

House Bill 440

By: Representatives Ballinger of the 23rd, Welch of the 110th, Gaines of the 117th, Collins of the 68th, Oliver of the 82nd, 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 change the jurisdiction of the juvenile court to include children who
3 are under the age of 18 years; to amend Title 42 of the Official Code of Georgia Annotated,
4 relating to penal institutions, so as to clarify provisions relating to juveniles; to provide for
5 related matters; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Chapter 11 of Title 15 of the Official Code of Georgia Annotated, relating to the Juvenile
9 Code, is amended by revising paragraph (10) of Code Section 15-11-2, relating to definitions,
10 as follows:

11 "(10) 'Child' means any individual who is:

12 (A) Under the age of 18 years;

13 (B) Under the age of ~~17~~ 18 years when alleged to have committed a delinquent act;

14 (C) Under the age of 22 years and in the care of DFCS as a result of being adjudicated
15 dependent before reaching 18 years of age;

16 (D) Under the age of 23 years and eligible for and receiving independent living
17 services through DFCS as a result of being adjudicated dependent before reaching 18
18 years of age; or

19 (E) Under the age of 21 years who committed an act of delinquency before reaching
20 the age of ~~17~~ 18 years and who has been placed under the supervision of the court or
21 on probation to the court for the purpose of enforcing orders of the court."

22 **SECTION 2.**

23 Said chapter is further amended by revising subsection (a) of Code Section 15-11-7, relating
24 to court of inquiry, as follows:

25 "(a) The juvenile court shall have jurisdiction to act as a court of inquiry with all the
 26 powers and rights allowed courts of inquiry in this state and to examine or investigate into
 27 the circumstances or causes of any conduct or acts of any person ~~17~~ 18 or more years of
 28 age that may be in violation of the laws of this state whenever such person is brought
 29 before the court in the course of any proceeding instituted under this chapter. The court
 30 shall cause the person to be apprehended and brought before it upon either a writ of
 31 summons, a warrant duly issued, or by arrest."

32 SECTION 3.

33 Said chapter is further amended by revising paragraph (2) of Code Section 15-11-10, relating
 34 to exclusive original jurisdiction, as follows:

35 "(2) Concerning any individual under the age of ~~17~~ 18 years alleged to have committed
 36 a juvenile traffic offense as defined in Code Section 15-11-630; or"

37 SECTION 4.

38 Said chapter is further amended by revising subsection (e) of Code Section 15-11-504,
 39 relating to place of detention, as follows:

40 "(e) The official in charge of a jail or other facility for the detention of adult offenders or
 41 persons charged with a crime shall inform the court or the juvenile court intake officer
 42 immediately when a child who appears to be under the age of ~~17~~ 18 years is received at
 43 such facility and shall deliver such child to the court upon request or transfer such child to
 44 the facility designated by the juvenile court intake officer or the court."

45 SECTION 5.

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

48 "15-11-560.

49 (a) Except as provided in subsection (b) of this Code section, the court shall have
 50 concurrent jurisdiction with the superior court over a child who is alleged to have
 51 committed a delinquent act which would be considered a crime if tried in a superior court
 52 and for which an adult may be punished by loss of life, imprisonment for life without
 53 possibility of parole, or confinement for life in a penal institution.

54 (b) The superior court shall have exclusive original jurisdiction over the trial of any child
 55 13 to ~~17~~ 18 years of age who is alleged to have committed any of the following offenses:

- 56 (1) Murder;
- 57 (2) Murder in the second degree;
- 58 (3) Voluntary manslaughter;

