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COURTS

Juvenile Proceedings, Parental Rights: Provide Exclusive Jurisdiction over Juvenile Traffic Offenses in Juvenile Court and Provide for Records of Juvenile Offenses

CODE SECTIONS:	O.C.G.A. §§ 15-11-2 (amended), 15-11-9.1 (new), 15-11-18.1, -35, -49 (amended), 17-10-14 (amended), 35-6A-3 (amended), 49-5-10, -130 to -135, -150 to -155, -203, -205, -208, -224, -227 (amended)
BILL NUMBERS:	HB 560, HB 785, SB 283, SB 335, SB 370
ACT NUMBERS:	403, 439, 268, 575, 313
SUMMARY:	These Acts revise a number of Code sections relating to juvenile law and proceedings. They define juvenile traffic offenses and delinquent offenses; define exclusive original jurisdiction over all juvenile traffic offenses to the juvenile court; require an official record be kept of juvenile traffic and delinquent offenses; strengthen the public policy that restraints on juveniles prior to adjudication are not preferred; and combine the Commission on Children and Youth with the Juvenile Justice Coordination Council.
EFFECTIVE DATES:	July 1, 1991, O.C.G.A. §§ 15-11-18.1, -35, -49, 35-6A-3, 49-5-130 to 135, -150 to -155, -203, -205, -208, -224 to -227. July 1, 1992, O.C.G.A. §§ 15-11-2, 17-10-14, 49-5-10. Effective when funded, O.C.G.A. § 15-11-9.1.

Introduction

For a number of years the Georgia General Assembly has attempted to revamp the juvenile justice system.¹ The biggest stumbling block to

1. Telephone Interview with Judge Herbert Crane, Juvenile Court Judge, Bartow County, (Apr. 4, 1991) [hereinafter Crane Interview]. For approximately 10 years, legislation has been introduced to amend the Code sections related to traffic offenses and delinquent acts. *Id.* See also Steve Harvey, *Juvenile Justice System Set for Debate*, ATLANTA J. & CONST., Mar. 2, 1991, at B1.

restructuring the juvenile system is the age old belief in the need for confidentiality to protect juveniles within the system.² Another major obstacle to change in the juvenile system is determining the focus of future changes.³ The State can direct its funds towards either rehabilitation and prevention of future wrongs, towards incarceration and retribution for past wrongs, or towards a combined effort.⁴ Concern for what direction to take in the future appears to go hand in hand with the amount of confidentiality provided to juveniles within the system.⁵

Although two separate bills to open the juvenile system to the public passed each chamber of the General Assembly this session,⁶ the legislators could not agree on the degree of changes. Thus, neither bill passed both houses.⁷ However, the General Assembly did agree on several other significant changes in the juvenile system.

HB 785

The Council of Juvenile Court Judges of Georgia asked the Department of Public Safety to work with them in drafting proposed changes to the juvenile traffic offenses and delinquent acts sections of the Code.⁸ These changes were partially motivated by a need for a clear definition of a juvenile traffic offense, of a delinquent act,⁹ and of the exclusive

2. Harvey, *supra* note 1. This was illustrated by the failure of two separate bills, HB 683 and SB 260, which would have provided access to juvenile records and enabled photographing and fingerprinting of juvenile offenders in certain circumstances. Final Composite Status Sheet, Mar. 15, 1991.

3. Telephone Interview with Rep. Gail Buckner, House District No. 72, (Apr. 17, 1991) [hereinafter Buckner Interview]. See also Harvey, *supra* note 1.

4. Buckner Interview, *supra* note 3. Rep. Buckner proposed an amendment to SB 370 that did pass, combining the Commission on Children and Youth and the Juvenile Justice Coordination Council. She proposed this change because of her concern about the future focus of this council. *Id.* See also Harvey, *supra* note 1.

5. Harvey, *supra* note 1. Although juvenile judges are becoming more comfortable with the notion of relaxing confidentiality requirements, concern exists that the public will demand punishment for crimes rather than rehabilitation. *Id.* (quoting John Beam, President of the Council of Juvenile Court Judges of Georgia).

6. Briefing: *Separate Juvenile Court Bills Ok'd*, ATLANTA J. & CONST., Feb. 22, 1991, at C3 (discussing HB 683 and SB 260).

7. Final Composite Status Sheet, Mar. 15, 1991. HB 663 and SB 260 both failed. *Id.* The Senate version of SB 260 would have opened all delinquency hearings to the public with certain exceptions. SB 260, as introduced, 1991 Ga. Gen. Assem. However, the House version of SB 260 would have kept delinquency hearings closed but given judges the discretion to open certain types of hearings. SB 260, HCS, 1991 Ga. Gen. Assem.

