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Juvenile Justice Reform HB 242

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COURTS

Amend Title 15 of the Official Code of Georgia Annotated, Relating to Courts, so as to Substantially Revise, Supersede, and Modernize Provisions Relating to Juvenile Proceedings and Enact Comprehensive Juvenile Justice Reforms Recommended by the Governor's Special Council on Justice Reform in Georgia; Provide for Purpose Statements; Provide for Definitions; Provide for General Provisions; Provide for Juvenile Court Administration; Provide for Dependency Proceedings; Provide for Venue; Provide for Taking Children into Care; Provide for Preliminary Protective Hearings; Provide for Petitions Alleging Dependency; Provide for Summons and Service; Provide for Preadjudication Procedures; Provide for Adjudication; Provide for Predisposition Social Study; Provide for Family Reunification Determinations; Provide for Disposition of Dependent Children; Provide for Permanency Plan Hearings for Dependent Children; Provide for Permanent Guardianship; Provide for Termination of Parental Rights; Provide for Petitions to Terminate Parental Rights and Summons; Provide for Hearings on such Petitions; Provide for Grounds for Terminating Parental Rights; Provide for Disposition of Children Whose Parental Rights Have Been Terminated; Provide for Children in Need of Services; Provide for Formal Court Proceedings for Children in Need of Services; Provide for Preadjudication Custody and Release of Children in Need of Services; Provide for a Petition Seeking an Adjudication that a Child is a Child in Need of Services; Provide for Adjudication, Disposition, and Reviews; Provide for a Permanency Plan for Children in Need of Services; Provide for Children with Mental Health Issues; Provide for Delinquency; Provide for Custody and Release of a Child Including the Use of Detention Assessments; Provide for Intake and Arraignment; Provide for Informal Adjustment; Provide for a Petition Alleging Delinquency and Summons; Provide for Preadjudication Procedures for Delinquency Proceedings; Provide for Transfers to Superior Court; Revise Designated Felony Acts; Provide for Adjudication of Delinquency; Provide for Predisposition Investigation and Risk Assessments; Provide for Disposition Hearings for Delinquent

Children; Provide for Permanency Plans for Delinquent Children; Provide for Traffic Offenses; Prohibit Secure Confinement under Certain Circumstances; Provide for Competency in Delinquency Cases; Provide for Parental Notification of Abortions; Provide for Access to Hearings and Records; Provide for Emancipation of Minors; Provide for the Office of the Child Advocate for the Protection of Children; Amend Section 52 of Article 3 of Chapter 5 of Title 42 of the Official Code of Georgia Annotated, Relating to Classification and Separation of Inmates Generally and the Placement of Inmates, so as to Provide for the Detention of Children in the Department of Corrections under Certain Circumstances; Amend Chapter 4A of Title 49 of the Official Code of Georgia Annotated, Relating to the Department of Juvenile Justice, so as to Change Provisions Relating to the Duties of the Board of Juvenile Justice; Change Provisions Relating to the Duties of the DJJ; Amend the Official Code of Georgia Annotated so as to Conform Provisions to the New Chapter 11 of Title 15 and Correct Cross-References; Provide for Related Matters; Provide for an Effective Date and Applicability; Repeal Conflicting Laws; and for Other Purposes

CODE SECTIONS: O.C.G.A. §§ 1-2-8 (amended); 5-7-1 (amended); 13-3-20 (amended); 15-11-1 to -41 (amended); 15-11-50 to -69 (amended); 15-11-100 to -113 (amended); 5-11-125, -130, -131, -132, -133, -135, -145, -146, -150, -151, -152, -153, -160, -161, -162, -163, -170, -180, -181, -190, -191, -200, -201, -202, -203, -204, 15-11-210 to -218 (amended); 15-11-230, -231, -232, -233, -240, -241, -242, -243, -244, -260, -261, -262, -263, -264,-265, -270, -280, -281, -282, -283, -284, -285, -300, -301, -302, -303, -310, -311, -320, -321, -322, -323, -380, 381, -390, -400, -401, -402, -403, -404, -405, -410, -411, -412, -413, -414, -41

5, -420, -421, -422, -423, -424, -425, -4 40, -441, -442, -443, -444, -445, -450, -451 (amended); 15-11-470 to -481 (amended); 15-11-490, -500, -501, -502, -503, -504, -505, -506, -507, -508, -510, -511, -515, -520, -521,-522, -523, -530, -531, -532, -540, -541,-542, -543, -544, -545, -546, -560, -561, -562, -563, -564, -565, -566, -567,-580, -581, -582, -590, -600, -601, -602, -603, -604, -605, -606, -607, -608,-620, -621, -622, -630 (amended); 15-11-650 to -660 (amended); 15-11-680, -681, -682, -683, -684, -685, -686, -687, -688 (amended); 15-11-700 to -710 (amended); 15-11-720, -721, -722, -723, -724,-725, -726, -727, -728, -740, -741,-742,-743, -744, -745, -746, -747 (amended); 15-18-6.1 (new); 15-23-7, -10 (amended); 16-5-45, -52 (amended); 16-11-101.1, -127.1, -132 (amended); 16-12-1, -141.1 (amended); 17-4-25.1 (amended); 17-7-50.1, -130 (amended); 17-10-1, -14 (amended); 17-14-2 (amended); 17-15-13 (amended); 17-16-2 (amended); 19-7-1, -5, -22 (amended); 19-8-10, -11, -13 (amended); 19-10A-4, -6 (amended); 19-13-20 (amended); 20-1A-30 (amended); 20-2-133 (amended); 20-2-670, -671, -690.2, -699, -751.2, -7 66.1, -768 (amended); 20-3-660 (amended); 24-6-603 (amended); 24-12-21 (amended); 31-22-9.2 (amended); 35-3-33 (amended); 35-8-2 (amended); 36-32-10 (amended); 40-5-75 (amended); 40-6-391

	(amended); 42-5-52 (amended); 44-5-41 (amended); 45-9-81, -101 (amended) 45-20-1 (amended); 49-4A-1, -2, -3, -4, -5, -6, -7, -8, -9, -10, -11, -16, -17 (amended); 49-5-3, -8, -41, -60, -110, -131, -154, -281 (amended); 52-7-12 (amended)
BILL NUMBER:	HB 242
ACT NUMBER:	127
GEORGIA LAWS:	2013 Ga. Laws 294
SUMMARY:	The Act reorganizes, revises, and modernizes Georgia's Juvenile Court Code to provide clarity and coherence, establish ease in application, and promote consistency in outcomes. There are eleven independent articles within the Act, seven of which are self-contained and fully integrated sections of a particular aspect of juvenile court jurisdiction. The Act further reflects extensive research and input from various stakeholders across Georgia. Finally, the Act seeks to decrease juvenile justice costs and reduce recidivism rates by mandating uniform data collection and reporting, mandating risk and detention assessment instruments, and expanding community-based alternatives to detention for certain youth offenders.
EFFECTIVE DATE:	January 1, 2014

History

Georgia's previous Juvenile Court Code (the "code") was enacted in 1971 and codified at Chapter 11 of Title 15 of the Official Code of

Georgia Annotated.[1] Under that system, juvenile courts handled three types of cases: deprivation,[2] delinquency,[3] and status offenses.[4] Over the last four decades, the juvenile code was subjected to a patchwork of amendments resulting in confusion and frustration among judges, lawyers, and other practitioners alike.[5] For example, the code contained articles with provisions for both delinquent children and deprived children, which created confusion about what process or timeline would apply to each category of children.[6] Moreover, within the last decade, concerns arose that the juvenile code did not reflect research-based best practices.[7] The combination of these concerns

1. Ga. Appleseed Ctr. For Law and Justice, Common Wisdom: Making the Case for a New Georgia Juvenile Code 10 (Nov. 2008), *available at* http://www.gaappleseed.org/children/reports/summary.pdf; s*ee also* Video Recording of House Judiciary Committee Meeting, Feb. 13, 2013 at 0 min., 0 sec. (remarks by Rep. Wendell Willard (R-51st)), http://media.legis.ga.gov/hav/13_14/2013/committees/judi/judi021313EDITED.wmv [hereinafter House Committee Feb. 13 Video].

2. O.C.G.A. § 15-11-2(8) (2012) (repealed). The code defined a deprived child as "a child who: [i]s without proper parental care or control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, or emotional health or morals; [h]as been placed for care or adoption in violation of law; [h]as been abandoned by his or her parents or other legal custodian; or [i]s without a parent, guardian, or custodian *Id.*

3. O.C.G.A. § 15-11-2(7) (2012) (repealed). The code defined a delinquent child as "a child who has committed a delinquent act and is in need of treatment or rehabilitation." *Id.*

4. *See* Ga. Appleseed, *supra* note 1, at 10. The code defined a status offender as "a child who is charged with or adjudicated of an offense which would not be a crime if it were committed by an adult, in other words, an act which is only an offense because of the perpetrator's status as a child." O.C.G.A. § 15-11-2(11) (2012) (repealed).

5. Ga. Appleseed, *supra* note 1, at 10; *see also* Video Recording of House Proceedings, Feb. 28, 2013 at 1 hr., 32 min., 58 sec. (remarks by Rep. Wendell Willard (R-51st)), http://www.gpb.org/lawmakers/2013/day-26 [hereinafter House Video Feb. 28] ("[O]ver the years since [the juvenile code's] first adoption . . . as amendments were made, things were changed, put into different areas and became very convoluted for the practitioners in the field as well as the judges to try and follow."); House Committee Feb. 13 Video, *supra* note 1, at 51 min., 22 sec. (remarks by Melissa Carter, Executive Director, Barton Child Law & Policy Center, Emory University Law School) ("Georgia's [current] juvenile code was enacted initially about 40 years ago and so over the course of now four decades, we have had the advantage, the disadvantage perhaps of cobbling together through patchwork amendments what now exists as our juvenile code. And in many ways, it's incoherent. It's inconsistent at points. It's very difficult to practice under."). The code was an "organizational mess" in part due to changes made over the years in response to case law as well as several different federally mandated legislative entitlements. *See* Telephone Interview with Rep. Mary Margaret Oliver (D-82nd) (May 14, 2013) [hereinafter Oliver Interview].

6. *See* Telephone Interview with Melissa Carter, Executive Director, Barton Child Law & Policy Center, Emory University Law School (May 16, 2013) [hereinafter Carter Interview].

7. Soledad A. McGrath, Hon. Velma Cowen Tilley & Lucy S. McGough, *The Juvenile Code Revision Project: A Model Code for Georgia,* State Bar of Ga. Young Lawyers Div. Juvenile Law Comm. i (2008), [on file with Georgia State University Law Review].

prompted a series of efforts, beginning in 2004, to revise, reorganize, and modernize Georgia's juvenile laws.[8]

Early Efforts

In early 2004, the Honorable Robin Nash, the President of the Council of Juvenile Court Judges at the time, asked the Juvenile Law Committee of the State Bar of Georgia's Young Lawyers Division ("YLD") to revise Georgia's Juvenile Code.[9] The Georgia Bar Foundation provided a grant to the YLD to fund the revision project in September 2004.[10] In 2005, Senate Resolution 161 created a legislative study committee on the juvenile code which provided a forum for the YLD to continue its code revision work.[11] The YLD hired three code reporters including Professor Lucy McGough of Louisiana State University, who helped draft the original Georgia Juvenile Court Code; Soledad McGrath, a former staff attorney with the Barton Child Law & Policy Center; and Juvenile Court Judge Velma Tilley to draft a proposed model code.[12] In 2006, a statewide juvenile justice coalition called JUSTGeorgia formed to "advocate[] for improvements in juvenile justice and the underlying social service systems that serve Georgia's children."[13]

The JUSTGeorgia coalition supported the work of the YLD to complete the model juvenile code, and together they conducted extensive research including "a review of academic literature, consultation with experts and practitioners throughout the country, and an extensive review of state statutes."[14] JUSTGeorgia further gathered input from various stakeholders and practitioners in Georgia's juvenile system to identify the strengths and weaknesses of the state's juvenile code and to garner recommendations regarding

8. *Id.*
9. *Id.*
10. *Id.*
11. SR 161, as passed, 2005 Ga. Gen. Assem.; *see also* McGrath, *supra* note 7, at i.
12. McGrath, *supra* note 7, at i–ii.
13. *Id.* at ii. The JUSTGeorgia coalition's main partners include Georgia Appleseed, Barton Child Law & Policy Center, Emory University Law School, and Georgia Voices for Children. *Id.* at i.
14. *Id.* at ii.

