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COURTS Prosecution of Traffic Offenses and Juvenile Proceedings

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Juvenile Courts: Provide Guidelines to Judges Regarding When Juveniles Shall be Incarcerated Prior to Case Adjudication

CODE SECTION:	O.C.G.A. § 15-11-18.1 (new)
BILL NUMBER:	SB 371
ACT NUMBER:	534
SUMMARY:	The Act provides that, as a matter of public policy, the unconditional release of accused juveniles prior to the adjudication of their cases is preferred to incarceration. The Act sets forth conditions under which the detention of a juvenile may be considered. The Act also delineates certain values which must be reflected in any detention of a juvenile prior to the adjudication of that juvenile's case.
EFFECTIVE DATE:	July 1, 1989

History

SB 371 was introduced through the cooperative efforts of the Governor's Office, the Council of Juvenile Court Judges of Georgia, and a legislator who was "extremely concerned" about the pre-adjudication incarceration of juveniles who are accused of crimes in Georgia.[1] The bill's sponsor views the purpose of SB 371 as an "attempt to minimize the detention time of juveniles" accused of crimes in Georgia.[2]

The Act provides a "more detailed statement regarding the general principles" of juvenile detention than that found in prior law.[3] Georgia law formerly stated that any juvenile accused of a crime should not be

1. Telephone interview with Richard Stancil, Executive Assistant to the Governor and Executive Director, Juvenile Justice Coordinating Council of Georgia (Apr. 24, 1989). The bill was introduced by Senator J. Nathan Deal, Senate District No. 49.

2. Telephone interview with Senator J. Nathan Deal, Senate District No. 49 (Apr. 20, 1989).

3. Telephone interview with Chris Perrin, Executive Director, Council of Juvenile Court Judges of Georgia (Apr. 20, 1989) [hereinafter Perrin Interview].

incarcerated unless at least one of four conditions was met.[4] SB 371 reflects the intent of the Legislature, the Governor, and the Council of Juvenile Court Judges of Georgia to give "a little more direction" regarding those circumstances under which an accused juvenile may be detained prior to the adjudication of his case.[5]

SB 371

The Act makes it "a matter of public policy" in Georgia that an accused juvenile should not be incarcerated or otherwise detained prior to the adjudication of his case absent "clear and convincing evidence to support" the incarceration or detention of the juvenile.[6] Prior to the passage of SB 371, Georgia law did not require "clear and convincing evidence" to support the incarceration of a juvenile, nor did it make it "a matter of public policy" that juveniles should not be incarcerated.[7] The Act also states that the unconditional release of a juvenile prior to the adjudication of his case should be "the preferred course in each case."[8] If the unconditional release of a juvenile is not possible, the Act states that "conditional or supervised release that results in the least necessary interference with the liberty of the juvenile should be favored over more intrusive alternatives."[9]

The new law states that an accused juvenile may be detained only for one of three purposes. First, an accused juvenile may be detained to "[protect] the jurisdiction and process of the court."[10] Second, an accused juvenile may be incarcerated to reduce the possibility that the juvenile "may inflict serious bodily harm on others" if he is not incarcerated prior to the adjudication of his case.[11] Finally, an accused juvenile may be detained or incarcerated upon the juvenile's own request, to protect himself from "imminent bodily harm."[12]

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4. 1971 Ga. Laws 709. The four conditions were:

(1) The juvenile's "detention or care is required to protect the person or property of others or of the child";

(2) The juvenile "may abscond or be removed from the jurisdiction of the court";

(3) The juvenile "has no parent, guardian, or custodian or other person able to provide supervision and care for him and return him to the court when required";

(4) The court issues "an order for [the juvenile's] detention or shelter care ... pursuant to this [chapter]." *Id.*

5. Perrin Interview, *supra* note 3.
6. O.C.G.A. § 15-11-18.1(a) (Supp. 1989).
7. *Compare* O.C.G.A. § 15-11-18.1 (Supp. 1989) *with* 1971 Ga. Laws 709.
8. O.C.G.A. § 15-11-18.1(a) (Supp. 1989).
9. O.C.G.A. § 15-11-18.1(d) (Supp. 1989).
10. O.C.G.A. § 15-11-18.1(b)(1) (Supp. 1989).
11. O.C.G.A. § 15-11-18.1(b)(2) (Supp. 1989).
12. O.C.G.A. § 15-11-18.1(b)(3) (Supp. 1989).

In addition to stating those purposes for which a juvenile may be detained or incarcerated, the Act also sets forth five reasons why a juvenile should not be incarcerated prior to the adjudication of his case: (1) as a manner of punishment, treatment, or rehabilitation;[13] (2) as a means of allowing parents "to avoid their legal responsibilities";[14] (3) as a way of satisfying the demands made by the "victim, the police, or the community";[15] (4) as a means of permitting "more convenient administrative access to the juvenile";[16] or (5) as a means of facilitating additional interrogation or investigation of the juvenile.[17]

The Act implicitly recognizes that there are situations in which a juvenile will be incarcerated. If a juvenile is incarcerated or detained prior to the adjudication of his case, the Act sets forth seven "values" that such an "exercise of authority" over the juvenile (*i.e.*, the act of incarceration) should reflect.[18]

The House Judiciary Committee made three changes in SB 371 which were incorporated into the final version of the bill as passed by both houses of the General Assembly. The bill's original sponsor in the Senate proposed each of the three changes in an appearance before the House Judiciary Committee at the request of the Council of Juvenile Court Judges of Georgia.[19]