- 59 (4) Rape;
- 60 (5) Aggravated sodomy;
- 61 (6) Aggravated child molestation;
- 62 (7) Aggravated sexual battery; or
- 63 (8) Armed robbery if committed with a firearm.
- 64 (c) The granting of bail or pretrial release of a child charged with an offense enumerated
65 in subsection (b) of this Code section shall be governed by the provisions of Code Section
66 17-6-1.
- 67 (d) At any time before indictment, the district attorney may, after investigation and for
68 cause, decline prosecution in the superior court of a child 13 to ~~17~~ 18 years of age alleged
69 to have committed an offense specified in subsection (b) of this Code section. Upon
70 declining such prosecution in the superior court, the district attorney shall cause a petition
71 to be filed in the appropriate juvenile court for adjudication within 72 hours if the child is
72 in detention or 30 days if the child is not in detention. Except as provided in paragraph (8)
73 of subsection (b) of Code Section 15-11-602, any case transferred by the district attorney
74 to the juvenile court pursuant to this subsection shall be subject to the class A designated
75 felony act provisions of Code Section 15-11-602, and the transfer of the case from superior
76 court to juvenile court shall constitute notice to such child that such case is subject to the
77 class A designated felony act provisions of Code Section 15-11-602.
- 78 (e)(1) After indictment, the superior court may after investigation transfer to the juvenile
79 court any case involving a child 13 to ~~17~~ 18 years of age alleged to have committed
80 voluntary manslaughter, aggravated sodomy, aggravated child molestation, or aggravated
81 sexual battery. In considering the transfer of such case, the court shall consider the
82 criteria set forth in Code Section 15-11-562. Any such transfer shall be appealable by the
83 State of Georgia pursuant to Code Section 5-7-1. Upon such a transfer by the superior
84 court, jurisdiction shall vest in the juvenile court and jurisdiction of the superior court
85 shall terminate.
- 86 (2) Except as provided in paragraph (8) of subsection (b) of Code Section 15-11-602, any
87 case transferred by the superior court to the juvenile court pursuant to this subsection
88 shall be subject to the class A designated felony act provisions of Code Section
89 15-11-602, and the transfer of the case from superior court to juvenile court shall
90 constitute notice to such child that such case is subject to the class A designated felony
91 act provisions of Code Section 15-11-602.
- 92 (f) The superior court may transfer any case involving a child 13 to ~~17~~ 18 years of age
93 alleged to have committed any offense enumerated in subsection (b) of this Code section
94 and convicted of a lesser included offense not included in subsection (b) of this Code
95 section to the juvenile court of the county of such child's residence for disposition. Upon

96 such a transfer by the superior court, jurisdiction shall vest in the juvenile court and
 97 jurisdiction of the superior court shall terminate.

98 (g) Within 30 days of any proceeding in which a child 13 to ~~17~~ 18 years of age is
 99 convicted of certain offenses over which the superior court has original jurisdiction as
 100 provided in subsection (b) of this Code section or adjudicated as a delinquent child on the
 101 basis of conduct which if committed by an adult would constitute such offenses, the
 102 superior court shall provide written notice to the school superintendent or his or her
 103 designee of the school in which such child is enrolled or, if the information is known, of
 104 the school in which such child plans to be enrolled at a future date. Such notice shall
 105 include the specific criminal offense that such child committed. The local school system
 106 to which such child is assigned may request further information from the court's file."

107 **SECTION 6.**

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

110 "(d) No child, either before or after reaching ~~17~~ 18 years of age, shall be prosecuted in
 111 superior court for an offense committed before the child turned ~~17~~ 18, unless the case has
 112 been transferred as provided in this part. In addition, no child shall be subject to criminal
 113 prosecution at any time for an offense arising out of a criminal transaction for which the
 114 juvenile court retained jurisdiction in its transfer order."

115 **SECTION 7.**

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

118 "(a) The criteria that the juvenile court shall consider in determining whether to transfer
 119 an alleged delinquent child as set forth in subsection (a) of Code Section 15-11-561 to
 120 superior court and the criteria that the superior court shall consider in determining whether
 121 to transfer any case involving a child 13 to ~~17~~ 18 years of age alleged to have committed
 122 voluntary manslaughter, aggravated sodomy, aggravated child molestation, or aggravated
 123 sexual battery to juvenile court as set forth in subsection (e) of Code Section 15-11-560
 124 includes, but shall not be limited to:

- 125 (1) The age of such child;
- 126 (2) The seriousness of the alleged offense, especially if personal injury resulted;
- 127 (3) Whether the protection of the community requires transfer of jurisdiction;
- 128 (4) Whether the alleged offense involved violence or was committed in an aggressive or
 129 premeditated manner;