needed improvements.[15] The proposed model code was completed in early 2008.[16]

The Proposed Model Code

The previous juvenile code was divided into six articles, the first of which was further subdivided into nine parts.[17] Structurally, the proposed model code eliminated the subdivided parts and established twelve independent articles designed to be self-contained to minimize cross-referencing as much as possible and create a clearer document.[18] The model code also replaced archaic language with new, more effective terminology.[19] Substantively, the model code balanced best practices with "the complexities of Georgia's political landscape . . . to ensure that the proposed model would not be dismissed as wholly unrealistic and unachievable."[20] Noteworthy revisions included:

> 1. Increase the age of juvenile court jurisdiction to 18 for all children;
> 2. Provide for the right to qualified and independent counsel to all children;
> 3. Repeal [Senate Bill (SB) 440] and all other automatic waiver laws and allow only for discretionary judicial waiver of juvenile court jurisdiction through a transfer hearing;
> 4. Remove [thirteen] year olds from eligibility for transfer to superior court and for adjudication under the designated felony statute;
> 5. Ban the secure confinement of children in adult correctional facilities;

15. Ga. Appleseed, *supra* note 1, at 7. ("For over a year, hundreds of lawyers and other professionals logged over 6,500 pro bono hours in identifying, interviewing, and transcribing interviews from a wide array of stakeholders, such as parents, young adults and older youth, law enforcement, child welfare workers, mental health providers, judges, prosecutors, defense attorneys, educators, business leaders, probation officers and many more . . . In addition, to encourage input from the general community about the current juvenile code, Georgia Appleseed held public town hall meetings.").
16. *Id.* at 10.
17. McGrath, *supra* note 7, at iii.
18. *Id.*
19. *Id.*
20. *Id.* at iv.

6. Add three new articles governing independent living services, children in need of services, and competency in delinquency proceedings;
7. Ensure compliance with the requirements of the Adoption and Safe Families Act in delinquency and status offense cases;
8. Require the electronic recording of custodial interrogations in certain cases;
9. Provide for the reinstatement of parental rights; and
10. Establish a comprehensive procedure for the creation of subsidized permanent guardianships.[21]

Previous Versions of the Bill

Senator Bill Hamrick subsequently introduced The Child Protection and Public Safety Act as SB 292 at the end of the 2009 legislative session,[22] but the bill did not move out of the Senate.[23] Following revisions based upon further review by legislators and various stakeholders, Senator Hamrick reintroduced the legislation as SB 127 during the 2011 legislative session.[24] An identical piece of legislation was also introduced in 2011 by Representative Wendell Willard (R-51st) in the House of Representatives as House Bill (HB) 641.[25] The bill remained active in both chambers of the Georgia General Assembly at the close of the 2011 legislative session after eleven public hearings and broad bipartisan support.[26]

HB 641 and SB 127 were both reintroduced during the 2012 legislative session.[27] SB 127 unanimously passed the Senate

21. *Id.* at v.
22. *Juvenile Code Rewrite*, JUSTGeorgia, http://www.justga.org/initiatives/juvenile-code/sb-292-the-child-protection-and-public-safety-act (last visited May 26, 2013). The bill was based upon the proposed model code developed by the YLD. *Id.*
23. *See* Telephone Interview with Rep. Wendell Willard (R-51st) (May 24, 2013) [hereinafter Willard Interview]. There were, however, several Senate Judiciary hearings to continue the deliberation and vetting of the legislations. Email from Melissa Carter, Executive Director, Barton Child Law & Policy Center, to author (Sep. 2, 2013, 19:41 EST) (on file with Georgia State University Law Review).
24. JUSTGeorgia, *supra* note 22.
25. *HB 641, The Child Protection and Public Safety Act*, JUSTGeorgia, http://www.justga.org/initiatives/juvenile-code/hb-641-the-child-protection-and-public-safety-act (last visited May 26, 2013).
26. *Id.*
27. *See* Georgia General Assembly, HB 641, Bill Tracking, http://www.legis.ga.gov/Legislation/en-US/display/20112012/HB/641; Georgia General Assembly, SB 127, Bill Tracking,

Judiciary Committee, but the bill did not proceed any further.[28] HB 641, on the other hand, proceeded to the House floor and passed out of the House unanimously.[29] The bill then passed out of the Senate Judiciary Committee with unanimous support but did not reach the Senate Rules Committee.[30] Governor Nathan Deal (R) intervened at that point due to concerns about how to fund the changes mandated by the proposed legislation.[31] Initially, HB 641's sponsors recognized the funding concerns but, nevertheless, moved forward with the bill with the intention to set the implementation date far enough down the road to allow for legislation to come forward in the next session that would address the funding concerns.[32] The Governor approached the House Judiciary Committee Chairman and bill sponsor, Representative Willard (R-51st), and requested he put the bill on hold to give the Governor's Special Council on Criminal Justice Reform the opportunity to gather data on Georgia's juvenile justice system and make recommendations for an improved juvenile rewrite bill for the 2013 legislative session that would address funding concerns.[33]

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http://www.legis.ga.gov/Legislation/en-US/display/20112012/SB/127.

28. *See* Georgia General Assembly, SB 127, Bill Tracking, http://www.legis.ga.gov/Legislation/en-US/display/20112012/SB/127.

29. *See* Georgia General Assembly, HB 641, Bill Tracking, http://www.legis.ga.gov/Legislation/en-US/display/20112012/HB/641; *see also* House Video Feb. 28, *supra* note 5, at 1 hr., 32 min., 58 sec. (remarks by Rep. Wendell Willard (R-51st)).

30. *See* Georgia General Assembly, HB 641, Bill Tracking, http://www.legis.ga.gov/Legislation/en-US/display/20112012/HB/641.

31. House Video Feb. 28, *supra* note 5, at 1 hr., 32 min., 58 sec. (remarks by Rep. Wendell Willard (R-51st)) ("The Governor had concerns as the rest of us did . . . [that] there were some costs in [HB 641] that really were not clearly defined or what would be the cost and where that cost would be placed as far as the burden on either state or local governments."). There had been some pushback to many of the proposed changes found in HB 641 from the prosecuting attorneys and also the county governments because of concerns that the legislation was building in costs that would be absorbed locally but not doing anything to assist with funding these potential expenses at the state level. *See* Willard Interview, *supra* note 23. Notably, these concerns arose at a time when Georgia's budget was being cut eighteen percent overall. *See* Oliver Interview, *supra* note 5.

32. *See* Willard Interview, *supra* note 23; *see also* House Video Feb. 28, *supra* note 5, at 1 hr., 32 min., 58 sec. (remarks by Rep. Wendell Willard (R-51st)); House Committee Feb. 13 Video, *supra* note 1, at 0 min., 0 sec. (remarks by Rep. Wendell Willard (R-51st)) ("[W]e recognized there was going to be some costs associated with it. But we felt what we would be able to do is have the bill first implemented, then putting a date down the road far enough, we could come back, next—this session—[and] begin looking at how to best fund it.").

33. House Video Feb. 28, *supra* note 5, at 1 hr., 32 min., 58 sec. (remarks by Rep. Wendell Willard (R-51st)) ("So the Governor recommended, and I agreed, that we hold the bill up and let the commission that had been set up by the Governor . . . look into and review our juvenile practices and see where reforms might be necessary."); *see also* House Committee Feb. 13 Video, *supra* note 1, at 0 min., 0 sec. (remarks by Rep. Wendell Willard (R-51st)) (explaining "we had a commission that was looking at

Chairman Willard agreed and HB 641 did not reach a vote on the Senate floor in 2012.[34]

Governor Deal's Special Council on Criminal Justice Reform for Georgians

Previously, in March of 2011, "the Georgia General Assembly passed House Bill 265 . . . creating both the Special Council on Criminal Justice Reform and Special Joint Committee on Criminal Justice Reform" (the "Council") in response to needed reforms within the adult criminal justice system.[35] On May 24, 2012, Governor Deal (R) extended the term of the Council and expanded both its membership and its focus to include the juvenile justice system through an executive order.[36] The Council was specifically tasked with "identify[ing] ways to improve outcomes; develop fiscally sound, data-driven juvenile justice policies; and ensure Georgia's tax dollars are used effectively and efficiently."[37] The Council commissioned the Public Safety Performance Project of the Pew Center on the States and the Annie E. Casey Foundation for research and technical assistance.[38] For six months, "the Council conducted extensive analysis of the state's juvenile justice data and solicited input from a wide range of stakeholders."[39] The Council focused exclusively on the issue of juvenile delinquency and made no

adult measures of ways to change programs and better ways to treat sentencing of adults . . . [so] the Governor's plan was to . . . have the commission really look at the juvenile justice reform issues and how better ways can be implemented with policies, again for the state, looking at cost overall").

34. House Video Feb. 28, *supra* note 5, at 1 hr., 32 min., 58 sec. (remarks by Rep. Wendell Willard (R-51st)); House Committee Feb. 13 Video, *supra* note 1, at 0 min., 0 sec. (remarks by Rep. Wendell Willard (R-51st)).

35. Meg Buice & Tamara Garcia, *Crimes and Offenses HB 1176*, 29 Ga. St. U. L. Rev. 290, 294 (2012); *see also* HB 265, as passed, 2011 Ga. Gen. Assembly § 1, p. 2–3, ln. 25–84.

36. The Special Council On Criminal Justice Reform For Georgians, Report Of The Special Council On Criminal Justice Reform For Georgians 2 (Dec. 2012), *available at* http://gov.georgia.gov/sites/gov.georgia.gov/files/related_files/press_release/Report%20of%20the%20Special%20Council%20on%20Criminal%20Justice%20Reform%20for%20Georgians%202012%20-%20FINAL.pdf [hereinafter Council Report]. Expanded membership specifically included those with juvenile justice expertise. *See* Carter Interview, *supra* note 6.

37. Council Report, *supra* note 36, at 4.

38. *Id.* at 4.

39. *Id.*

recommendations regarding deprivation aspects of Georgia's juvenile laws.[40]

The Council's Findings

The Council assessed the policies and costs of current practices within Georgia's juvenile justice system.[41] After reviewing its findings, the Council concluded that Georgia's juvenile justice system presented substantial costs to taxpayers without a sufficient return on investment.[42] Specifically, the Council found that it costs the state over $90,000 annually for each juvenile housed in youth detention, but "[d]espite these costs, the recidivism rate remains high, with more than half of the youth in the juvenile justice system committing an offense leading to re-adjudication of delinquency or an adult conviction of a crime within three years."[43] The Council determined these high rates of recidivism were unacceptable and identified five areas in need of reform: (1) misdemeanor and status offenders, many of whom were low-risk, comprised a significant portion of detained youth, (2) low-risk designated felons comprised a significant portion of detained youth, (3) risk and needs assessment tools were not being used effectively to inform decision-making, (4) many local jurisdictions had limited or no community-based program services, leaving juvenile judges with few dispositional options short of commitment to state facilities, and (5) the state struggled to collect uniform data on juvenile offenders.[44]

The Council's Recommendations

In December 2012, the Council made fifteen policy recommendations to the Governor, Lieutenant Governor, Speaker of the House of Representatives, Chief Justice of the Georgia Supreme Court, and Chief Judge of the Georgia Court of Appeals for consideration by the upcoming legislature.[45] The stated goals of the

40. *See* Carter Interview, *supra* note 6.
41. Council Report, *supra* note 36, at 7.
42. *Id.*
43. *Id.* at 8.
44. *Id.* at 9–12.
45. *Id.* at 4, 12–20; *see also* House Video Feb. 28, *supra* note 5, at 1 hr., 32 min., 58 sec. (remarks by

recommendations were to "protect public safety, hold offenders accountable, and control juvenile justice costs."[46] The Council projected the recommendations would "decrease the average daily out-of-home adjudicated population by 639 offenders by 2018 (from 1,908 offenders to 1,269 offenders)" which would allow for savings of "more than $88 million in averted state expenditures and actual savings through 2018."[47]

The report categorized the Council's recommendations into two separate sections.[48] The first section contained recommendations to "[f]ocus the state's out-of-home facilities on higher-risk, serious offenders" because the state was spending significant resources on juveniles who are misdemeanants, status offenders, or low-risk offenders without improved public safety outcomes.[49] To achieve this goal, the Council provided the following recommendations: (1) "create a two-class system within the Designated Felony Act . . . that continues to allow for restrictive custody in all designated felony (DF) cases while adjusting the dispositional sanctions to take into account both the offense severity and risk level,"[50] (2) "prohibit status offenders and certain misdemeanants from being disposed to residential facilities,"[51] and (3) "implement a performance incentive

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Rep. Wendell Willard (R-51st)).

