



## 2013 Juvenile Justice Reform Legislation House Bill 242<sup>1</sup>

### Overview

In 2012, Gov. Nathan Deal reappointed the Special Council on Criminal Justice Reform. He asked members to study Georgia's juvenile justice system and craft recommendations that improve public safety and decrease costs. With the help of the Pew Center on the States, a non-partisan research organization, the Council produced a sound set of research-based recommendations. These recommendations were combined with previous legislative efforts led by Rep. Wendell Willard, chairman of the House Judiciary Committee. The resulting legislation reorganizes, revises and modernizes Title 15, Chapter 11 of the Official Code of Georgia Annotated, a section of our law known as the juvenile code. The following provides a summary of key elements of House Bill 242, highlighting changes from current law and reflecting amendments made by the House and Senate Judiciary committees.

### Article 1 – General Provisions

Article 1 provides general definitions and principles that would apply in all juvenile court proceedings. Specifically, Article 1:

- Provides clear definitions of key terms, including:
  - **Abuse.** The current juvenile court provisions do not include a definition of abuse. HB 242 defines abuse to include emotional abuse and prenatal abuse, in addition to physical abuse, sexual abuse and exploitation.
  - **Child in Need of Services (CHINS).** This definition would create a new designation to take the place of what is currently called an “unruly” child. Detailed provisions related to this new designation are found in Article 5.
  - **Dependency.** Currently, Georgia uses the term “deprivation” to describe cases where the court intervenes to protect children from abuse and neglect. HB 242 changes this term to “dependency,” which is the term used in all other states for these cases.
  - **Party.** This definition clarifies that children are parties to juvenile court proceedings involving their interests.
- Separates the definition of “designated felonies” into two classes. Current law’s designated felony provisions contain apply the same penalty range for nearly 30 offenses that vary widely in severity.<sup>2</sup> HB 242 would create a two-class system that continues to allow for restrictive custody in all designated felony cases while adjusting the penalties to take into account both offense severity and risk level.
- Requires that, whenever possible, the same judge should preside over all proceedings involving a particular child or family.
- Provides jurisdiction for juvenile courts to review services offered to children who stay in foster care after age 18.
- Clarifies the jurisdiction of juvenile and superior courts for termination of parental rights in response to a recent Georgia Supreme Court case.<sup>3</sup>
- Clarifies how time should be calculated for purposes of time-limited provisions.

<sup>1</sup> Updated March 14, 2013 by the Barton Child Law and Policy Center, Emory University School of Law.

<sup>2</sup> See O.C.G.A. § 15-11-63 (2013).

<sup>3</sup> See *Brine v. Shipp*, 291 Ga. 376 (2012).



- Allows the court to consolidate proceedings if the same child is alleged to be both deprived and delinquent or in need of services.
- Clarifies that a child, as a party, has a right to be present during juvenile court proceedings involving him or her, but allows the court to exclude the child from any part of the proceeding that the court finds is not in the child's best interest to attend.
- Allows the court to refer cases for mediation if appropriate, and provides procedural guidance.
- Outlines factors the court should consider when evaluating the best interests of a child. These factors have been aligned as closely as possible with similar factors in the domestic relations section of the Georgia Code,<sup>4</sup> while still respecting the uniqueness of the cases facing juvenile courts.
- Prevents the court from requiring a state agency or county government to perform an evaluation of a child if the agency or government does not have funds for evaluations.
- Protects children from having statements they make in court-related physical or mental health screenings, evaluations or treatment from being used against them at the adjudicatory phase of any proceeding except for impeachment or rebuttal, but allows courts to consider those statements in determining the child's placement or other dispositional matters.
- Allows the court to change or vacate a delinquency order if the child was found to have committed a prostitution-related act and was a victim of human trafficking or sexual exploitation.
- Provides a time limit for the court to certify expenses for payment by the county. If the court has not certified the expenses within 120 days of submission, certification will be considered denied.
- Clarifies the applicability of privacy laws in the juvenile court system, and outlines the steps required for access to different types of information.