The first change made to SB 371 by the House Judiciary Committee concerned O.C.G.A. § 15-11-18.1(a). In its original form, this section of SB 371 stated that "[r]estraints on the freedom of accused juveniles

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13. O.C.G.A. § 15-11-18.1(c)(1) (Supp. 1989).
14. O.C.G.A. § 15-11-18.1(c)(2) (Supp. 1989).
15. O.C.G.A. § 15-11-18.1(c)(3) (Supp. 1989).
16. O.C.G.A. § 15-11-18.1(c)(4) (Supp. 1989).
17. O.C.G.A. § 15-11-18.1(c)(5) (Supp. 1989).
18. O.C.G.A. § 15-11-18.1(e)(1)—(7) (Supp. 1989). The seven articulated values are as follows:

> (1) Respect for the privacy, dignity, and individuality of the accused juvenile and his or her family;
> (2) Protection of the psychological and physical health of the juvenile;
> (3) Tolerance of the diverse values and preferences among different groups and individuals;
> (4) Assurance of equality of treatment by race, class, ethnicity, and sex;
> (5) Avoidance of regimentation and depersonalization of the juvenile;
> (6) Avoidance of stigmatization of the juvenile; and
> (7) Assurance that the juvenile has been informed of his right to consult with an attorney and that if he cannot afford an attorney, one will be provided.

Id.

19. Perrin Interview, *supra* note 3. The changes proposed by the Council of Juvenile Court Judges of Georgia were outlined in a letter which Judge T. Jefferson Loftiss, II, President of the Council of Juvenile Court Judges of Georgia, sent to Senator J. Nathan Deal. *See* Letter from Judge T. Jefferson Loftiss, II, President, Council of Juvenile Court Judges of Georgia to Senator J. Nathan Deal (Mar. 1, 1989) (available in Georgia State University College of Law Library) [hereinafter Loftiss Letter].

pending trial[20] and disposition are generally contrary to public policy. The preferred course in each case should be unconditional release."[21] The Council of Juvenile Court Judges of Georgia viewed this provision as too broad a statement of the public policy against the pre-adjudication incarceration of juveniles. The Council argued that such language fails "to reference the fact that public policy does not proscribe detaining juveniles in cases in which detention is absolutely necessary."[22] The Council argued for the inclusion of the "clear and convincing evidence" standard in this section of the bill as a means of narrowing the "overly broad" statement of public policy contained in the original version of SB 371.[23]

In its original form, SB 371 also included a statement that pre-adjudication incarceration of juveniles should not take place "[d]ue to a lack of a more appropriate facility or status alternative."[24] This statement was deleted from the bill by the House Judiciary Committee at the request of the bill's sponsor and the Council of Juvenile Court Judges of Georgia.[25]

In its original form, SB 371 stated that any "exercise of authority" over a juvenile in the form of pre-adjudication detention should include an "[a]ssurance that the juvenile receives adequate legal assistance."[26] The House Judiciary Committee, upon the request of the bill's sponsor,[27] changed this provision of the bill to "[a]ssurance that the juvenile [be] informed of his right to consult with an attorney and that if he cannot afford an attorney, one will be provided."[28] The Council of Juvenile Court Judges of Georgia argued, on behalf of this change, that "there

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20. The Senate Judiciary Committee amended SB 371 to substitute the word "adjudication" for the word "trial" as it appeared in the original version of SB 371. *See* SB 371 (SCA), 1989 Ga. Gen. Assem. This change was "one of nomenclature only and not of substance," according to Chris Perrin. Perrin Interview, *supra* note 3.

21. SB 371, as introduced, 1989 Ga. Gen. Assem.

22. Loftiss Letter, *supra* note 19. Judge Loftiss set forth in his letter three examples of when the detention of a juvenile may be appropriate. According to Judge Loftiss, the detention of a juvenile may be appropriate in cases "(a) where the juvenile has committed a serious violent crime, (b) when release [of the juvenile] may endanger the lives of others or the juvenile himself or (c) when there is no suitable, available alternative." *Id.*

23. *Id.*

24. SB 371, as introduced, 1989 Ga. Gen. Assem.

25. Perrin Interview, *supra* note 3. This change in SB 371 was suggested to Senator J. Nathan Deal by the Council of Juvenile Court Judges of Georgia. According to Judge T. Jefferson Loftiss, II, this provision, if made law, "would unduly limit the court's discretion in determining the best course of action, taking into account the interests of all parties concerned." Loftiss Letter, *supra* note 19. Judge Loftiss argued that "[i]t is one thing to state a preference for striving to use non-secure community based detention; it is another to prohibit use of secure detention when all existing alternative avenues have been exhausted." *Id.*

26. SB 371, as introduced, 1989 Ga. Gen. Assem.

27. Perrin Interview, *supra* note 3.

28. O.C.G.A. § 15-11-18.1(e)(7) (Supp. 1989).

is no absolute duty imposed upon the state to ensure that a person [accused of a crime] actually has retained counsel," and that a "court is under no duty to *require* that legal assistance be secured."[29]

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29. Loftiss Letter, *supra* note 19. Judge Loftiss argued in his letter to Senator Deal "[i]f it is your intent ... to ensure that the juvenile courts are, in fact, protecting the juvenile's right to counsel under the Sixth Amendment," then the new language actually incorporated into O.C.G.A. § 15-11-18.1(e)(7) "would more accurately state the duties imposed upon the state under the current law." *Id.*