46. Council Report, *supra* note 36, at 12.

47. *Id.* at 12.

48. *Id.*

49. *Id.* at 13.

50. *Id.* at 14. The Designated Felony Act, at the time, provided for a single sentencing range for an entire gamut of offenses ranging in severity from murder to smash-and-grab burglary. *Id.* When the Act was first passed, it included only eleven serious offenses. *See* House Committee Feb. 13 Video, *supra* note 1, at 17 min., 45 sec. (testimony by Hon. Michael P. Boggs, Co-Chair of the Special Council on Criminal Justice Reform and Judge in the Court of Appeals of Georgia). However, over the course of thirty-two years, the Act morphed to include nearly thirty offenses including less serious felonies. Council Report, *supra* note 36, at 14. The Council recommended dividing the offenses into two tiers to limit the discretion of sentencing judges "to handle sentencing those offenders of less serious consequence to no more than eighteen months in secured confinement as opposed to those that are the more severe [who could] . . . remain up to sixty months [in] confinement." House Committee Feb. 13 Video, *supra* note 1, at 17 min., 45 sec. (testimony by Hon. Michael P. Boggs, Co-Chair of the Special Council on Criminal Justice Reform and Judge in the Court of Appeals of Georgia). The Council made this recommendation based upon its findings that in 2011 "39 percent of designated felons in YDCs were assessed as low-risk and 38 percent were in YDCs for non-violent offenses," costing the state $91,126 per bed annually. Council Report, *supra* note 36, at 14.

51. Council Report, *supra* note 36, at 14–15. Specifically, the Council recommended the legislature prohibit judges from sentencing all status offenders to confinement and further limit confinement to only those juvenile misdemeanants "who had at least four prior adjudications of delinquency (excluding status offenses) including at least one prior felony adjudication." *Id.* at 15. This recommendation was, in

structure" whereby the state would provide funding incentives to localities to create and use community-based alternatives to detention.[52]

The second category of recommendations aimed at reducing recidivism by strengthening evidence based community supervision and programs.[53] To achieve this goal, the Council recommended statutorily mandating the use of decision-making instruments, including "risk and needs assessment" and "detention assessment" tools.[54] Additionally, the Council made recommendations regarding effective community-based options, including the establishment of administrative probation for certain youth and the funding and development of evidence based community programs.[55] The Council further made recommendations regarding data collection and reporting requirements, requiring that all juvenile data be collected and reported to the state through a mandated uniform data collection and tracking system and that there be a performance measurement system created to track such things as "recidivism, education,

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part, based on similar recent restrictions enacted by other states, including Tex. Family Code Ann. § 54.0401 (West, Westlaw through 2013 third called Legis. Sess.), Fla. Stat. § 985.441 (West, Westlaw through 2013 Legis. Sess.), Va. Code Ann. § 16.1-278.8 (West, Westlaw through 2013 Legis. Sess., and Ala. Code § 12-15-208(a)(1) (West, Westlaw through 2013 Legis. Sess.). *Id.* It was further based on concerns that "[i]n 2011, 53 percent of juveniles in non-secure residential facilities were adjudicated for misdemeanors (45 percent) or status offenses (8 percent)" fifty-six percent of whom were considered low-risk. *Id*. at 14–15.

52. Council Report, *supra* note 36, at 15. This recommendation recognizes that community-based programs can reduce recidivism and thus save states money by decreasing the number of offenders confined in state facilities. *Id.* The idea is to reward local jurisdictions that successfully reduce recidivism with a portion of the state's savings for the purpose of investing in stronger community-based options. *Id.* Further, the recommendation provides communities with no local options with an incentive to apply for grant money to create such programs. *See* House Committee Feb. 13 Video, *supra* note 1, at 20 min., 8 sec. (testimony by Hon. Michael P. Boggs, Co-Chair of the Special Council on Criminal Justice Reform and Judge in the Court of Appeals of Georgia). The Governor set aside $5 million in his budget for fiscal year 2014 as funding for implementation of this recommendation. *Id.*

53. Council Report, *supra* note 36, at 12.

54. *Id.* at 16. The Council recommended the legislature mandate the use of two assessment instruments. *Id.* First, a detention assessment should be administered prior to detention intake. *Id.* Second, a risk and needs assessment should be administered prior to disposition to inform judges prior to sentencing. *Id.* Finally, the Council recommended that all assessment tools be immediately and regularly validated as accurate. *Id.* Notably, the Council also recommended the legislature mandate decision-making tools for the DJJ and probation officers to guide a court's decisions regarding placement recommendations, but this recommendation was not included in HB 242. *See infra* text accompanying note 59.

55. Council Report, *supra* note 36, at 16–18. Specifically the Council recommended that "'evidence-based and proven practices'" be defined by the legislation and that funding be limited to those practices proven to reduce recidivism. *Id.* at 17.

employment, substance use, and payment of victim restitution".[56] Finally, there was a recommendation regarding the transportation of juveniles to detention centers,[57] and a recommendation requiring the DJJ to investigate the cost effectiveness of using certain available federal funds.[58] Ultimately, only eight of the Council's fifteen recommendations were included in HB 242, as introduced, because some of the Council's recommendations were determined to be more appropriately addressed through the budgetary or regulatory process.[59]

On February 7, 2013, Representative Willard (R-51st) introduced the first version of HB 242 to the House of Representatives,[60] which reflected the great merger of massive reform initiatives undertaken by the YLD of the Georgia State Bar and the JUSTGeorgia coalition with Governor Deal's Special Council on Criminal Justice Reform for Georgians.[61] On the same day, then Georgia Supreme Court Chief Justice Carol Hunstein referred to the legislation in her State of the Judiciary address noting that "we as Georgians—and as a nation—stand at a crossroads in juvenile justice history. We have learned, just as we did with adult criminal justice, that cracking down on juvenile crime is not enough. We must also be smart about juvenile crime and take action to reduce it."[62]

Bill Tracking of HB 242

Consideration and Passage by the House

Representatives Wendell Willard (R-51st), Christian Coomer (R-14th), Matt Hatchett (R-150th), Chad Nimmer (R-178th), Mary

56. *Id.* at 18–19.

57. *Id.* at 19–20. Specifically, the recommendation requires the agency that requests the Detention Assessment Instrument to transport juveniles to the detention center rather than place that responsibility on the local sheriff as was the practice in most counties. *Id.* at 19.

58. *Id.* at 20. Notably, this requirement was not included in HB 242 as introduced. *See infra* text accompanying note 59.

59. House Committee Feb. 13 Video, *supra* note 1, at 17 min., 01 sec. (testimony by Hon. Michael P. Boggs, Co-Chair of the Special Council on Criminal Justice Reform and Judge in the Court of Appeals of Georgia).

60. State of Georgia Final Composite Status Sheet, HB 242, May 9, 2013.

61. *See* Carter Interview, *supra* note 6.

62. The Honorable Chief Justice Carol Hunstein of the Supreme Court of Georgia, *2013 State of the Judiciary Address*, Feb. 7, 2013, *available at* http://www.gasupreme.us/press_releases/13Judi.pdf.

Margaret Oliver (D-82nd) and Jay Neal (R-2nd) sponsored HB 242 in the House.[63] On February 8, 2013 and February 11, 2013, the House read the bill for the first and second time respectively.[64] The Speaker of the House David Ralston (R-7th) assigned the bill to the House Judiciary Committee, which favorably reported a Committee substitute on February 20, 2013.[65]

The House Committee made a number of changes to the bill.[66] First, based on circumstances peculiar to the juvenile's case, the Committee amended the bill to provide a variety of detention and treatment options.[67] In addition, the House Committee clarified that "secure probation sanction programs" include confinement in nonsecure residential facilities.[68] The House Committee, however, amended the definition of "foster care" by removing nonsecure residential facilities as a detention alternative for children adjudicated for delinquent acts.[69] Additionally, the House Committee amended the bill to provide that, "[a] child who is released from detention but subject to conditions of release shall not be considered to be in detention for purposes of calculating time served."[70] The House Committee also amended the bill by clarifying that a juvenile adjudicated to be a dependent child may not, pursuant to the court's contempt power, be placed in nonsecure residential facilities.[71] Moreover, the House Committee amended the bill to permit a juvenile court, in the context of civil commitment, to have a child

63. HB 242, as introduced, 2013 Ga. Gen. Assem.

64. State of Georgia Final Composite Status Sheet, HB 242, May 9, 2013.

65. *Id.*

66. *Compare* HB 242, as introduced, 2013 Ga. Gen. Assem., *with* HB 242 (HCS), 2013 Ga. Gen. Assem.

67. *See, e.g.*, HB 242 (HCS), § 1.1, p. 129, ln. 4452–454, 2013 Ga. Gen Assem.; *see also* Video Recording of House Judiciary Committee Meeting, Feb. 19, 2013 at 5 min., 39 sec. (remarks by Rep. Wendell Willard (R-51st)), http://media.legis.ga.gov/hav/13_14/2013/committees/judi/judi021913EDITED.wmv [hereinafter House Committee Feb. 19 Video].

68. HB 242 (HCS), § 1.1, p. 24, ln. 827–30, 2013 Ga. Gen. Assem. For consistency, the House Committee changed "nonsecure facility" to "nonsecure residential facility" throughout the bill. *E.g., id.* § 1.1, p. 27, ln. 926. Additionally, the House Committee amended the bill by removing "mandatory conference" information throughout the bill. *Id.* § 1.1, p. 115, 119, 121, 124, ln. 3995, 4107, 4110, 4187, 4276. *See infra* note 187 for discussion of the implications of removing the mandatory conference requirement.

69. *Id.* § 1.1, p. 9, ln. 308–11.

70. *Id.* § 1.1, p. 132, ln. 4581–83.

71. *Id.* § 1.1, p. 24, ln. 827–30.

committed to an "appropriate treatment setting."[72] The House Committee also amended the bill to provide for inpatient treatment where a child is found to be incompetent to stand trial.[73]

Second, the House Committee redefined "a prosecuting attorney" and the role of such attorneys and other parties or entities under the amended bill.[74] The amended definition acknowledges that state, county, and local governments are often under-staffed and ensures that a qualified individual attorney will handle juvenile proceedings where a district attorney is unavailable.[75] Additionally, the House Committee amended the bill to allow other individuals, in addition to prosecuting attorneys, to move that a juvenile is a child in need of services (CHINS) and to revoke probation.[76] The House Committee also amended the bill by expanding a prosecuting attorney's access to juvenile records when necessary to discharge her official duties.[77]

Third, the House Committee amended the bill to protect children in various phases of the juvenile justice system. The substitute prevented children from waiving their right to an attorney where liberty is in jeopardy.[78] Additionally, the House Committee amendments prohibit courts from accepting a child's admission of guilt at arraignment where her liberty is at risk and an attorney does not represent her.[79] To address funding concerns, the House Committee also narrowed the language of the bill and the circumstances where a child may be examined by a physician or psychologist.[80]Specifically, this amendment clarifies that the court

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72. HB 242 (HCS), § 1.1, p. 129, ln. 4452–54, 2013 Ga. Gen. Assem.

73. *Id.* § 1.1, p. 128, ln. 4423–25.

74. *Id.* § 1.1, p. 12, ln. 410–11. ("'Prosecuting attorney' means an attorney designated by the district attorney of the judicial circuit in which the juvenile proceedings are instituted . . . . ").

75. *Id.* § 4-4, p. 221–22, ln. 7679–16.

76. *Id.* § 1.1, p. 121, ln. 4173–78.

> Under HB 242 as introduced, only an attorney could file a CHINS petition. [This] amendment reverts back to current law, under which any person can file a petition alleging status offenses, provided that the court endorses the petition as being [in] the best interests of the child and the community.