## Article 2 – Juvenile Court Administration

Article 2 governs the creation and administration of juvenile courts and the appointment of judges. Article 2 reorganizes existing provisions and makes minor stylistic revisions. It contains very few substantive changes from current law. Changes include:

- Adds the Department of Juvenile Justice to agencies whose records the Council of Juvenile Court Judges is authorized to inspect for the purposes of compiling statistical data on children.
- Requires juvenile court judges to complete at least 12 hours per year of continuing education established or approved by the Council of Juvenile Court Judges.
- Requires anyone appointed as a pro tempore judge to have the same qualifications as other juvenile court judges.
- Requires the clerk of each juvenile court to collect data for each child in need of services, delinquent child, and child accused of a class A or B designated felony and to supply that data to DJJ.
- Allows a probation officer to place a child he or she is supervising on unsupervised probation if the probation officer determines it is appropriate and the court has not ordered otherwise.
- Clarifies that the Department of Juvenile Justice retains authority over the duties and responsibilities of their employees who serve as probation and intake officers, and that these duties cannot include tasks that could be construed as the practice of law.

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<sup>4</sup> Found in O.C.G.A. 19-9-3.

### **Article 3 – Dependency**

Article 3 relates to cases involving children who have been abused or neglected by the adults responsible for their well-being. HB 242 would rename what are currently known in Georgia as “deprivation” cases, calling them instead dependency cases. This change will stress the child’s relationship with the court and provide consistency with national standards. Article 3 reorganizes current law, and makes the following changes:

- Clarifies the purpose of dependency proceedings, stressing timeliness, permanency and protection.
- Allows child abuse and neglect investigators to request court-ordered physical or psychological evaluations of children or their parents. Courts are to review these requests using a probable cause standard.
- Changes the name of 72-hour hearing in dependency cases to the “preliminary protective hearing.”
- Consolidates provisions related to the timeframes in which different steps in a dependency case must occur into one code section for ease of reference.
- Shortens the timeline for holding a permanency planning hearing for children under the age of 7. Currently, all children are on the same timeline, which requires a permanency hearing within 12 months after their entry into foster care.<sup>5</sup> HB 242 leaves this timeline in place for children age 7 and older, but shorten it to within nine months for younger children and the siblings of younger children.
- Clarifies that a child in any dependency case is entitled to an attorney and guardian ad litem, and that the same person can be appointed in both capacities unless or until a conflict arises between an attorney’s duties to the child as client and the attorney’s considered opinion of the child’s best interests. The child’s right to an attorney cannot be waived.
- Stresses the important role a Court-Appointed Special Advocate (CASA) can play, and that appointment of a CASA may be appropriate even if the child’s attorney is also serving as guardian ad litem.
- Provides specific guidance for attorneys and courts regarding when deviations from case timelines may be requested and granted. These deviations, known as “continuances,” must be for good cause and may not be granted simply because the parties agree or because a later time would be more convenient. The court must always consider the child’s interests, giving particular weight to the child’s need for prompt resolution and stability.
- Creates a presumption that visitation between a child and his or her parents or other relatives should be unsupervised, unless the court finds that unsupervised visitation is not in the child’s best interests.
- Allows the court to issue an oral or electronic order for the removal of a child from his or her home. When this occurs, an affidavit containing supporting evidence must be submitted to court the next business day and the court must issue a written order.
- Emphasizes that siblings who are taken into the state’s care should be kept together whenever possible.
- Clarifies the rules governing the gathering of information related to a case, known as “discovery.” HB 242 provides clear guidelines about which common evidence in a dependency case must be given to another party upon request, and which requires consent or a court order. Requested information must be provided within five days or by 72 hours before the hearing, to accommodate the quick pace of proceedings in juvenile court. The court has discretion to prevent disclosure of evidence that may be harmful, and to sanction parties who fail to comply with discovery rules.

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<sup>5</sup> See O.C.G.A. § 15-11-58(o) (2013).

