conditions and limitations for a period not to exceed 12 months;

(3) Require such child to attend a traffic school approved by the Department of Driver Services or a substance abuse clinic or program approved by either DBHDD or the Council of Juvenile Court Judges for a reasonable period of time;

(4) Assess a fine and order such child to remit to the general fund of the county a sum not exceeding the maximum applicable to an adult for a like offense. The fine shall be subject to all additions and penalties as specified under this title and Title 47;

(5) Require such child to participate in a program of community service as specified by the court;

(6) Impose any sanction authorized by Code Section 15-11-442 or 15-11-601; or

(7) Place such child on probation subject to the conditions and limitations imposed by Title 40 governing probation granted to adults for like offenses, provided that such probation shall be supervised by the court or shall be unsupervised probation.

~~(g)~~(h) In lieu of the orders provided by subsection ~~(f)~~ (g) of this Code section, if the evidence warrants, the court may transfer the case to the delinquency calendar of the court and direct the filing and service of a summons and delinquency petition.

~~(h)~~(i) Upon finding that a child has committed a juvenile traffic offense or an act of delinquency which would be a violation of Title 40 if committed by an adult, the court shall forward, within ten days, a report of the final adjudication and disposition of the charge to the Department of Driver Services; provided, however, that this procedure shall not be

applicable to those cases which have been dismissed or in which a child and his or her parent, guardian, or legal custodian have been reprimanded, counseled, or warned by the court. The Department of Driver Services shall record the adjudication and disposition of the offense on such child's permanent record, and such adjudication and disposition shall be deemed a conviction for the purpose of suspending or revoking such child's driver's license. Such record shall also be available to law enforcement agencies and courts as are the permanent traffic records of adults."

SECTION 1-16.

Code Section 17-10-14 of the Official Code of Georgia Annotated, relating to committal of person under 17 convicted of felony, is amended by revising subsection (b) as follows:

"(b) If a child is transferred to superior court ~~according to subsection (b) of~~ pursuant to Code Section 15-11-561 and convicted of aggravated assault as defined in Chapter 5 of Title 16, the court may sentence such child to the Department of Corrections. Such child shall be housed in a designated youth confinement unit until such person is 17 years of age, at which time such person may be housed in any other unit designated by the Department of Corrections."

PART II

SECTION 2-1.

Title 15 of the Official Code of Georgia Annotated, relating to courts, is amended by revising subsection (a) of Code Section 15-11-390, relating to filing a complaint for a child in need of services, as follows:

"(a) A complaint alleging a child is a child in need of services may be made by any person, including a law enforcement officer, who has knowledge of the facts alleged or is informed and believes that such facts are true. A prosecuting attorney may file a complaint alleging a child is in need of services or intervene in such matter to represent the interest of the state as parens patriae."

SECTION 2-2.

Said title is further amended by revising Code Section 15-11-405, relating to termination of proceedings relating to a runaway child, as follows:

"15-11-405.

Any proceeding or other processes or actions alleging for the first time that a child is a runaway shall be terminated or dismissed upon the request of such child's parent, guardian, or legal custodian or a prosecuting attorney."

SECTION 2-3.

Said title is further amended by revising Code Section 15-11-420, relating to the authority to file a petition, as follows:

"15-11-420.

A petition alleging that a child is a child in need of services may be filed by a parent, a guardian, a legal custodian, a law enforcement officer, a guardian ad litem, ~~or~~ an attorney who has knowledge of the facts alleged or is informed and believes that such facts are true: ~~Such petition, or a prosecuting attorney. Except when such petition has been filed by a prosecuting attorney, it~~ shall not be accepted for filing unless the court or a person authorized by the court has determined and endorsed on the petition that the filing of the petition is in the best interests of the public and such child. When such petition is filed by a prosecuting attorney, the prosecuting attorney shall be authorized to conduct the proceedings on behalf of the state as parens patriae."

SECTION 2-4.

Said title is further amended by revising Code Section 15-11-440, relating to the standard of proof, as follows:

"15-11-440.

The petitioner, or prosecuting attorney when representing the state, has the burden of proving the allegations of a child in need of services petition by clear and convincing evidence."

SECTION 2-5.

Said chapter is further amended by revising paragraph (1) of subsection (a) of Code Section 15-11-443, relating to the duration of disposition orders, as follows:

"(1) A hearing is held prior to the expiration of the order upon motion of DFCS, DJJ, the petitioner, the prosecuting attorney, or on the court's own motion;"

SECTION 2-6.

Said title is further amended by revising subsection (c) of Code Section 15-11-450, relating to comprehensive services plan for child found unrestorably incompetent to proceed, as follows:

"(c) A plan manager may request that other relevant persons attend a comprehensive services plan meeting, including but not limited to the following:

(1) A representative from the Department of Public Health;

(2) A DFCS caseworker;

(3) A prosecuting attorney;

(d) Upon receipt of the notice set forth in subsection (c) of this Code section, the governing authority of such county may appoint one or more attorneys to represent the state in prosecuting delinquency and child in need of services cases in juvenile court. Such attorney shall be compensated in an amount to be fixed by the governing authority of such county. The governing authority shall determine and state in writing whether an attorney shall serve on a full-time or part-time basis. An attorney appointed to serve on a full-time basis shall not engage in the private practice of law. An attorney appointed to serve on a part-time basis may engage in the private practice of law, but shall not represent a child charged with committing a delinquent act or being a child in need of services in the juvenile court of the county in which he or she serves as part-time prosecutor nor may he or she appear in any matter in which he or she has exercised jurisdiction.

(e) An attorney appointed pursuant to subsection (d) of this Code section shall have all of the powers, duties, and authority of the district attorney with regard to delinquency and child in need of services cases and shall be subject to all laws and rules governing the conduct of prosecuting attorneys in this state. If such attorney is disqualified from interest or relationship to engage in prosecution, the provisions of Code Section 15-18-5 shall apply."

PART III

SECTION 3-1.

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

SECTION 3-2.

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