Juvenile Justice Reform Legislation: House Bill 242, JUSTGeorgia, http://www.justga.org/initiatives/juvenile-code/hb-242-juvenile-justice-reform-bill/HB242_Summary_HouseJudyAmendments.pdf/view (last visited Aug. 12, 2013); *see also* HB 242 (HCS), § 1.1, p. 126, 127, 129, ln. 4364–367, 4395, 4460–465, 2013 Ga. Gen. Assem.

77. HB 242 (HCS), § 1.1, p. 193, ln. 6697–98, 2013 Ga. Gen. Assem.

78. *Id.* § 1.1, p. 133, ln. 4603–05.

79. *Id.* § 1.1, p. 145–46, ln. 5035–43.

80. *Id.* § 1.1, p. 22–23, ln. 762–71.

may not order the county government to perform a medical examination where funding is unavailable.[81]

Fourth, the House Committee amended several provisions that affect the rights of victims of juvenile crime. The House Committee clarified that victims are encouraged to participate in mediation but are not required to participate as a condition of being heard in a juvenile court.[82] Additionally, the House Committee amended the bill to clarify that victims of juvenile delinquent acts are "entitled to the same rights, notices, and benefits as the victim of a crime committed by an adult[.]"[83] Furthermore, the House Committee amended the bill to establish that procedures for ordering restitution are the same for juveniles as for adults and that such orders are enforceable after a child reaches the age of twenty-one unlike other juvenile court orders.[84]

Fifth, the House Committee amendments also clarified several procedural issues.[85] The House Committee amendments extended the time an attorney, declining to prosecute a juvenile in superior court, has before filing a mandatory adjudication petition with the appropriate juvenile court.[86] The House Committee amendments established that a complaint filed thirty days after a child is released from preadjudication custody shall be filed within the statute of limitations set forth in Chapter 3 of Title 17 of the Official Code of Georgia Annotated.[87] The House Committee amendments also establish varying conditions for filing a complaint deadline extension following an initial detention hearing.[88]

Lastly, the House Committee amendments clarified potential evidentiary issues. The House Committee amendments granted courts additional authority where a party fails to comply with discovery requests.[89] Moreover, the House Committee clarified a provision

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81. *Id.*
82. *Id.* § 1.1, p. 20, ln. 4651–52.
83. HB 242 (HCS), § 1.1, p. 134, ln. 4651–52, 2013 Ga. Gen. Assem.
84. *Id.* § 1.1, p. 161–62, 172, ln. 5580–90, 5942–45.
85. *E.g.*, *id.* § 1.1, p. 101, ln. 3497 (clarifying the proper service of summons).
86. *Id.* § 1.1, p. 153, ln. 5286–88.
87. *Id.* § 1.1, p. 132, ln. 4557–60. Additionally, the House Committee amendments contemplate the possibility of a continuance. *Id.* § 1.1, p. 132, ln. 4565–56, 4575–76.
88. HB 242 (HCS), § 1.1, p. 147, ln. 5082–89, 2013 Ga. Gen. Assem.
89. *Id.* § 1.1, p. 152, ln. 5255–63. Additionally, the House Committee amendments broadened what the court may order to be produced at a delinquency hearing and established that "[a] delinquency

which provides that evidence adduced at a juvenile hearing generally may not be used against such child in any proceeding in any court except in the establishment of conditions of bail, plea negotiations, and sentencing criminal offenses.[90] The House Committee clarified, however, that nothing in the bill may be construed to prevent compliance with tendering confidential information pursuant to a search warrant.[91]

The House read HB 242 for the third time on February 28, 2013 and adopted the Committee substitute by a vote of 173 to 0.[92]

Consideration and Passage by the Senate

Senator Charlie Bethel (R-54th) sponsored HB 242 in the Senate.[93] After the first reading of the bill on March 1, 2013, Lieutenant Governor Casey Cagle (R) referred HB 242 to the Senate Judiciary Committee.[94]

The Senate Judiciary Committee made several changes to the bill. The Committee's amendments affected repeat delinquent acts, the effect of delinquent sexual acts, payment of costs associated with juvenile proceedings, termination of parental rights, and a variety of timing issues. First, the Committee amended the bill's definition of a "Class A designated felony act."[95] In particular, the Senate Committee substitute states that a Class A felony occurs when, inter alia, a child was previously adjudicated of committing three felonies, "*all of which*, if committed by an adult, would have been felonies in violation of any chapter of Title 16."[96] The Senate Committee applied the revised definitions in other provisions throughout the Act.[97]

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proceeding . . . shall be considered a criminal prosecution insofar as the applicability of Article 4 of Chapter 13 of Title 24." *Id.* § 1.1, p. 19, ln. 658–59.

90. *Id.* § 1.1, p. 191, ln. 6619–26.

91. *Id.* § 1.1, p. 32, ln. 1096–97.

92. State of Georgia Final Composite Status Sheet, HB 242, May 9, 2013.

93. *Id.*

94. *Id.*

95. *Compare* HB 242 (HCS), p. 13, ln. 177, 2013 Ga. Gen. Assem., *with* HB 242 (SCS), § 1-1, p. 6, ln. 175–80, 2013 Ga. Gen. Assem.

96. HB 242 (SCS), § 1-1, p. 6, ln. 175–80, 2013 Ga. Gen. Assem. (emphasis added).

97. *Id.* § 1-1, p. 6, ln. 181–87.

Under specified circumstances, the proposed House bill permitted an order of adjudication of delinquency to be modified or set aside.[98] The Senate Committee added two circumstances where an order of adjudication of delinquency may be set aside.[99] Under the amended bill, if the crime resulted from a child being "trafficked for sexual servitude," [100] or from a child being "a victim of sexual exploitation,"[101] then the court order may be modified or set aside. Additionally, the Senate Committee amended the bill to permit a child's records to be sealed when the delinquent act resulted from trafficking or sexual exploitation.[102]

Third, the Senate Committee amended the bill to clarify the circumstances that require a county to pay expenses associated with juvenile proceedings and child detention.[103] Additionally, the bill creates a 120-day deadline for judges to certify expenses that qualify for county payment.[104]

Fourth, the Senate Committee amended the bill altering and creating modified timing deadlines in a number of circumstances.[105] The amended bill extended the amount of time CHINS may be held in temporary custody or foster care prior to a "continued custody hearing."[106] Going further, the Committee increased the time the Department of Juvenile Justice (DJJ) may hold a delinquent child from eighteen to thirty months.[107] The Committee also changed the bill's effective date from July 1, 2013 to January 1, 2014.[108]

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98. HB 242 (HCS), § 1.1, p. 25, ln. 860–62, 2013 Ga. Gen. Assem.
99. HB 242 (SCS), § 1-1, p. 25, ln. 866–70, 2013 Ga. Gen. Assem.
100. *Id.* § 1-1, p. 26, ln. 869.
101. *Id.* § 1-1, p. 26, ln. 870.
102. *Id.* § 1-1, p. 165, ln. 5701–07.
103. *Id.* § 1-1, p. 27, ln. 915–19.
104. *Id.* § 1-1, p. 27, ln. 922–26.
105. *E.g.*, HB 242 (SCS), § 1-1, p. 114–15, ln. 3954–81, 2013 Ga. Gen. Assem.
106. *Id.* § 1-1, p. 114, ln. 3955–61. The revised bill increased the time a child may be held in temporary custody from twenty-four to seventy-two hours. *Id.* Further, it increased the time a child may be held in foster care from seventy-two hours to five days. *Id.*
107. *Compare* HB 242, as passed House, p. 165, ln. 5697–700, 2013 Ga. Gen. Assem., *with* HB 242 (SCS), § 1-1, p. 165, ln. 5715–17, 2013 Ga. Gen. Assem. Additionally, the Committee removed a judge's discretion to transfer high risk juveniles to nonsecure facilities. *Id.* § 1-1, p. 165, ln. 5718–23.
108. State of Georgia Final Composite Status Sheet, HB 242, May 9, 2013. The effective date was pushed back to allow enough time for judges and trial practitioners to be educated about the changes as well as provide departments enough time to understand their responsibilities. *See* Video Recording of Senate Judiciary Committee Meeting, Mar. 13, 2013 at 11 min., 58 sec. (remarks by Rep. Wendell Willard (R-51st)).

Fifth, the Senate Committee substitute made changes to HB 242 regarding the termination of parental rights. The bill creates additional methods to terminate parental rights under Code section 19-7-1. Further, the bill provides that juvenile courts shall have original jurisdiction in Article 2 proceedings regarding the termination of parental rights.[109] Additionally, the Committee amended the bill to permit a superior court to transfer a case to juvenile court under certain circumstances.[110]

The Senate Judiciary Committee favorably reported its substitute on March 14, 2013.[111] The bill was read a second time in the Senate on March 20, 2013.[112] On March 21, 2013, the Senate read the bill for a third time and passed it by a vote of 47 to 0.[113] The House agreed to the Senate substitute on March 25, 2013 by a vote of 167 to 0, and Governor Deal (R) signed the bill on May 2.[114]

The Act

The Act primarily amends Title 15 of the Official Code of Georgia Annotated to revise the juvenile court code and to reform the juvenile justice system.[115] The Act further amends Title 42 to provide for the detention of children in the Department of Corrections under certain circumstances.[116] Finally, the Act amends Title 49 to change provisions relating to the DJJ.[117]

Part I—Juvenile Code

There are eleven self-contained, fully integrated articles within Part I of the Act which are structured to provide clarity and to reduce confusion that previously existed in the juvenile courts regarding the application of various processes and timelines.[118] Significantly, the

109. HB 242 (SCS), § 1-1, p.16, ln. 554–58, 2013 Ga. Gen. Assem.
110. *Id.* § 1-1, p. 153–54, ln. 5311–21.
111. State of Georgia Final Composite Status Sheet, HB 242, May 9, 2013.
112. *Id.*
113. *Id.*
114. *Id.*
115. O.C.G.A. §§ 15-11-1 to -747 (Supp. 2013).
116. O.C.G.A. § 42-5-52(b) (Supp. 2013).
117. O.C.G.A. §§ 49-4A-1 to 11, -16, -17 (2013).
118. *See* Carter Interview, *supra* note 6. The ultimate purpose behind the reorganization is more

Act designates separate articles for dependency, delinquency, and CHINS proceedings.[119]

Article 1—General Provisions

Article 1 sets forth definitions and principles to guide all juvenile court proceedings and articulates the General Assembly's intent:

> to promote a juvenile justice system that will protect the community, impose accountability for violations of law, provide treatment and rehabilitation, and equip juvenile offenders with the ability to live responsibly and productively[,] . . . to preserve and strengthen family relationship[s], . . . to guarantee due process of law, . . . [and] to reflect that the paramount child welfare policy of this state is to determine and ensure the best interests of its children.[120]

Further, Article 1 provides seventy-six key definitions, a significant increase from the twenty definitions previously provided in Georgia's juvenile court code.[121] Notably, the Article provides definitions for "abuse,"[122] "child in need of services,"[123] "dependent child"[124] and "party."[125] The Article also creates and defines two

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consistent and reliable outcomes for Georgia's children. *Id.*

119. 2013 Ga. Laws 294.

120. O.C.G.A. § 15-11-1 (Supp. 2013).

121. *Compare* O.C.G.A. § 15-11-2 (2009) (prior to 2013 amendment), *with* O.C.G.A. § 15-11-2 (Supp. 2013).

122. O.C.G.A. § 15-11-2(2) (Supp. 2013). The definition of abuse includes physical, emotional, sexual, and prenatal abuse as well an act of family violence in the presence of a child. *Id.* Georgia's juvenile code previously failed to define abuse. *2013 Juvenile Justice Reform Legislation House Bill 242*, JUSTGeorgia, 1, http://www.justga.org/initiatives/juvenile-code/hb-242-juvenile-justice-reform-bill/HB242LongSummary_021813.pdf/view (last visited August 12, 2013) [hereinafter JUSTGeorgia].

123. O.C.G.A. § 15-11-2(11) (Supp. 2013). CHINS is a new designation that replaces what was previously referred to as an "unruly" child. JUSTGeorgia, *supra* note 122, at 1. A CHINS is "a child adjudicated to be in need of care, guidance, counseling, structure, supervision, treatment, or rehabilitation and who is adjudicated to be" habitually disobedient or a status offender, which is a child who commits an act that would not be against the law for an adult, such as skipping school, running away from school, or violating curfew. O.C.G.A. § 15-11-2(11) (Supp. 2013).