- Describes content that should be included in social study reports, stressing the need for information about children’s relationships with their siblings and extended family and consideration of how these relationships can best be maintained.
- Outlines the requirements for case plans.
- Clarifies that the Division of Family and Children’s Services (DFCS) must show it has made reasonable efforts to preserve or reunite the family or to find another permanent home for the child at every hearing, and provides factors for the court to consider in determining whether reasonable efforts have been made.
- Changes one of the exceptions to the requirement to make reasonable efforts to preserve or reunify a family. Currently, reasonable efforts do not need to be made if the parental rights of the parent to a sibling of the child have been terminated.<sup>6</sup> Under HB 242, to apply this exception to the reasonable efforts requirement, the court must also determine whether the parent has resolved the issues that led to the termination of his or her parental rights to the sibling.
- Incorporates a new requirement of federal law to include two new circumstances in which reasonable efforts to reunify the family are not required. These are when the parent has been convicted of sexual abuse of the child or another child of the parent, or when the parent is required to register as a sex offender and preservation of the parent-child relationship is not in the child’s best interests.
- Improves compliance with federal law regarding permanency alternatives by eliminating the option for a court to place a child in someone’s long-term custody without creating a legal guardianship.
- Requires the court to make detailed findings to support placement and case plan decisions, known as “dispositions.” In making these findings, the court is to consider the child’s attachments to significant people and his or her school, home, and community.
- Removes the time limitation on temporary custody orders. Under current law, a court may only grant temporary custody to DFCS for 12 months, and can extend that custody order by no more than an additional 12 months.<sup>7</sup> Under HB 242, custody orders are not time limited. Instead, they last until a contrary order is made or the purpose of the order has been fulfilled.
- Requires an initial review hearing within 75 days of a child’s removal from his or her home, and a subsequent review hearing within four months after that. Currently, the initial review must happen within 90 days, and subsequent reviews occur at six-month intervals.<sup>8</sup>
- Identifies specific findings that must be made by the court at review hearings, requiring that the court evaluate whether the child continues to be dependent and whether the placement, case plan, and services offered to the child and the parents continue to be appropriate.
- Eliminates the option for courts to delegate permanency hearings to citizen review panels. These hearings would be required to be conducted by judges.
- Details the requirements for permanency planning reports. DFCS must document the steps that will be taken to move the child to a permanent home, and if the plan is not reunification, adoption, or permanent guardianship, DFCS must document a compelling reason for a different plan. For children age 14 and older, the report must also describe services that will be provided to help the child prepare for independent living in adulthood.
- Identifies specific findings that must be made by the court at permanency hearings.

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<sup>6</sup> See O.C.G.A. § 15-11-58(a)(4)(c) (2013).

<sup>7</sup> See O.C.G.A. § 15-11-58(n) (2013).

<sup>8</sup> See O.C.G.A. § 15-11-58(k) (2013).

- Continues the presumption of termination of parental rights if a child cannot be reunified with his or her parent, but expands the list of exceptions to this presumption when termination may not be in the best interests of the child.

## **Article 4 – Termination of Parental Rights**

Article 4 governs cases involving a petition to involuntarily terminate the rights of a parent to the custody and control of his or her child because the parent is unable to safely and adequately care for the child. These petitions generally follow dependency proceedings, and therefore several provisions cross-reference or incorporate changes made by Article 3. Additionally, Article 4:

- Clarifies the purpose of termination of parental rights (TPR) proceedings, stressing timeliness, and protection of parties' constitutional rights.
- Allows a child to retain the right to inherit from his or her natural parents and to receive any government or other benefits associated with the parent after TPR until the child is adopted by another family.
- Preserves a child's relationships with siblings and other extended family after TPR until the child is adopted by another family.
- Prevents a parent from voluntarily surrendering his or her parental rights to anyone except for DFCS once a petition for TPR has been filed with the court. Currently, a parent can surrender rights to allow the child to be adopted by a family member or other person of the parent's choosing at any time.<sup>9</sup>
- Provides language that must be included in a notice to a parent when a petition for TPR is filed. This language explains in clear terms the effect of a court order terminating parental rights and advises the parent that he or she is entitled to be represented by an attorney.
- Requires that transcripts of TPR hearings be produced within 30 days of the filing of an appeal of a TPR order, unless there is just cause for delay.
- Shortens the length of time a parent's failure (1) to develop and maintain a bond with the child; (2) to provide support; or (3) to comply with court-ordered reunification services should be scrutinized by the court in determining whether the parent has provided proper care or control. Under current law, if a child is not in his or her parents' custody, the court looks at the bond, support and participation in services over a year or more.<sup>10</sup> Under HB 242, this time frame is reduced to six months.
- Clarifies that a parent's reliance on prayer or spiritual healing instead of medical care does not, by itself, constitute grounds for termination of parental rights.
- Requires the court to inform the parents whose rights have been terminated of their rights to use the services of the Adoption Reunion Registry.
- Eliminates the option to place a child with an organization outside of the adoption and foster care system for long-term care of the child without adoption or guardianship after TPR.
- Allows a child who has not been adopted and is unlikely to be adopted to ask the court to reinstate his or her parents' parental rights under certain circumstances. In making the determination of whether to grant the request, the court must hold a hearing and consider whether the parent has remedied the situation that resulted in the TPR and whether reinstatement of parental rights is in the child's best interests. The court retains supervision over the case for six months after the request is granted, and can return the child immediately or order a gradual transition with appropriate DFCS services.