- 130 (5) The impact of the alleged offense on the alleged victim, including the permanence
 131 of any physical or emotional injury sustained, health care expenses incurred, and lost
 132 earnings suffered;
- 133 (6) The culpability of such child, including such child's level of planning and
 134 participation in the alleged offense;
- 135 (7) Whether the alleged offense is a part of a repetitive pattern of offenses which
 136 indicates that such child may be beyond rehabilitation in the juvenile justice system;
- 137 (8) The record and history of such child, including experience with the juvenile justice
 138 system, other courts, supervision, commitments to juvenile institutions, and other
 139 placements;
- 140 (9) The sophistication and maturity of such child as determined by consideration of his
 141 or her home and environmental situation, emotional condition, and pattern of living;
- 142 (10) The program and facilities available to the juvenile court in considering disposition;
 143 and
- 144 (11) Whether or not a child can benefit from the treatment or rehabilitative programs
 145 available to the juvenile court."

146 **SECTION 8.**

147 Said chapter is further amended by revising subsection (b) of Code Section 15-11-565,
 148 relating to places authorized for detention of child before and after transfer order, as follows:
 149 "(b) After the entry of a judgment ordering transfer, a child shall be detained only in those
 150 places authorized for the detention of a child until such child, as set forth in Code Section
 151 15-11-34, reaches ~~17~~ 18 years of age."

152 **SECTION 9.**

153 Said chapter is further amended by revising subsection (a) of Code Section 15-11-630,
 154 relating to juvenile traffic offenses, as follows:
 155 "(a) As used in this Code section, the term 'child' means an individual under ~~17~~ 18 years
 156 of age."

157 **SECTION 10.**

158 Title 42 of the Official Code of Georgia Annotated, relating to penal institutions, is amended
 159 by revising subsection (b) of Code Section 42-5-52, relating to classification and separation
 160 of inmates generally and placement of juvenile offenders, as follows:
 161 "(b) The department may establish separate correctional or similar institutions for the
 162 separation and care of juvenile offenders. The commissioner may transfer any juvenile
 163 under ~~17~~ 18 years of age from the penal institution in which he or she is serving to the

164 Department of Juvenile Justice, provided that the transfer is approved thereby. The
 165 juvenile may be returned to the custody of the commissioner when the commissioner of
 166 juvenile justice determines that the juvenile is unsuited to be dealt with therein. The
 167 commissioner may accept a juvenile for transfer into a penal institution upon the request
 168 of the commissioner of juvenile justice if such juvenile is 16 years of age or older and has
 169 been committed to the Department of Juvenile Justice for a class A designated felony act
 170 or class B designated felony act, as defined by Code Section 15-11-2, and such juvenile's
 171 behavior presents a substantial danger to any person at or within a Department of Juvenile
 172 Justice facility. In the event of such transfer, the department shall have the same authority
 173 over and responsibility for such juvenile as the Department of Juvenile Justice has for such
 174 juvenile and shall maintain sight and sound separation as set forth in paragraph (5) of
 175 subsection (c) of Code Section 15-11-504."

176 **SECTION 11.**

177 Said title is further amended by revising subsection (b) of Code Section 42-8-35.1, relating
 178 to special alternative incarceration–probation boot camp, as follows:

179 "(b) Before a court may place such condition upon the sentence, an initial investigation
 180 shall be completed by the officer which indicates that the probationer is qualified for such
 181 treatment in that the individual does not appear to be physically or mentally disabled in a
 182 way that would prevent him or her from strenuous physical activity, that the individual has
 183 no obvious contagious diseases, that the individual is not less than ~~17~~ 18 years of age nor
 184 more than 30 years of age at the time of sentencing, and that the Department of Corrections
 185 has granted provisional approval of the placement of the individual in the special
 186 alternative ~~incarceration–probation~~ incarceration–probation boot camp unit."

187 **SECTION 12.**

188 Said title is further amended by revising subsection (b) of Code Section 42-8-35.4, relating
 189 to confinement in probation detention center, as follows:

190 "(b) The court shall determine that the defendant is at least ~~17~~ 18 years of age at the time
 191 of sentencing."

192 **SECTION 13.**

193 Said title is further amended by revising paragraph (4) of Code Section 42-12-3, relating to
 194 definitions for the "Prison Litigation Reform Act of 1996," as follows:

195 "(4) 'Prisoner' means a person ~~17~~ 18 years of age or older who has been convicted of a
 196 crime and is presently incarcerated or is being held in custody awaiting trial or
 197 sentencing."

198

SECTION 14.

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