124. O.C.G.A. § 15-11-2(22) (Supp. 2013). "Dependency" replaces use of the term "deprivation" previously used in Georgia to describe cases in which children need court intervention for protection from abuse and neglect. JUSTGeorgia, *supra* note 122, at 1.

125. O.C.G.A. § 15-11-2(52) (Supp. 2013). Significantly, this definition clarifies that a child is a party to a juvenile court proceeding, which reflects a shift away from "antiquated ideas of children as

separate classes of designated felonies.[126] The creation of a two-tiered class system within the Designated Felony Act was a result of the Governor's Council's recommendations to provide discretionary adjustment of penalties based on the severity of the offense and to limit sentencing for certain less severe offenses to no more than eighteen months in secured confinement.[127]

Article 1 further contains provisions regarding exclusive and concurrent jurisdiction; calculation of time for time-limited provisions; mediation; factors to evaluate the best interest of a child; court-ordered evaluations of children; protection of statements made by children in court-ordered screenings; evaluations or treatment; court-ordered community-based risk reduction programs; and privacy laws within the juvenile court system.[128]

Article 2—Juvenile Court Administration

Article 2 contains nineteen Code sections and creates juvenile courts in every county in the state.[129] Although Article 2 contains few substantive changes, the recommendations of Governor Deal's Special Council (Special Council) are seen throughout the Article. For instance, the Special Council recommended several data collection and reporting requirements.[130] Article 2 requires the collection of statistical data for CHINS, delinquent children, and children accused of acts under the Class A or B Designated Felony Acts.[131] More specifically, Article 2 requires the collection of the child's demographic information, the type and location of the offense and the ultimate disposition of the case.[132] To aid in data collection, Article 2 provides that the Council of Juvenile Courts may inspect the records of the DJJ.[133]

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property" and "lingering notions that . . . children [in abuse and neglect cases] are just the subject of those proceedings and that the only parties should be the state and the parents." *See* Carter Interview, *supra* note 6.

126. O.C.G.A. § 15-11-2(12), -2(13) (Supp. 2013).
127. *See supra* note 50 and accompanying text.
128. *See* O.C.G.A. §§ 15-1-3 to -41 (Supp. 2013).
129. O.C.G.A. § 15-11-50 to -69 (Supp. 2013).
130. Council Report, *supra* note 36, at 18.
131. O.C.G.A. § 15-11-64 (Supp. 2013).
132. *Id.*
133. O.C.G.A. § 15-11-58(b) (Supp. 2013). The Council of Juvenile Courts is composed of all judges

Additionally, Article 2 establishes continuing educational and training requirements for judges exercising juvenile jurisdiction.[134] Under Article 2, all juvenile judges must be qualified.[135] More specifically, Article 2 requires judges and associate juvenile judges to attend at least twelve hours of continuing legal education approved by the Council of Juvenile Courts.[136] Moreover, associate judges are required to practice law for five years, be members of the State Bar of Georgia, and possess the same requirements as elected juvenile court judges.[137] Additionally, in the event that a judge exercising juvenile jurisdiction becomes ill or is otherwise disqualified, a judge pro tempore, possessing the same qualifications as other juvenile judges, will be appointed.[138]

Article 3–Dependency

Article 3 is organized into thirteen parts, contains sixty Code sections, and addresses juvenile dependency proceedings.[139] In a dependency proceeding, a child is at risk of abuse, neglect or exploitation from those responsible for her care.[140] Consequently, the dependent child is in need of the court's protection. Thus, the provisions of Article 3 are crafted so that dependency proceedings are conducted expeditiously, provide the greatest protection for the

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and associate judges exercising jurisdiction over children. O.C.G.A. § 15-11-58(a) (Supp. 2013). The Council has the power to create general policies, promulgate rules, appoint officers and inspect records of several state entities. O.C.G.A. § 15-11-58(b)(1)–(3), (5) (Supp. 2013). The Council is responsible for publishing an annual statistical report regarding the work of courts exercising control over juveniles. O.C.G.A. § 15-11-58(b)(4) (Supp. 2013).

134. O.C.G.A. § 15-11-59(d) (Supp. 2013).

135. *See* O.C.G.A. §§ 15-11-50, -60, -62(a) (Supp. 2013).

136. Associate juvenile judges are individuals appointed by a Juvenile Court Judge. O.C.G.A. § 15-11-60(a) (Supp. 2013).

137. O.C.G.A. § 15-11-60(b) (Supp. 2013). Prior to the Act, dependency proceedings were referred to as deprivation cases. JUSTGeorgia, *supra* note 122, at 1. This change both, clarifies the relationship between the court and a child in a dependency proceeding and provides consistency with national terminology. *Id.*

138. O.C.G.A. § 15-11-62(a) (Supp. 2013).

139. O.C.G.A. §§ 15-11-100 to -113, -125, -130 to -135, -145, -146, -150 to -153, -160 to -163, -170, -180, -181, -190, -191, -200 to -204, -210 to -218, -230 to -233, -240 to -244 (Supp. 2013).

140. O.C.G.A. § 15-11-100 (Supp. 2013). Additionally, the Act defines the terms "abuse," "neglect," and "dependent child" in Article 1. O.C.G.A. § 15-11-2(2), (22), (48) (Supp. 2013).

child, and produce lasting results in accordance with the child's best interests.[141]

Article 3 recognizes the dependent child as a party with distinct interests from her parents and the state in a dependency proceeding.[142] This is a significant change from the previous view that a child is the object of a dependency proceeding.[143] Moreover, the Article mandates protections to ensure the child's interests are represented in the dependency proceeding.[144] For example, Article 3 mandates the child have both an attorney and a guardian ad litem in a dependency proceeding.[145] In some circumstances, the juvenile court may even appoint a special advocate to a child in a dependency proceeding in addition to her attorney and guardian ad litem.[146] Additionally, neither a child nor her representative may waive the child's right to an attorney in a dependency proceeding.[147] Consequently, the recognition of children as parties goes a long way toward placing children on equal footing with their parents and the state during a dependency proceeding.[148]

Article 3 also establishes strict timelines for dependency proceedings and organizes these timing requirements into a single Code section.[149] As stated above, the provisions of Article 3 are crafted so that dependency proceedings are conducted expeditiously.[150] Consequently, courts may only grant a continuance or deviate from the dependency timeline upon a showing of "good-

141. O.C.G.A. §§ 15-11-100 to -104 (Supp. 2013).

142. *See* Carter Interview, *supra* note 6.

143. Oliver Interview, *supra* note 5.

144. *Id.*

145. O.C.G.A. §§ 15-11-103(a), -104(a) (Supp. 2013). Providing children with counsel poses several unresolved issues. Carter Interview, *supra* note 6. In Georgia and across the nation, great variation exists between the approaches attorneys use when representing a child in a dependency case. *Id.* Indeed, the Act tackled this question before a national consensus developed. *Id.* Consequently, the Act may serve as model legislation for other states developing similar provisions. *See id.*

146. O.C.G.A. § 15-11-104(d) (Supp. 2013). Recognizing the importance of special advocates' role in juvenile court proceedings, a court may appoint one even where a child's attorney serves as guardian ad litem. *Id.* The Act defines the term "Court Appointed Special Advocate" or "CASA" more specifically in Code section 15-11-2(16). O.C.G.A. § 15-11-2(16) (Supp. 2013). However, among other things, a CASA is a community volunteer "trained regarding child abuse and neglect, child development, and juvenile court proceedings." O.C.G.A. § 15-11-2(16)(A) (Supp. 2013).

147. O.C.G.A. § 15-11-103(f) (Supp. 2013).

148. *See* Carter Interview, *supra* note 6.

149. O.C.G.A. § 15-11-102 (Supp. 2013).

150. O.C.G.A. § 15-11-100(2) (Supp. 2013).

cause" and only where delay is not contrary to the interests of the child.[151] Additionally, even where an attorney shows good cause, the continuance may only be granted for the amount of time shown to be necessary, and the facts that demonstrated good cause shall be entered into the court record.[152]

Dependency proceedings are conducted in accordance with the child's best interests. When evaluating the child's best interests, courts consider many factors, including "[t]he child's need for permanence, including his or her need for stability and continuity of relationships with a parent, siblings, and other relatives."[153] A child may be removed from her home during the course of dependency proceedings and placed in foster care with Georgia Division of Family and Children Services (DFCS).[154] Generally, however, prior to removal, DFCS has the burden of showing that it made "reasonable efforts" to reunite or preserve the family.[155] However, in eight identified circumstances, DFCS is not required to show that it made reasonable efforts to reunite or preserve the family.[156] Of those eight circumstances, two were introduced in HB 242 to make the Article consistent with federal law.[157]

The child's continuing interest in family continuity is considered where she is removed from her home and placed in foster care.[158] For example, when a child is placed in foster care, Article 3 requires the

151. O.C.G.A. § 15-11-110(a), (b) (Supp. 2013). The Article identifies several circumstances that fail to establish good cause. O.C.G.A. § 15-11-110(c) (Supp. 2013). For example, neither the need for discovery, a pending criminal trial, nor a joint stipulation on behalf of the parties shall necessarily demonstrate good cause. *Id.*

152. O.C.G.A. § 15-11-110(b) (Supp. 2013).

153. O.C.G.A. § 15-11-105(b)(9) (Supp. 2013).

154. O.C.G.A. § 15-11-135 (Supp. 2013). A child may remain in foster care until she is eighteen years of age. After a child reaches the age of eighteen, she may receive additional assistance from DFCS in the form of independent living services. O.C.G.A. § 15-11-10(G) (Supp. 2013). Under the Act, children that "age out" of foster care may receive independent living services until the age of twenty-one. Carter Interview *supra* note 6. It is worth noting, however, that prior versions of the Act would have provided independent living services to children until the age of twenty-three. *Id.*

155. O.C.G.A. § 15-11-202(a)(1), (a)(2), (e)(1)(A) to (C) (Supp. 2013). DFCS must show that it made reasonable efforts to reunite or preserve the family at "each stage of the proceedings." O.C.G.A. § 15-11-202(d) (Supp. 2013). The Article provides guidance to determine whether DFCS's efforts were reasonable. O.C.G.A. § 15-11-202(f) (Supp. 2013).

156. O.C.G.A. § 15-11-203(a)(1) to (8) (Supp. 2013).

157. O.C.G.A. § 15-11-203(a)(6), (7) (Supp. 2013). Also consistent with federal law, Article 3 provides that the DFCS need not show reasonable efforts where parental rights to a dependent child's sibling have been terminated and not resolved. O.C.G.A. § 15-11-203(a)(8) (Supp. 2013).

158. O.C.G.A. §§ 15-11-112(a), -135(e) (Supp. 2013).

court to order reasonable visitation consistent with the child's developmental needs and best interests.[159] Additionally, DFCS shall place a dependent child with his or her siblings who are also in foster care, or submit a plan describing continuing efforts to place siblings together or explaining why such placement efforts are not appropriate.[160]

After a child is adjudicated to be dependent, the court will hold a disposition hearing. Before a court can make a disposition, it must consider the DFCS case plan.[161] Article 3 sets out factors that should be considered when evaluating the case plan.[162] During a review hearing, the court is required to make certain determinations regarding the effectiveness and status of the case plan.[163]

Article 4—Termination of Parental Rights

Article 4 is organized into six parts, contains twenty-three Code sections, and addresses the termination of parental rights (TPR).[164] The purpose of Article 4 is to:

> protect a child who has been adjudicated as a dependent child from his or her parent who is unwilling or unable to provide safety and care adequate to meet such child's physical, emotional, and mental health needs by providing a judicial process for the termination of all parental rights and responsibilities.[165]

While providing judicial process for the TPR, Article 4 emphasizes timeliness and the protection of constitutional rights as well as the child's interest in stability and permanency.[166]

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159. O.C.G.A. § 15-11-112(a) (Supp. 2013). Visitation is presumed to be unsupervised unless unsupervised visits are not in the child's best interests. O.C.G.A. § 15-11-112(b) (Supp. 2013).