<sup>9</sup> See O.C.G.A. §§ 19-8-5, 19-8-6, and 19-8-7 (2013).

<sup>10</sup> See O.C.G.A. § 15-11-94(b)(4)(C) (2013).

## **Article 5 – Children in Need of Services**

Article 5 creates a new approach for intervening with children who are currently considered “unruly.” Children in Need of Services (CHINS) include children who have committed an act that would not be against the law but for the fact that they are children, such as skipping school, running away from home, and violating curfew. CHINS also include children who are “habitually disobedient” to their parents and place themselves or others in unsafe circumstances through their behavior. Article 5:

- Acknowledges that these behaviors happen within the context of the family and school environment the child is in, and that the involvement of the family and other important people in the child’s life is important to protect the child and help him or her become a responsible member of society.
- Allows a complaint indicating that a child is in need of services to be filed by a parent, DFCS, school, law enforcement, guardian ad litem, or attorney. If the school brings the complaint, it must state that it has attempted to address the issue at the school level before filing the complaint with the juvenile court, including addressing any disabilities or suspected disabilities that may be contributing to the child’s behavior.
- Provides that a child is entitled to representation by an attorney at all stages of CHINS proceedings. The child may either receive a court-appointed attorney if he or she is indigent or employ an attorney of his or her choice. The court can also appoint a guardian ad litem, when appropriate, and should appoint a CASA to fill that role whenever possible.
- Collects all time-frames for CHINS proceedings into one code section for ease of reference.
- Allows a child in need of services to be taken into temporary custody if the child has run away from home, the child is in immediate danger from his or her surroundings, or the court reviews a detention assessment and makes an order specifying that the child’s welfare is endangered by remaining at home and reasonable services cannot solve the problem.
- Clarifies that in CHINS cases, children should receive services in the least restrictive environment possible, preferably at home with their parents, but if that is not appropriate then children should be in DFCS care. The court must consider whether services could be structured to allow the child to remain in his or her home.
- Prohibits a child in need of services from being held in a jail or other detention facility intended for adults, and limits the use of secure detention to only those children who have run away from home or who are ungovernable. A child in need of services may not be held in secure detention for more than 72 hours before a court hearing and 72 hours after the hearing.
- Requires a case plan for a child who is placed in foster care, and details what this plan should include.
- Retains the ability for any person to file a petition to have a court formally adjudicate that a child is in need of services. The petition may not be filed unless the court determines that its filing would be in the best interests of the child and the community.
- Provides that a petition that stems from a complaint filed by a school official must be dismissed unless the school has already attempted to resolve the problem through educational approaches, including evaluating a child for special education services if appropriate.
- Allows the court to order child-serving agencies to attend court hearings and to sanction an agency if it fails to attend.
- Establishes that in order for a court to adjudicate that a child is in need of services, the allegations in the petition must be proved by clear and convincing evidence.



- Extends the timeframe for holding a disposition hearing to within 60 days after the hearing in which a court determines that a child is in need of services. Currently, disposition hearings must be held within 30 days.<sup>11</sup>
- Retains most of the disposition options currently available for unruly children, including placing the child on probation and requiring restitution or community service, but clarifies that a child in need of services cannot be placed in a secure residential facility or a non-secure residential facility.
- Limits the duration of a disposition order to a maximum of two years, but allows the court to extend for an additional two years after a hearing, if necessary. The court can also terminate the order early if the purposes of the order have been accomplished.
- Clarifies that if a child violates probation the court may modify the terms of the child’s probation or make any other disposition that was originally available to the court when the child was adjudicated to be in need of services.
- Requires the court to review the child’s disposition after three months, and then at least every six months after that until the order of disposition expires.
- Provides a process for serving children who have been found to be incurably incompetent to stand trial, meaning that because of a permanent disability or limitation they will never be able to understand the charges or legal proceedings and assist an attorney in their defense for an act that would have been a crime if they were adults. Children whose competence can be restored are subject to Article 7.