8. Telephone Interview with Capt. J.L. Howell, Georgia State Patrol, (Apr. 4, 1991) [hereinafter Howell Interview].

9. *Id.*

original jurisdiction of the juvenile court.¹⁰ Although the juvenile court had jurisdiction over juvenile traffic offenses, adult traffic court also had jurisdiction over some juvenile traffic offenses.¹¹ Because of this concurrent jurisdiction, many juveniles were being processed in the adult courts without parental knowledge.¹²

Another motivation for introducing HB 785 was to provide for equal treatment of all licensed drivers.¹³ Juveniles did not have driving records because of the confidentiality requirements of the juvenile court system.¹⁴ Since driving is a privilege of adults and one that comes with the risks of suspension or revocation, the Council of Juvenile Judges believed that all licensed drivers should accrue points on their driving record for traffic violations.¹⁵ The equal treatment issue was compounded when dealing with "Driving Under the Influence" or DUI offenses. DUI penalties are graduated with each offense.¹⁶ Without a driving record, a juvenile could come before the court, claim to be a first offender, and receive a lighter sentence.¹⁷

The Act amends Code provisions on juvenile traffic offenses by changing the age limit of a juvenile offense from sixteen to seventeen.¹⁸ This change was made in order to give the juvenile court exclusive jurisdiction over traffic offenses of all juveniles.¹⁹

The Act further amends the Code by defining a delinquent act as certain serious offenses or any offense which, if committed by an adult, could result in suspension or revocation of driving privileges.²⁰ The

10. Crane Interview, *supra* note 1.

11. *Id.*

12. *Id.* Juvenile court proceedings provide for notification to parents or guardians; no comparable procedure exists in adult courts. *Id.* See also 1971 Ga. Laws 709 § 1 (formerly found at O.C.G.A. § 15-11-49(e) (1990)).

13. Crane Interview, *supra* note 1.

14. *Id.*

15. *Id.*

16. *Id.* See also O.C.G.A. § 40-5-63 (Supp. 1991).

17. *Id.* This problem continued even into adulthood. Under prior law, when juveniles came of age, they could still claim to be a first offender and receive the lighter sentence, even if they had been convicted of DUI as a juvenile. Howell Interview, *supra* note 8.

18. O.C.G.A. § 15-11-49(a) (Supp. 1991).

19. O.C.G.A. § 15-11-49(b) (Supp. 1991). The jurisdictional age limit of the juvenile court in general is 17, but in the past the only way for the juvenile court to have jurisdiction over a 16-year-old who had been accused of a speeding violation was to consider speeding a delinquent act. Crane Interview, *supra* note 1. Juvenile traffic offenses are minor traffic violations, such as speeding, committed by a person under a certain age. O.C.G.A. § 15-11-49(a)-(b) (Supp. 1991). Crimes that are not traffic offenses or designated felony acts are delinquent acts (*e.g.*, simple theft). O.C.G.A. § 15-11-2(6) (1990). See also *In re L.J.V.*, 349 S.E.2d 37 (Ga. Ct. App. 1986) (speeding by a 16-year-old is a delinquent act; under Georgia law speeding is a crime that cannot be a juvenile traffic offense because only persons under 16 can commit juvenile traffic offenses).

20. O.C.G.A. § 15-11-49(c) (Supp. 1991).

juvenile court in the county where a juvenile traffic offense occurred may retain jurisdiction over the entire case.²¹

The Act also creates a reporting procedure which requires the juvenile court to file a report of any final disposition of traffic offenses or delinquent offenses with the Department of Public Safety, unless the case was dismissed or the disposition was merely a reprimand, counsel, or warning.²² These reports must be kept on record at the Department of Public Safety and are deemed a conviction for the purpose of suspension or revocation of a person's driver's license.²³ These records are also available to law enforcement agencies and the courts.²⁴ Delinquent offenses include, among other things, vehicular homicide and manslaughter, driving under the influence of alcohol and drugs, and the possession of a controlled substance or marijuana.²⁵ Although the Act is designed for the maintenance of driving records and the equal treatment of all drivers accused of traffic violations,²⁶ there is nothing in the Act which would prevent these records from being introduced during the sentencing or disposition phase of a criminal or juvenile delinquency proceeding.²⁷ Although the General Assembly failed to create open public access to all juvenile hearings and records,²⁸ it appears that they have at least provided the court system easier access to certain types of juvenile records.²⁹

SB 283

SB 283 was introduced in order to codify the public policy that juveniles should not be restrained before adjudication in the absence

21. O.C.G.A. § 15-11-49(e) (Supp. 1991). This changes the prior law, which provided that once a child had been judged to have committed a traffic offense and was not a resident of the county, the case was transferred to the county of the juvenile's residence for final disposition. *See* 1983 Ga. Laws 829 (formerly found at O.C.G.A. § 15-11-16 (1990)). *See also In re R.W.*, 368 S.E.2d 824 (Ga. Ct. App. 1988).