160. O.C.G.A. § 15-11-135(e) (Supp. 2013). Where a dependent child and her siblings are not placed together, DFCS shall provide frequent and ongoing visitation. *Id.*

161. O.C.G.A. § 15-11-213 (Supp. 2013).

162. O.C.G.A. § 15-11-213(1) to (5) (Supp. 2013).

163. O.C.G.A. § 15-11-216(c)(1) to (8) (Supp. 2013).

164. O.C.G.A. §§ 15-11-260 to -265, -270, -280 to -285, -300 to -303, -310, -311, -320 to -323 (Supp. 2013).

165. O.C.G.A. § 15-11-260(a)(1) (Supp. 2013).

166. O.C.G.A. § 15-11-260(a)(2), (4), (5) (Supp. 2013).

The Article sets out several reasons why a court may terminate parental rights.[167] To terminate parental rights, the petitioner must prove their case by clear and convincing evidence.[168] When a party petitions for the TPR, the parent must receive notice.[169] Generally, the parent may not voluntarily surrender their parental rights to another party after the petition is filed.[170] However, the parent may surrender their parental rights to the DFCS.[171]

The Article also provides guidance for determining whether a parent has failed to provide parental control and care.[172] This guidance varies depending on whether the child is currently under the care of the parent.[173] Notably, however, the Article clearly states a parent's "reliance on prayer or other religious nonmedical means" is not necessarily a ground for finding the parent failed to provide proper care.[174]

Following the TPR, the dependent child continues to have ties to her former parent and siblings.[175] First, until a final adoption order is entered, the child has the right to collect child support and inherit property from her former parent.[176] Additionally, similar to a child's right to inheritance, a court preserves ties to the dependent child's siblings until a final adoption order has been entered.[177]

Under certain circumstances, a parent may regain parental rights. For example, after three years, a child may petition for the reinstatement of parental rights.[178]

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167. O.C.G.A. § 15-11-310(1) to (5) (Supp. 2013).
168. O.C.G.A. § 15-11-303 (Supp. 2013).
169. O.C.G.A. § 15-11-281 (Supp. 2013). The Article requires that the notice inform the parent of their rights and the consequences of a TPR hearing. O.C.G.A. § 15-11-281(c) (Supp. 2013).
170. O.C.G.A. § 15-11-265 (Supp. 2013).
171. *Id.*
172. O.C.G.A. § 15-11-311(a)(1) to (6) (Supp. 2013).
173. O.C.G.A. § 15-11-311(a), (b) (Supp. 2013).
174. O.C.G.A. § 15-11-311(c) (Supp. 2013).
175. *See* O.C.G.A. § 15-11-261 (Supp. 2013). Additionally, in its TPR order, the court must inform the parent of the existence of the Georgia Adoption Reunion Registry. O.C.G.A. § 15-11-320(b)(4) (Supp. 2013).
176. O.C.G.A. § 15-11-261(a)(1), (2) (Supp. 2013).
177. O.C.G.A. § 15-11-261(c) (Supp. 2013).
178. O.C.G.A. § 15-11-323 (Supp. 2013). It should be noted, however, that before such a petition is granted, several conditions must be met and the court must find that the restoration of parental rights is in the child's best interest. *Id.*

Article 5—CHINS

Article 5 is organized into seven parts, contains twenty-nine Code sections, and creates a framework for dealing with an entirely new category of juveniles—CHINS—created by the Act.[179] The Article "acknowledge[s] that certain behaviors or conditions occurring within a family or school environment indicate that a child is experiencing serious difficulties and is in need of services and corrective action"[180] and aims "to provide a child with a program of treatment, care, guidance, counseling, structure, supervision, and rehabilitation that he or she needs."[181] The Article favors the least restrictive environment possible for CHINS and detention is strictly limited.[182]

The Article sets forth the procedural steps and safeguards involved in adjudicating CHINS. First, the Article allows any person to file a complaint indicating a child is in need of services and further allows any person to file a petition to have the court formally adjudicate a child as a CHINS as long as the court determines such a petition is in

179. O.C.G.A. § 15-11-380 (Supp. 2013); *see also* discussion *supra* note 123 and accompanying text; JUSTGeorgia, *supra* note 122, at 1.

180. O.C.G.A. § 15-11-380(1) (Supp. 2013).

181. O.C.G.A. § 15-11-380(3) (Supp. 2013). Such comprehensive attention to the needs of a CHINS will require significant collaboration between agencies that previously have not been required to work together. *See* Carter Interview, *supra* note 6. The bill, as introduced, required mandatory conferencing to address such collaboration. *Id.* Mandatory conferencing would have convened all the agencies required to serve a particular child. *Id.* However, the General Assembly removed mandatory conferencing from the CHINS Article making it unclear how such collaboration will be implemented. *Id.* Other states designate a particular agency—one with the authority to convene all agencies—to every CHINS case. *See* Carter Interview, *supra* note 6. The lack of a mandatory conferencing provision in HB 242 may require further legislation to achieve the level of multi-agency engagement that is necessary to provide the services required for CHINS cases. *Id.*

182. *See, e.g.*, O.C.G.A. §§ 15-11-410 to 413, -442(b)(9) (Supp. 2013). The Article forbids CHINS from being detained in a facility intended for adults. O.C.G.A. § 15-11-412(c) (Supp. 2013). Furthermore, the Article only permits temporary secure detention of a minor alleged to be a CHINS if she: 1) has run away from home; 2) is habitually disobedient and ungovernable, or; 3) has failed to appear at a scheduled hearing. O.C.G.A. §§ 15-11-412, -413(a) (Supp. 2013). The Act also permits a juvenile court to have CHINS detained for up to seventy-two hours following a continued custody hearing, but only for the purpose of providing adequate time to arrange for an appropriate alternative placement pending the adjudication hearing. O.C.G.A. § 15-11-414(d) (Supp. 2013). Significantly, upon determination that a child is a CHINS, Code section 15-11-442(b)(1)–(8) "[r]etains most of the disposition options [previously] available for unruly children, including placing the child on probation and requiring restitution or community service." JUSTGeorgia, *supra* note 122, at 7. However, Code section 15-11-442(b)(9) prohibits placement of a CHINS in a secure residential facility or nonsecure residential facility. O.C.G.A. § 15-11-442(b)(9) (Supp. 2013).

the best interest of the child and the community.[183] Importantly, if a school brings the complaint, the school must indicate it first attempted to address the issue, including any potential disabilities causing the child's behavior, using education approaches.[184] Second, the Article provides all timeframes applicable to CHINS proceedings as well as the appropriate location for the proceedings.[185] Third, the Article clarifies that a child is entitled to legal representation by an attorney at all stages of CHINS proceedings, and that the court may appoint a guardian ad litem if deemed necessary to determine the best interests of the child.[186] Fourth, the Article requires a case plan if a child alleged or adjudicated to be a CHINS is placed in foster care.[187] Fifth, the Article outlines timeframes and options for disposition following a CHINS adjudication.[188] Finally, the Article provides a process for serving children found to be "unrestorably incompetent."[189]

Article 6—Delinquency

Article 6 is organized into fourteen parts, contains sixty-three Code sections, and addresses "delinquent" acts by juveniles that would be crimes if committed by adults.[190] The Act "reorganizes and clarifies

183. O.C.G.A. §§ 15-11-390, -420 (Supp. 2013). Further, "[t]he petitioner has the burden of proving the allegations of a CHINS petition by clear and convincing evidence." O.C.G.A. § 15-11-440 (Supp. 2013).

184. O.C.G.A. § 15-11-390(c)–(d) (Supp. 2013).

185. *See, e.g.*, O.C.G.A. §§ 15-11-400 to -401 (Supp. 2013). Good cause is required for a continuance to be granted. O.C.G.A. § 15-11-403 (Supp. 2013).

186. O.C.G.A. § 15-11-402 (Supp. 2013). If possible, the court should appoint a CASA, whose role is the same as in dependency proceedings under Article 3, to be the guardian ad litem. O.C.G.A. § 15-11-402(b) and (d) (Supp. 2013). Whenever possible, the court shall appoint the same attorney or guardian ad litem for a CHINS if that child was previously represented in a dependency or delinquency proceeding. O.C.G.A. § 15-11-402(e) (Supp. 2013). The court is also empowered to order parents, guardians, or legal custodians and child-serving agencies to attend CHINS hearings. O.C.G.A. §§ 15-11-423 to -425 (Supp. 2013).

187. O.C.G.A. § 15-11-404 (Supp. 2013).

188. O.C.G.A. §§ 15-11-441 to -445 (Supp. 2013). An adjudication hearing must be held within sixty days of the filing of a petition and a final disposition hearing must be held within sixty days of adjudication. O.C.G.A. §§ 15-11-441(a), -442(a) (Supp. 2013). Previously, disposition hearings were required within thirty days of adjudication. JUSTGeorgia, *supra* note 122, at 7 (referring to O.C.G.A. § 15-11-65 (2012)). A disposition order is limited to two years and must be reviewed after three months and then at least every six months until the order expires. O.C.G.A. §§ 15-11-443, -445 (Supp. 2013).

189. O.C.G.A. §§ 15-11-450 to -451 (Supp. 2013).

190. JUSTGeorgia, *supra* note 122, at 7–10.

the delinquency provisions of" Georgia's previous juvenile court code and makes several significant changes.[191] Part 1 of the Article aims to balance holding children accountable for their actions with efforts to: 1) "mitigate the adult consequences of criminal behavior;" 2) rehabilitate delinquent children through community based programs; and 3) "successfully reintegrate delinquent children into homes and communities."[192] Importantly, the Act locates all of the timelines for delinquency proceedings in one Code section for clarity and ease of reference.[193]

Significant changes regarding parties and participants in delinquency proceedings include the requirement that a prosecuting attorney represent the state in all delinquency matters;[194] that only the state and the child alleged to be delinquent are parties to delinquency proceedings;[195] and that the right to representation by an attorney may only be waived by the child under limited circumstances, and never by a parent.[196] The Act further requires that a guardian ad litem be appointed if the parent is unable to protect the child's best interest or fails to accompany the child to court.[197] Part 1 of Article 6 also addresses various matters such as when double jeopardy attaches and victims' rights in delinquency matters.[198]

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191. *Id.* at 7.

192. O.C.G.A. § 15-11-470 (Supp. 2013). Reducing recidivism was one of the primary goals of the Act and is the driving force behind the focus on evidence based community programs. *See* House Committee Feb. 13 Video, *supra* note 1, at 20 min., 08 sec. (testimony by Hon. Michael P. Boggs, Co-Chair of the Special Council on Criminal Justice Reform and Judge in the Court of Appeals of Georgia).

193. O.C.G.A. § 15-11-472 (Supp. 2013). Continuances are only granted for good cause and for as short a period of time as deemed necessary. O.C.G.A. § 15-11-477 (Supp. 2013).

194. O.C.G.A. § 15-11-473 (Supp. 2013).

195. O.C.G.A. § 15-11-474 (Supp. 2013). Although a parent is not a party to a delinquency proceeding, "[a] parent, guardian, or legal custodian of an alleged delinquent child shall have the right to notice, the right to be present in the courtroom, and the opportunity to be heard at all stages of the delinquency proceedings." O.C.G.A. § 15-11-474(b) (Supp. 2013). An attorney for a child alleged to be delinquent does not need a parent's consent to access "dependency, school, hospital, physician, or other health or mental health care records relat[ed to the] child" as long as the child provides written permission. O.C.G.A. § 15-11-475(d) (Supp. 2013).

196. O.C.G.A. § 15-11-475 (Supp. 2013). A child may not waive representation by an attorney if the child's liberty is in jeopardy. O.C.G.A. § 15-11-475(c) (Supp. 2013).

197. O.C.G.A. § 15-11-476 (Supp. 2013). Whenever possible, the guardian ad litem should be a CASA. *Id.*

198. O.C.G.A. §§ 15-11-480, -481 (Supp. 2013). "The victim of a child's alleged delinquent act shall be entitled to the same rights, notices, and benefits as the victim of a crime committed by an adult." O.C.G.A. § 15-11-481(a) (Supp. 2013).