## **Article 6 – Delinquency**

Article 6 relates to cases involving children who have committed acts that would be crimes if the children were adults. These acts are known as “delinquent acts” and the cases are known as “delinquency” cases. Article 6 reorganizes and clarifies the delinquency provisions of current law, and makes the following changes:

- Clarifies that the purposes of delinquency proceedings include protecting the public interest, holding children accountable for their actions, rehabilitating children so that they can become productive members of society, and strengthening families.
- Consolidates all timelines related to delinquency proceedings into one code section for ease of reference.
- Requires a prosecuting attorney to conduct all delinquency proceedings on behalf of the state.
- Clarifies that the child and the state are the parties in a delinquency proceedings. Parents are entitled to be notified of hearings, and have the right to be present for hearings and to be heard in those hearings, but are not parties.
- Provides that a child’s right to be represented by an attorney cannot be waived by the child’s parent, but can be waived by the child, unless the child is at risk of losing his or her liberty.
- Gives the child’s attorney the right to access documents related to the case from schools, service providers and certain government agencies with the child’s permission and a court order and therefore without having to obtain the consent of his or her parent.
- Requires the court to appoint a separate guardian ad litem for the child when his or her parent fails to come to court or is unwilling or unable to protect the child’s best interests. A CASA should be appointed to serve as guardian ad litem whenever possible.

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<sup>11</sup> O.C.G.A. § 15-11-65 (2012).

- Allows the court to order a behavioral health evaluation to aid in decision making about the child’s needs, and requires the court to obtain and consider the results of a behavioral health evaluation before ordering a child into restrictive custody for a designated felony.
- Provides that continuances may only be granted if there is good cause, and that they should be as short as possible.
- Excludes statements made by a child during intake, screening, treatment, or evaluation from evidence, meaning that these statements cannot be considered by the court, except as impeachment or rebuttal if the child tells a conflicting story in court.
- Clarifies when the double jeopardy protection of the U.S. Constitution applies. Once the court accepts a child’s admission or the first witness is sworn in for an adjudication hearing, the child can no longer be retried for the same offense if the current case is dismissed or ends in a finding that the child did not commit the act.
- Provides victims with the same rights in juvenile delinquency cases that they would have in adult criminal proceedings.
- Requires that whenever the juvenile is brought before the court or to a secure or non-secure facility, a detention assessment be used to determine if a juvenile should be detained or released. A detention assessment instrument is a standardized tool used to evaluate the risks a child poses to the community and to him or herself and to determine whether a child who has been taken into custody should be held in detention pending a court hearing or should be released to his or her parents.
- Clarifies the circumstances under which a child age 15 or older can be held in an adult jail. In most cases, the child may be held for processing for up to six hours. However, if the jail is more than 70 miles from the nearest regional youth detention center, a child may be held there for up to 24 hours if strict conditions are met.
- Requires all facilities in which detained children are held to collect certain data on the children in their care, and to make that data available to the courts and the Department of Juvenile Justice (DJJ).
- Clarifies that children held for delinquent acts are entitled to request bail and must be told of their right to do so. The court can release a child on bail if the child is likely to appear in court when required, does not pose a significant threat to the community or his or herself, and does not pose a significant risk of committing a felony, intimidating witnesses, or obstructing justice upon release. Bail must be posted by an adult blood relative, legal custodian, or stepparent.
- Provides procedural guidance for intake and arraignment, requiring that a child be informed of the contents of the complaint, the nature of the proceedings, the possible consequences, and their rights with respect to their detention and the proceedings. It also clarifies that a court cannot accept an admission at arraignment from a child who is at risk of losing his or her liberty unless he or she is represented by a lawyer.
- Adds factors that should be considered in determining whether filing a petition or proceeding by informal adjustment is in the public and the child’s best interests. “Informal adjustment” means a minimal level of short-term supervision, the successful completion of which leads to the dismissal of the complaint. Children accused of designated felonies are not eligible for informal adjustment without the agreement of the prosecutor.
- Requires that an attorney file a delinquency petition. Under current law, any person can make a delinquency petition, which then must be endorsed by the juvenile court as being in the best interest of the public or child.<sup>12</sup>

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<sup>12</sup> See O.C.G.A. §§ 15-11-37 and 15-11-38 (2013).