22. O.C.G.A. § 15-11-49(j) (Supp. 1991).

23. *Id.* *See also* O.C.G.A. § 40-5-63(1) (1991) (Nolo contendere pleas to the charge of DUI by persons under age 18 will be reported to the Department of Public Safety).

24. O.C.G.A. § 15-11-49(j) (Supp. 1991).

25. O.C.G.A. § 15-11-49(c) (Supp. 1991).

26. Crane Interview, *supra* note 1.

27. O.C.G.A. § 15-11-38(b) (1990) provides that the disposition of a juvenile proceeding may be used "in dispositional proceedings after conviction of a felony for the purposes of a presentence investigation and report." *Id.* *See also* C.P. v. State, 306 S.E.2d 688 (Ga. Ct. App. 1983) (no error in admitting the juvenile's prior juvenile record during disposition phase) and Burrell v. State, 376 S.E.2d 184 (Ga. 1989) (no error in admitting juvenile records during sentencing phase of trial).

28. *See supra* notes 2, 7 and accompanying text.

29. O.C.G.A. § 15-11-49(j) (Supp. 1991). These records are available to the courts in the same manner as adult traffic records. *Id.* All other juvenile records are only available upon order of the previous court. O.C.G.A. § 15-11-59(c) (1990). *See also* O.C.G.A. § 15-11-58 (1990) and 1986 Op. Att'y Gen. 36.

of compelling circumstances.³⁰ Some Georgia courts have previously held that the language in the Code was not mandatory, and therefore prior restraint was in the discretion of the judge.³¹ Thus, the "should" language in the Code was changed to "shall."³²

The Act provides that a juvenile's freedom shall only be restrained when there is probable cause that the accused juvenile committed the act and the need to restrain the juvenile is clear and convincing.³³ Further, when prior restraints on a juvenile's freedom are necessary, conditional or supervised release are favored over incarceration.³⁴

SB 370

The initial purpose of SB 370 was to combine two existing councils into one body in order to more effectively oversee problems and possible changes in the juvenile system.³⁵ Primary opposition to SB 370 was directed towards the requirement that one-fifth of the members be under age twenty-four at the time of their appointment and that at least three members be currently under the jurisdiction of the juvenile justice system.³⁶ Since these requirements are federally mandated and must be met to receive federal funding, opposition to them was dropped.³⁷

The Act abolished the Commission on Children and Youth and the Juvenile Justice Coordination Council and created in their place one body entitled the Children and Youth Coordinating Council.³⁸ The name of the council was changed twice before passing the Act to reflect some legislators' concern for a rehabilitation orientation as opposed to simple justice.³⁹

30. Telephone Interview with Sen. Nathan Deal, Senate District 49 (Apr. 5, 1991) [hereinafter Deal Interview]. Sen. Deal cosponsored SB 370.

31. *Id.* O.C.G.A. § 15-11-18.1 was enacted in 1989 in "an 'attempt to minimize the detention time of juveniles' accused of crimes in Georgia." Legislative Review, 6 GA. ST. U. L. REV. 191 (1989) (quoting Sen. Nathan Deal).

32. Deal Interview, *supra* note 30. Compare O.C.G.A. § 15-11-18.1 (Supp. 1991) with 1989 Ga. Laws 838 (formerly found at O.C.G.A. 15-11-18.1 (1990)).

33. O.C.G.A. § 15-11-18.1(a) (Supp. 1991). The "probable cause" language was a concession to the juvenile court judges, who wanted to retain some discretion in prior restraint matters. Deal Interview, *supra* note 30.

34. O.C.G.A. § 15-11-18.1(d) (Supp. 1991).

35. Deal Interview, *supra* note 30.

36. *Id.* See also O.C.G.A. § 49-5-132(a) (Supp. 1991).

37. *Id.*

38. O.C.G.A. § 49-5-132 (Supp. 1991).

39. Deal Interview, *supra* note 30. The new name of the council was originally to have been the "Georgia Commission on Juvenile Justice." SB 370, as introduced, 1991 Ga. Gen. Assem. It was later changed to "Children and Youth Coordinating Council." SB 370, HCS, 1991 Ga. Gen. Assem. Sen. Deal did not oppose the name change because he felt that the name was not as important as what the council could accomplish. Deal Interview, *supra* note 30.