The Act establishes several new procedural guidelines and protections pertaining to preadjudication detention of juveniles alleged to be delinquent. Article 6 aims to place an allegedly delinquent child "in the least restrictive facility available."[199] First, the Article requires the use of a detention assessment to determine if a juvenile brought before a court or to a secure or nonsecure facility should be detained or released.[200] A detention assessment is a standardized tool "that identifies and calculates specific factors that are likely to indicate a child's risk to public safety pending adjudication and the likelihood that such child will appear for juvenile proceedings."[201] Second, the Article requires all facilities used to detain children to collect and share data on the children with juvenile courts, the DJJ, the Governor's Office for Children and Families, and the Council of Juvenile Court Judges.[202] Third, the Article clarifies the circumstances in which an allegedly delinquent child age fifteen or older may be detained in an adult jail.[203] Finally, Article 6 clarifies that allegedly delinquent children are entitled to the same right to bail as adults.[204]

Article 6 also provides procedural guidance and safeguards for juveniles going through delinquency adjudicatory proceedings such as intake and arraignment;[205] the filing of a petition;[206] service of

199. O.C.G.A. § 15-11-504(b) (Supp. 2013).

200. O.C.G.A. § 15-11-505 (Supp. 2013). The Article favors release "unless it appears that . . . detention is warranted." *Id.*

201. O.C.G.A. § 49-4A-1(6) (2013).

202. O.C.G.A. § 15-11-504(f) (Supp. 2013). The Governor's Council was concerned that Georgia did not have the necessary data to make certain decisions and recommended the legislature add a uniform methodology of collecting, reporting, and tracking data and furthermore that any contracted community based programs be audited for a proven reduction in recidivism before contracts could be compensated or renewed. *See* House Committee Feb. 13 Video, *supra* note 1, at 25 min., 38 sec. (testimony by Hon. Michael P. Boggs, Co-Chair of the Special Council on Criminal Justice Reform and Judge in the Court of Appeals of Georgia).

203. O.C.G.A. § 15-11-504(c) (Supp. 2013).

204. O.C.G.A. § 15-11-507 (Supp. 2013).

205. O.C.G.A. §§ 15-11-510 to -511 (Supp. 2013). At intake and arraignment, the Act requires the juvenile court to inform the child of the contents of the complaint, the nature of the proceedings, the possible consequences following adjudication, and the child's due process rights. *Id.* Further, the Act clarifies that a court may not accept an admission of guilt at arraignment by an unrepresented child unless the child's liberty is not in jeopardy. O.C.G.A. § 15-11-511(b) (Supp. 2013).

206. O.C.G.A. § 15-11-520 (Supp. 2013). The Act changes the previous juvenile law that allowed anyone to file a delinquency petition by requiring that an attorney file a delinquency petition. *Id.*; *see also* JUSTGeorgia, *supra* note 122, at 8. Further, the petition must state whether a child is being charged with a designated felony. O.C.G.A. § 15-11-522(5) (Supp. 2013). The Act also adds factors to consider

summons;[207] discovery;[208] and adjudicatory hearings.[209] The Article further addresses the transfer of juveniles alleged to have committed certain acts to superior court, retaining certain provisions and changing or adding others. Notably, the Act retains the provision giving superior courts exclusive jurisdiction over a juvenile thirteen to seventeen years of age accused of murder, voluntary manslaughter, rape, aggravated sodomy, aggravated child molestation, aggravated sexual battery, or armed robbery with a firearm.[210] The Act also retains the provision granting the superior court concurrent jurisdiction with the juvenile court over juveniles alleged to have committed an act that would be considered a crime if committed by an adult and that would be punishable by loss of life, imprisonment for life without parole, or confinement for life in a penal institution.[211] However, the Act adds criteria the court must consider when making an optional transfer determination.[212] The Act also clarifies that statements made by the child during a transfer hearing or evaluation are not admissible if the case is transferred except as impeachment or rebuttal evidence.[213] If the court orders a transfer to superior court, the child is permitted to immediately appeal the

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when deciding if filing a petition or pursuing informal adjustment is in the public and child's best interest. O.C.G.A. § 15-11-515 (Supp. 2013); *see also* JUSTGeorgia, *supra* note 122, at 8. The factors include: 1) the nature of the alleged offense; 2) the child's age and prior record; 3) recommendations made by the complainant or victim; and 4) whether alternative community programs would more effectively serve the child than the formal court system. O.C.G.A. § 15-11-515(a)(2) (Supp. 2013). Informal adjustment is not available to children accused of a Class A or Class B designated felony act without the prosecutor's prior consent. O.C.G.A. § 15-11-515(d) (Supp. 2013).

207. O.C.G.A. §§ 15-11-530 to -531 (Supp. 2013).

208. O.C.G.A. §§ 15-11-541 to -546 (Supp. 2013). Essentially, the Act makes it clear the sanctions for violating discovery rules in superior court also apply in juvenile court. JUSTGeorgia, *supra* note 122, at 9.

209. O.C.G.A. §§ 15-11-580 to -582 (Supp. 2013).

210. O.C.G.A. § 15-11-560(b) (Supp. 2013). Some legislators would have liked the Act to repeal this provision; however, due to the contentious nature of including such a provision, sponsors of the bill elected to leave it out for now so the bill would have a better chance of passing. *See* discussion *infra* notes 323–28 and accompanying text. The Act does allow the district attorney to decline prosecution in the superior court for cause after investigation but before indictment. O.C.G.A. § 15-11-560(d) (Supp. 2013). The Act further allows the superior court to transfer cases allegedly involving voluntary manslaughter, aggravated sodomy, aggravated child molestation, or aggravated sexual battery to the juvenile court for extraordinary cause. O.C.G.A. § 15-11-560(e) (Supp. 2013).

211. O.C.G.A. § 15-11-560(a) (Supp. 2013).

212. O.C.G.A. § 15-11-562 (Supp. 2013); *see also* JUSTGeorgia, *supra* note 122, at 9. The Article also allows the court to order a transfer evaluation be conducted to inform the court's consideration of the transfer criteria. O.C.G.A. § 15-11-562(c) (Supp. 2013).

213. O.C.G.A. §§ 15-11-562(c), -563 (Supp. 2013); *see also* JUSTGeorgia, *supra* note 122, at 9.

decision, which halts further proceedings in superior court until the Court of Appeals makes a determination.[214] Children under seventeen may not be detained in adult facilities—even if their case is transferred to superior court—until they reach the age of seventeen.[215] Finally, if multiple charges arise from "a single criminal transaction," a single court must retain jurisdiction over the charges.[216]

Following adjudication, Article 6 provides guidelines for the disposition of the adjudicated delinquent child.[217] Prior to disposition, the Article requires a probation officer or other designated person prepare a written investigation report "contain[ing] such information about the characteristics, family, environment, and the circumstances affecting the child" as will assist in determining the proper disposition including the need for treatment or rehabilitation.[218] If the court orders a physical or mental examination or a risk assessment for the child, the report must include the examination or risk assessment results.[219] The report must be provided to the child's attorney and to the prosecuting attorney at least five days before the disposition hearing.[220] A disposition hearing must occur within thirty days of the adjudication hearing unless "the court makes and files

214. O.C.G.A. § 15-11-564 (Supp. 2013).
215. O.C.G.A. § 15-11-565 (Supp. 2013).
216. O.C.G.A. § 15-11-566(c) (Supp. 2013).
217. O.C.G.A. §§ 15-11-590 to -607 (Supp. 2013).
218. O.C.G.A. § 15-11-590(b) (Supp. 2013). The Article lists information that should be included in the report. *Id.*
219. O.C.G.A. § 15-11-590(c) and (d) (Supp. 2013). The Act allows the court to order a behavioral health evaluation to inform a disposition order and requires the court to do so before ordering restrictive custody for a designated felony. O.C.G.A. § 15-11-477 (Supp. 2013). A behavioral health evaluation is "a court ordered evaluation completed by a licensed psychologist or psychiatrist of a child alleged to have committed or adjudicated of a delinquent act so as to provide the juvenile court with information and recommendations relevant to the behavioral health status and mental health treatment needs of such child." O.C.G.A. § 15-11-471(2) (Supp. 2013). The court must consider a risk assessment if restrictive custody is contemplated for the child. O.C.G.A. § 15-11-601(a) (Supp. 2013). A risk assessment is "an actuarial tool, approved by the [Board of Juvenile Justice] and validated on a targeted population, that identifies and calculates specific factors that predict a child's likelihood of recidivating." O.C.G.A. § 15-11-2(65) (Supp. 2013); O.C.G.A. § 49-4A-1(11) (2013). The requirement that the risk assessment instruments be validated was a recommendation of the Governor's Council to the legislature and simply means the instruments "be proven to be what they purport to be." *See* House Committee Feb. 13 Video, *supra* note 1, at 24 min., 0 sec. (testimony by Hon. Michael P. Boggs, Co-Chair of the Special Council on Criminal Justice Reform and Judge in the Court of Appeals of Georgia). Previously, juvenile law recognized risk assessment tools but did not mandate their use, so courts did not implement or use information from risk assessments to make decisions. *See* Willard Interview, *supra* note 23.
220. O.C.G.A. § 15-11-590(f) (Supp. 2013).

written findings of fact explaining the need for delay."[221] All possible dispositional outcomes are listed, but the Act favors "the least restrictive disposition order appropriate in view of the seriousness of the delinquent act, such child's culpability, . . . the age of such child, such child's prior record, and such child's strengths and needs."[222] Furthermore, dispositional orders must be "suited to such child's treatment, rehabilitation, and welfare."[223]

Article 6 also provides guidelines for courts when considering restrictive custody based on the seriousness of the delinquent act and the juvenile offender's risk level. First, the court may not order a child adjudicated of an act that would be a misdemeanor if committed by an adult to be placed in "an institution, camp, or other facility for delinquent children operated under the direction of the court or other local public authority" unless the child has previously been adjudicated "for an offense that would be a felony if committed by an adult and [the child has] at least three other prior adjudications for [certain delinquent acts]."[224] Second, if the court is contemplating restrictive custody for a child adjudicated of committing a Class A or Class B designated felony, the Act adds factors a judge must consider.[225] Moreover, if "restrictive custody is ordered for a child classified as low risk, the court shall make a specific written finding

221. O.C.G.A. § 15-11-600(b) (Supp. 2013). The court may proceed directly to the disposition hearing following adjudication. *Id.*

222. O.C.G.A. § 15-11-601(a) (Supp. 2013). Credit for time served in a secure or nonsecure residential facility during delinquency proceedings must be applied to detention time ordered at disposition. O.C.G.A. § 15-11-604 (Supp. 2013).

223. O.C.G.A. § 15-11-601(a) (Supp. 2013). Notably, the Act adds unsupervised probation to the list of dispositional outcomes available to the court. O.C.G.A. § 15-11-601(a)(4) (Supp. 2013); *see also* JUSTGeorgia, *supra* note 122, at 10. The purpose of adding unsupervised or administrative probation as an option within the juvenile justice system is to "free up caseworkers to focus on youth to whom they can have the greatest impact." House Committee Feb. 13 Video, *supra* note 1, at 25 min., 03 sec. (testimony by Hon. Michael P. Boggs, Co-Chair of the Special Council on Criminal Justice Reform and Judge in the Court of Appeals of Georgia).

224. O.C.G.A. § 15-11-601(a)(10)(B) and (11)(B) (Supp. 2013). The Governor's Council looked to practices in other states like Virginia, Texas, Florida, and Alabama and concluded that "prohibiting status offenders and certain misdemeanors (sic) from residential commitment is an appropriate mechanism to return to Georgia's taxpayers a better public safety and fiscal investment return." *See* House Committee Feb. 13 Video, *supra* note 1, at 19 min., 16 sec. (testimony by Hon. Michael P. Boggs, Co-Chair of the Special Council on Criminal Justice Reform and Judge in the Court of Appeals of Georgia).