- Requires the petition to specify if the child is being charged with a designated felony. Clarifies the process for service of summons, which is the legal notice that a hearing is to be held and that the person being served is required to attend. The court may issue a bench warrant, which is an order to bring the person before the court, if a child age 16 or older or a parent fails to attend a hearing for which he or she has been summoned.
- Allows the court to apply any sanction that would apply in superior court if a party fails to provide the other party with information required to be shared under discovery rules.
- Retains provision requiring transfer of a case to superior court for adult criminal proceedings if a child older than 13 is alleged to have committed certain specifically listed offenses, such as murder and rape.
- Allows the superior court to transfer cases involving aggravated sodomy, aggravated child molestation, and aggravated sexual battery to the juvenile court for extraordinary cause.
- Retains the optional transfer to superior court of cases involving children age 15 and older who are alleged to have committed acts that would be felonies if they were adults, and cases involving children ages 13 and 14 who are alleged to have committed acts that would carry a life sentence if they were adults or would be aggravated battery that resulted in serious bodily injury to the victim.
- Adds criteria that should be considered by the court in determining whether to make an optional transfer to superior court. Statements made by the child during a transfer hearing may not be used against him or her, except as impeachment or rebuttal, in the criminal trial if the hearing does result in transfer.
- Allows the court to order a transfer evaluation of the child be performed by the Department of Behavioral Health and Developmental Disabilities or a licensed psychologist or psychiatrist. The purpose of the evaluation is to provide information on the child's behavioral health status, treatment needs, and receptiveness to rehabilitation, to help inform the court's decision about whether to grant a requested transfer to superior court.
- Allows a child to immediately appeal the decision to transfer his or her case to superior court, and provides that the criminal proceedings must be halted until that appeal is decided.
- States that a child whose case is transferred to adult court should remain in juvenile, rather than adult, detention facilities until the child turns 17.
- Requires that if multiple charges arose from the same actions by the child, or a "single criminal transaction," all the related charges must stay together and either be all kept in juvenile court, or all transferred to superior court.
- Provides procedural guidance for the court's acceptance of a child's admission or denial of the charges, and for adjudication hearings.
- Outlines the information that should be included in a probation officer's report to the court providing information and recommendations for disposition. Specifically, the report should include information on the child's background, relationships, home environment, prior contact with law enforcement and the courts, educational status, and medical and psychological evaluation results. It should also examine the circumstances of the crime, including its seriousness, and any aggravating or mitigating factors.
- Allows the court to order a behavioral health evaluation of the child be performed by the Department of Behavioral Health and Developmental Disabilities or a licensed psychologist or psychiatrist. The purpose of the evaluation is to provide information on the child's behavioral health status and treatment needs, to help inform the court's disposition order. The evaluation is optional in most

cases, but must be ordered and considered by the court before the child can be given a disposition involving restrictive custody for a designated felony. Retains most of the current disposition options for a delinquent child, but requires the court to consider the results of the child’s risk assessment if the court is considering placing the child in restrictive custody. Children found to have committed offense that would be misdemeanors if they were adults may not be committed to DJJ or sent to secure detention or other facilities for delinquent children unless they have had at least three other previous delinquent offenses, at least one of which would have been a felony if they were adults.

- Adds an option for the court to place a child on unsupervised probation, subject to terms and conditions outlined by the court.
- Adds additional factors for a judge to consider in determining whether to order restrictive custody for a child who has committed either a class A or class B designated felony. Specifically, the court must consider the child’s maturity, culpability, and educational and dependency background. If the child has been determined to be a low-risk offender and the court orders restrictive custody, the court must specify in writing why restrictive custody is necessary. However, if the child has caused serious injury to a person aged 72 or older, the child must be ordered into restrictive custody.
- Provides flexibility to judges in determining the length of sanctions for children adjudicated of a designated felony. Currently, if a court determines that restrictive custody is required, the child must be committed to DJJ for five years and must serve a minimum of one year in secure confinement, followed by at least 12 months of intensive supervision.<sup>13</sup> HB 242 creates two classes of designated felonies and would eliminate the minimum term and provide different maximum terms, depending on the class level of the offense. Class A designated felonies would have a maximum term of five years, and class B designated felonies would have a maximum term of 36-month commitment to DJJ and 18 months in confinement. The maximum term of intensive supervision would be 12 months for class A offenders and 6 months for class B offenders. The court could set any term up to those maximums.
- Provides flexibility for DJJ in placing children found to have committed class B designated felonies. Children assessed to be low risk may be assigned to non-secure residential facilities for their entire term. Children assessed to be medium or high risk must spend at least the first half of their terms in a secure residential facility, but can be placed in a non-secure residential facility for the remainder of their terms.
- Reduces the time before a child found to have committed either class of designated felony may petition the court for early release. Currently, a child may not file a motion for early release until one year into his or her term of restrictive custody and if the motion is denied, may not bring another motion for another year.<sup>14</sup> Under HB 242, the first motion may be filed at any time, and a new motion may be filed six months after a motion has been denied.
- Requires that a child receive credit for time spent in secure confinement in connection with the proceedings and that this time be deducted from detention time imposed at disposition.