The Act delineates the General Assembly's intent to provide effective coordination and communication between providers of youth services and the juvenile justice system.⁴⁰ The General Assembly also expressed its intent that the number of children committed to institutions by the courts should be reduced, and instead, preventive alternatives should be provided.⁴¹

The new Council will have members that represent businesses which employ young people.⁴² This language was changed from "one member" to "members" by HFA in order to change the focus of the Council from one of justice to one of prevention.⁴³

HB 560

Last year the General Assembly added to the Code a new definition entitled "incorrigible child" and provided a method of dealing with children so defined.⁴⁴ This was prompted by problems with uncontrollable children in the custody of the Department of Human Resources (DHR).⁴⁵ HB 560 postponed the effective date of the 1990 Act from July 1, 1991 to July 1, 1992 because of construction delays in building new facilities.⁴⁶

Code section 15-11-2(8.1) defined an incorrigible child as one who is under the supervision of the Youth Services Division of the DHR. The DHR requires special attention because of a child's heinous crime, repeated assaultive behavior, or history of escape attempts.⁴⁷ The 1990 Code section further provided for the transfer of an incorrigible child from DHR to the Department of Corrections where the child would be housed in a special facility especially designed to rehabilitate incorrigible children.⁴⁸

40. O.C.G.A. § 49-5-130 (Supp. 1991).

41. *Id.*

42. O.C.G.A. § 49-5-132(a) (Supp. 1991).

43. SB 370, HFA, 1991 Ga. Gen. Assem. Rep. Buckner proposed this change because of concern over the makeup of the new council. Buckner Interview, *supra* note 3. Rep. Buckner thought if there were only one member representing businesses, the council would focus more closely on justice than on possible preventive measures. *Id.* The Act also changed other language throughout Code sections 49-5-130 to -227 to reflect a more preventive orientation. *Id.* "Juvenile justice system" was changed to "children's service systems," "juvenile justice" was changed to "child related," and "juveniles" was changed to "children and youth." SB 370, HFA, 1991 Ga. Gen. Assem.

44. 1990 Ga. Laws 1930 (formerly found at O.C.G.A. § 15-11-2(8.1) (Supp. 1990)).

45. Interview with Rep. Bobby Parham, House District No. 105, in Atlanta (Apr. 4, 1991).

46. *Id.*

47. 1990 Ga. Laws 1930 (formerly found at O.C.G.A. § 15-11-2(8.1) (Supp. 1990)).

48. 1990 Ga. Laws 1938 (formerly found at O.C.G.A. § 49-5-10.1 (Supp. 1990)).

SB 335

The juvenile court system in Georgia has been described in the past as a "patchwork 'nonsystem' of juvenile courts."⁴⁹ Presently, all but seventeen counties in Georgia are part of the state-wide DHR system.⁵⁰ SB 335 was enacted to enable these seventeen counties, which have their own juvenile court systems, to become part of the state system.⁵¹

SB 335 provides that the juvenile systems that are not part of the DHR system may be transferred to the state system by local act of the General Assembly once it has been funded.⁵² Although this is a step in the direction of a more unified juvenile system, the same people who have been employed by these counties will continue in their present positions once a transfer takes place.⁵³

Conclusion

The 1991 General Assembly passed several laws that will have a profound effect on the state's juvenile justice system. Although the General Assembly has explicitly stated its intent to reduce pre-adjudication incarceration,⁵⁴ it also made changes which will toughen the juvenile adjudication system. The court system will have greater access to some juvenile records.⁵⁵ Juveniles will have driving records and be held accountable for traffic offenses in nearly the same manner as adults.⁵⁶ The Children and Youth Coordinating Council was created in order to study youth problems and possible solutions.⁵⁷ The General Assembly has made significant steps in attempting to reach the appropriate balance between punishing juveniles for past wrongs and preventing youth from committing future wrongs.

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49. LESLIE A. JEFFRIES, MCGOUGH'S GA. JUVENILE PRACTICE & PROCEDURE §§ 1-9 (rev. ed. 1987 & Supp. 1990).

50. Telephone Interview with Sen. Charles Walker, Senate District No. 22 (Apr. 4, 1991) [hereinafter Walker Interview].

51. *Id.* See also O.C.G.A. § 15-11-9.1 (Supp. 1991). SB 335 provides definitions of terms used in § 15-11-9. O.C.G.A. § 15-11-9.1(a) (Supp. 1991).

52. O.C.G.A. § 15-11-9.1(b) (Supp. 1991). This provision was added to alleviate the burdensome expense to a county forced to provide its own system. Walker Interview, *supra* note 50.

53. O.C.G.A. § 15-11-9.1(b) (Supp. 1991).

54. See *supra* notes 30-34 and accompanying text.

55. See *supra* notes 22-29 and accompanying text.

56. *Id.*

57. O.C.G.A. § 49-5-151 (Supp. 1991).