## **Article 7 – Competency in Delinquency Cases**

Article 7 governs the way courts determine whether a child is competent to participate in delinquency or child in need of services proceedings, and how the court responds to a child who is not competent. Competency is important because due process requires that people not be subjected to the possible loss of their liberty in criminal or delinquency cases unless they understand the charges, the legal proceedings, and have the capacity

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<sup>13</sup> See O.C.G.A § 15-11-63(e)(2009).

<sup>14</sup> O.C.G.A. § 15-11-63(e)(2).

to effectively assist their attorney in their defense.<sup>15</sup> Article 7 of HB 242 revises current law regarding competency in juvenile proceedings. Specifically, it:

- Replaces the term “mental health evaluation” with “competency evaluation” for purposes of this article.
- Requires that if a child under the age of 13 is accused of committing a serious violent felony,<sup>16</sup> the court must order a competency evaluation before delinquency proceedings can move forward, unless the parties agree as to the child’s competency.
- The court retains the ability it has under current law to order an evaluation on its own motion or the motion of any party.
- Provides different responses depending on whether it is likely that an incompetent child is likely to ever become competent. Current law uses the same framework for all incompetent children.<sup>17</sup>
- Requires that when a court finds that a child is unlikely to ever be competent to stand trial, it must dismiss the delinquency petition, appoint a plan manager, and order that a comprehensive services plan be instituted for the child. If a child has been found incompetent due to their age or immaturity, and will become competent eventually but not in the near future, the same approach applies.
- Allows the court to order services for a child facing a delinquency petition who is currently incompetent but may become competent in the near future. The purposes of the services are to help the child attain competency to participate in delinquency proceedings. If a child facing a child in need of services petition and is currently incompetent but may become competent in the near future, the petition must be dismissed without prejudice, meaning that it could be filed again in the future.
- Stresses a preference for treatment in the least restrictive environment appropriate to the child’s needs.
- Outlines the information that needs to be included in a court order for services to help the child attain competency. Specifically, the court order must include the name and location of the service provider, consideration of transportation for the child to services, and the length of time the services are to last.
- Requires service providers to report on the child’s progress on a schedule established by the court. The report must include the provider’s view on whether the child can become competent in the near future, whether additional time is needed for services, and other appropriate information. Only a licensed psychologist or psychiatrist may offer an opinion to the court as to whether the child has achieved competency.
- Clarifies the requirements for competency review hearings and for reinstating delinquency proceedings once a child’s competency is restored.

## **Article 8 – Parental Notification**

Article 8 rennumbers provisions of current law requiring notification of parents when people under the age of 18 seek abortions. The language of these provisions is not modified by HB 242; the provisions are simply renumbered to fit into the new structure of O.C.G.A. Title 15, Chapter 11.

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<sup>15</sup> See *Drope v. Missouri*, 420 U.S. 162 (1975), and *In the Interest of S.H.*, 469 S.E.2d 810 (Ga. App. 1996).

<sup>16</sup> “Serious violent felony” is defined in O.C.G.A. § 17-10-6.1 (2009).

<sup>17</sup> See O.C.G.A. §§ 15-11-150 – 15-11-155 (2009).

## **Article 9 – Access to Hearings and Records**

Article 9 governs access to hearings and records in juvenile proceedings. For the most part, Article 9 maintains the current level of confidentiality, with the following specific changes:

- Clarifies that while the court may decide to exclude a child from certain portions of proceedings under Articles 3 and 4 if it is in the child’s best interests, the child’s lawyer may not be excluded.
- Allows the court to order the sealing of a child’s delinquency records for prostitution-related offenses if the child was a victim of human trafficking or sexual exploitation.
- Adds the Department of Juvenile Justice to the list of entities that should be notified when a child requests a hearing to have his or her juvenile delinquency or child in need of services records sealed.
- Removes language regarding the release of names or pictures of children to the press.
- Eliminates provisions giving school officials broad access to court and law enforcement records about a child, but continues to require notice to school superintendent in certain circumstances.<sup>18</sup>
- Restricts access to court records in Children in Need of Services cases. They may only be inspected by the child, the child’s attorney, probation officers, parents, and others entrusted with supervision of the child, unless additional access is granted by court order.
- Expands the use of delinquency records in superior court. Under current law, records of evidence or disposition from a delinquency case may only be used in sentencing in felony cases.<sup>19</sup> HB 242 would allow those records to be used in sentencing for any criminal case, whether felony or misdemeanor.
- Requires that the court keep records of cases handled through informal adjustment or mediation, but limits the use of these records to decisions regarding how to handle a subsequent case involving the same child. The records may not be used as evidence at trial that a child should be adjudicated delinquent or in need of services.
- Clarifies that court records regarding termination of parental rights may not be destroyed at any time, but rather must be permanently kept by the court.

## **Article 10 – Emancipation**

Article 10 relates to “emancipation,” which is the process by which a child becomes a legal adult responsible for his or her own care and able to enter into contracts and other adult transactions. Emancipation also releases parents from their obligations to the child and their rights to the care and control of the child. A child is automatically emancipated when they turn 18, when they marry, and when they enlist in the U.S. military. Current law also provides for a child who does not meet these automatic criteria to petition the court for early emancipation. Article 10 of HB 242 reorganizes and clarifies current law regarding emancipation, but does not make any substantive changes.

## **Article 11 – Child Advocate for the Protection of Children**

Article 11 renumbers provisions of current law establishing the Office of the Child Advocate and governing its operation. The language of these provisions is not modified by HB 242; the provisions are simply renumbered to fit into the new structure of O.C.G.A. Title 15, Chapter 11.

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<sup>18</sup> See O.C.G.A. § 15-11-80 (2013).

<sup>19</sup> See O.C.G.A. § 15-11-79.1 (2013).



## Provisions Outside the Juvenile Code

While the vast majority of HB 242 is a rewrite of O.C.G.A. Title 15, Chapter 11, some related provisions outside the juvenile code would also be amended. Those additional changes include:

- An amendment to O.C.G.A. § 42-5-52 that would allow DJJ to transfer a child age 16 and older to the Department of Corrections if the child was committed to DJJ for either class of designated felony act and the child's behavior presents a substantial danger to someone in the DJJ facility.
- An amendment to O.C.G.A. § 49-4A-1 to define key terms, including detention assessment, evidence based programs or practices, risk and needs assessment, and risk assessment.
- An amendment to O.C.G.A. § 49-4A-2 to:  
Require that detention assessments, risk assessments, and risk and needs assessments be developed, made available for use by intake workers and courts, and validated every 5 years.
  - Require DJJ to develop policies and regulations to ensure the use of evidence-based practices with children committed to DJJ.
  - Require DJJ to collect and analyze data and performance outcomes and to report that information to the leadership of the executive and legislative branches of Georgia government.
- An amendment to O.C.G.A. § 49-4A-3 that:
  - Clarifies that the same person may not serve as both the Commissioner of the Department of Human Resources and the Commissioner of the DJJ.
  - Requires the use of evidence-based services and practices for children committed to DJJ.
- An amendment to O.C.G.A. § 49-4A-7 that requires any DJJ contract to provide services to delinquent children be a performance-based contract that includes financial incentives or consequences based on the results achieved by the contractor as measured by output, quality, or outcomes measures.
- An amendment to O.C.G.A. § 49-4A-8 that requires DJJ to maintain records on of specified data for evaluating the merits of treatment methods.
- Amendments to various statutes to clarify types of facilities by shifting away from the term "youth development center" and "regional youth detention center" and other facility terms to "secure residential facility" and "non-secure residential facility."
- An amendment to O.C.G.A. § 17-4-25.1 that requires the agency requesting transportation of a juvenile to be responsible for all costs associated with the transport.
- Adds a new code section to Title 15, Chapter 18 to clarify the representation of the state in delinquency cases. Under new section 15-18-6.1, the District Attorney's office has responsibility for prosecuting delinquency cases in juvenile court and appeals from those cases, though the District Attorney can delegate certain types of cases to the Solicitor General. If the District Attorney's office lacks the resources to provide representation of the state in delinquency cases, notice must be sent to the chief judge of the superior court, the juvenile court judges, and the chair of the county governing authority, at which point the county can appoint an attorney or attorneys to serve as prosecutors for the juvenile court.
- Various amendments to keep language consistent and update cross-references.
- Provides that the new law would take effect on January 1, 2014.

To download a full copy of the bill, click here: <http://1.usa.gov/Yfh94F>

**About JUSTGeorgia:** *JUSTGeorgia is a statewide juvenile justice coalition created in 2006. Its purpose is to advocate for change to Georgia's juvenile code and the underlying social service systems to better serve Georgia's children and promote safer communities. The lead partners that formed JUSTGeorgia are Georgia Appleseed, The Barton Child Law and Policy Center of the Emory University School of Law, and Voices for Georgia's Children. Their efforts were launched by philanthropic funding. [www.JUSTGa.org](http://www.JUSTGa.org).*