225. O.C.G.A. § 15-11-602(b) (Supp. 2013). Factors include: the child's age and maturity; the child's needs and best interests; the child's record, background and risk level; the nature of the offense; the community's need for protection from the child; and the victim's characteristics. *Id.*

as to why placement in restrictive custody is necessary."[226] Third, the Act makes several significant changes regarding the length of time a child adjudicated of a designated felony must serve in secure confinement.[227] The Act eliminates mandatory minimum sentences and establishes different maximum terms depending on the class level of the designated felony.[228] The Act further provides DJJ with flexibility in its placement of children adjudicated of Class B designated felonies, depending on their risk level.[229] If the child is deemed low-risk, DJJ may assign the child to a nonsecure residential facility for the entire term.[230] If the child is deemed moderate or high-risk, the child must serve the first half of the term in restrictive custody in a secure residential facility, but DJJ may place the child in a nonsecure residential facility during the second half of the child's term.[231] Finally, the Act allows a child to move the court for early release at any time and further allows a renewed motion to be filed six months after the initial motion is denied.[232]

Article 7—Competency in Delinquency

Article 7 contains eleven Code sections and "set[s] forth procedures for a determination of whether a child is incompetent to proceed."[233] The Article further establishes "a mechanism for the development and implementation of competency remediation services, when appropriate."[234] The Act changes previous law regarding competency in juvenile proceedings primarily by creating

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226. *Id.*
227. JUSTGeorgia, *supra* note 122, at 10.
228. *Id.* Previously, "if a court determine[d] that restrictive custody [was] required, the child [had to] be committed to DJJ for five years and [had to] serve a minimum of one year in secure confinement, followed by at least 12 months of intensive supervision." *Id.* (referring to O.C.G.A. § 15-11-63(e) (2009)). The Act provides a maximum term of sixty months for Class A designated felony acts and a maximum term of thirty-six months, only eighteen of which may be spent in restrictive custody, for Class B designated felony acts. *Id.*; *see also* O.C.G.A. § 15-11-602(c) and (d) (Supp. 2013).
229. JUSTGeorgia, *supra* note 122, at 10.
230. O.C.G.A. § 15-11-602(d)(3) (Supp. 2013).
231. O.C.G.A. § 15-11-602(d)(2) (Supp. 2013).
232. O.C.G.A. § 15-11-602(f)(2)(A) (Supp. 2013). Previously, a motion for early release could not be filed within the first year of restrictive custody and a renewed motion could not be filed for a year after a motion was denied. JUSTGeorgia, *supra* note 122, at 10 (referring to O.C.G.A. § 15-11-63(e)(2) (2009)).
233. O.C.G.A. § 15-11-650(1) (Supp. 2013).
234. O.C.G.A. § 15-11-650(2) (Supp. 2013).

different categories of incompetent children—depending on the permanency of their incompetency—and establishing different responses depending on which category of competency exists in a particular case.[235] If a child under the age of thirteen is accused of committing a serious violent felony, the Act requires the court to order a competency evaluation before proceeding unless both parties stipulate to the child's incompetency.[236] If the court orders competency remediation services, the Act requires certain information to be included in such orders, establishes timelines for service providers to report on the juvenile's progress, and only allows a licensed psychologist or psychiatrist to report to the court whether the child has achieved competency.[237] Finally, the Article establishes timelines and other requirements for competency review hearings.[238]

Article 8—Parental Notification[239]

Article 8, entitled the "Parental Notification Act," contains eight Code sections and addresses the notification of an unemancipated child's parents or guardians where the child seeks to have an abortion.[240] The Article provides that, "[n]o physician or other person shall perform an abortion upon an unemancipated minor[.]"[241] A person may, however, perform an abortion upon an unemancipated child if one of five situations is present.[242] First, a person may

235. *See* JUSTGeorgia, *supra* note 122, at 11. Previously the court responded to all incompetent children in the same way. *Id.*; *see also* O.C.G.A. §§ 15-11-150 to -155 (2009). First, if the court determines a CHINS is currently incompetent but may be remediated, the court must either dismiss the petition without prejudice or order competency remediation services for the juvenile. O.C.G.A. § 15-11-656(a)(1) (Supp. 2013). Second, if the court finds a child alleged to be delinquent is currently incompetent but may be remediated, the court may order competency remediation services. O.C.G.A. § 15-11-656(a)(2) (Supp. 2013). Third, if a juvenile is found to be "unrestorably incompetent . . . the court shall dismiss the petition, appoint a plan manager, and order that procedures for a comprehensive services plan be initiated." O.C.G.A. § 15-11-658(a) (Supp. 2013). Finally, if a juvenile is found temporarily incompetent due to age or immaturity, the court shall proceed as if that juvenile is unrestorably incompetent. O.C.G.A. § 15-11-659 (Supp. 2013).

236. O.C.G.A. § 15-11-652(b) (Supp. 2013).

237. O.C.G.A. § 15-11-657 (Supp. 2013).

238. O.C.G.A. § 15-11-660 (Supp. 2013).

239. JUSTGeorgia, *supra* note 122, at 11. Article 8 does not make substantive changes to the current law, but reorganizes and renumbers relevant Codes sections to correspond with the Act.

240. O.C.G.A. § 15-11-680 (Supp. 2013).

241. O.C.G.A. § 15-11-682(a) (Supp. 2013).

242. O.C.G.A. § 15-11-682(a) and (b); O.C.G.A. § 15-11-686 (Supp. 2013).

perform an abortion upon an unemancipated child when a parent or guardian accompanies her to the facility for the procedure.[243] Second, a person may perform an abortion upon an unemancipated child when the parent or guardian is notified of the abortion, in person or over the phone, at least twenty-four hours before the procedure is performed.[244] Third, a person may perform an abortion upon an unemancipated child when the parent or guardian is notified in writing before the procedure is performed.[245] The procedure may be performed twenty-four hours after delivery of the notice.[246] Additionally, a child must consent in writing before an abortion may be performed under any of the three preceding scenarios.[247]

Fourth, a person may perform an abortion on an unemancipated child where a court grants the child's petition of waiver.[248] When a child petitions the court for a waiver, the court will hold a hearing.[249] The hearing is conducted in such a way as to preserve the child's anonymity.[250] Additionally, the court will assist the child in preparing a petition,[251] and refrain from charging the child fees.[252] A court will grant a child's petition for waiver under two circumstances.[253] First, the court will grant a waiver where the child shows that she is well-informed and capable of making her own decision independently of her parent or guardian.[254] Second, the court will grant a waiver where the child shows that notifying the child's parent or guardian is not in the child's best interest.[255]

Fifth, a doctor may perform an abortion upon an unemancipated child without notifying the parent, where an abortion is required immediately based on the physician's best clinical judgment.[256]

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243. O.C.G.A. § 15-11-682(a)(1)(A) (Supp. 2013).
244. O.C.G.A. § 15-11-682(a)(1)(B) (Supp. 2013).
245. O.C.G.A. § 15-11-682(a)(1)(C) (Supp. 2013).
246. *Id.*
247. O.C.G.A. § 15-11-682(a)(2) (Supp. 2013).
248. O.C.G.A. § 15-11-682(b) (Supp. 2013).
249. *Id*.
250. *Id*.
251. O.C.G.A. § 15-11-682(b) (Supp. 2013).
252. O.C.G.A. § 15-11-684(f) (Supp. 2013).
253. O.C.G.A. § 15-11-684(c)(1) to (2) (Supp. 2013).
254. O.C.G.A. § 15-11-684(c)(1) (Supp. 2013).
255. O.C.G.A. § 15-11-684(c)(2) (Supp. 2013).
256. O.C.G.A. § 15-11-686 (Supp. 2013).

Where a person fails to comply with the Parental Notification Act, he or she commits a misdemeanor.[257]

Article 9—Access to Hearing and Records

Article 9 contains eleven Code sections and addresses access to juvenile court hearings and related records.[258] First, Article 9 establishes guidelines for access to juvenile court hearings.[259] Under Article 9, the general public is excluded from juvenile proceedings that are not designated as open to the public.[260] In most cases, the general public may attend juvenile proceedings where that child is accused of committing an offense under either the Class A or Class B Designated Felony Act.[261] Certain individuals and entities may, however, move to close a juvenile court proceeding.[262] Additionally, the court may exclude individuals from juvenile court proceedings.[263] Indeed, under some circumstances, the court may "temporarily exclude" a child from a juvenile court proceeding.[264] In some cases, where the public is not generally permitted to attend a hearing, such as dispositional and dependency hearings, the court may permit the public to attend at its discretion.[265]

Second, Article 9 establishes guidelines for access to juvenile court and related investigatory records.[266] First, the Article sets out procedures where by a child may move to seal records of his or her juvenile court proceeding.[267] Additionally, Article 9 provides guidelines for determining whether a juvenile's record may be sealed.[268] Under some circumstances, the court may seal a juvenile's record *sua sponte*.[269] For example, where a child was adjudicated of

257. O.C.G.A. § 15-11-688 (Supp. 2013).
258. O.C.G.A. §§ 15-11-700 to -711 (Supp. 2013).
259. O.C.G.A. § 15-11-700 (Supp. 2013).
260. O.C.G.A. § 15-11-700(j) (Supp. 2013).
261. O.C.G.A. § 15-11-700(b)(1) (Supp. 2013).
262. O.C.G.A. § 15-11-700(d) (Supp. 2013).
263. *Id*.
264. O.C.G.A. § 15-11-700(g) (Supp. 2013). More specifically, the court may exclude a child from a TPR hearing unless allegations of delinquency or CHINS evidence is being heard. *Id*.
265. O.C.G.A. § 15-11-700(b)(5) and (6) (Supp. 2013).
266. O.C.G.A. §§ 15-11-701 to -708 (Supp. 2013).
267. O.C.G.A. § 15-11-701(a)(b) (Supp. 2013).
268. O.C.G.A. § 15-11-701(b) (Supp. 2013).
269. *Id*.

committing a delinquent sexual act as a result of human trafficking or sexual exploitation, the court may seal the juvenile's record on its own accord.[270] Moreover, a disposition in a juvenile court proceeding generally may not be used against the individual in the future.[271] Article 9 also governs access to police records that are related to juvenile proceedings.[272] For example, juvenile records must be stored separately from adult records.[273] Additionally, these juvenile records are generally unavailable to the public.[274] Some individuals, however, may inspect non-public juvenile records.[275]

Article 10—Emancipation

Article 10 contains nine Codes sections and addresses emancipation.[276] The Act reorganizes previous juvenile law to improve clarity without making substantial changes.[277] Emancipation terminates the parent's rights to "custody, control, services, and the earnings of the child"[278] and may occur in one of two ways.[279]

First, emancipation may occur by operation of law when a child is validly married, turns eighteen, or is serving in the armed services on active duty.[280] Second, emancipation may occur pursuant to a petition filed with the court.[281] In order to file a petition for emancipation, a child must be at least sixteen years of age.[282] A hearing is held when a child petitions for emancipation.[283] The court will grant the petition

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270. *Id*.

271. O.C.G.A. § 15-11-703 (Supp. 2013). The Act expands the use of delinquency records in superior court to allow records of evidence or disposition from a delinquency case to be used in sentencing for all criminal cases whereas previously, such records were only admissible in felony proceedings in superior court. *Compare* O.C.G.A. § 15-11-79.1 (2009) (prior to 2013 amendment), *with* O.C.G.A. § 15-11-703 (Supp. 2013).

272. O.C.G.A. §§ 15-11-702, -706, -708 (Supp. 2013).

273. O.C.G.A. § 15-11-708(a) (Supp. 2013).

274. O.C.G.A. § 15-11-708(b) (Supp. 2013). For example, the Act decreases the access school officials have to documents pertaining to juvenile proceedings. JUSTGeorgia, *supra* note 122, at 12.

275. O.C.G.A. § 15-11-708(c) (Supp. 2013).

276. O.C.G.A. §§ 15-11-720 to 728 (Supp. 2013).

277. *See* JUSTGeorgia, *supra* note 122, at 12.

278. O.C.G.A. § 15-11-2(29) (Supp. 2013).

279. O.C.G.A. § 15-11-720 (Supp. 2013).

280. *Id.*; O.C.G.A. § 15-11-720(b)(1) to (3) (Supp. 2013).

281. O.C.G.A. § 15-11-720(a) (Supp. 2013).

282. *Id*. Under Article 10, a valid petition must meet several requirements. O.C.G.A. § 15-11-721 (Supp. 2013).

283. O.C.G.A. § 15-11-723 (Supp. 2013).

if emancipation is in the best interest of the child and the child has demonstrated that she is able to care for herself.[284]

Article 11—Child Advocate for the Protection of Children

Article 11, is entitled the "Georgia Child Advocate for the Protection of Children Act."[285] The Article contains eight Code sections and creates both the "Office of the Child Advocate for the Protection of Children" and the "Child Advocate Advisory Committee."[286] First, the Office of the Child Advocate for the Protection of Children was created to provide "oversight of persons, organizations, and agencies responsible for providing services to or caring for children who are victims of child abuse and neglect or whose domestic situation requires intervention by the state."[287] Additionally, Article 11 establishes procedures for the appointment of the Child Advocate (Advocate) and sets out the Advocate's duties and powers.[288] For instance the Advocate has the duty to investigate complaints regarding agencies, public officials or public agents adversely affecting children.[289] In order to implement this responsibility, the Advocate is given the power to: investigate records; inspect agency facilities, offices, and personnel; and communicate with the affected children.[290] Moreover, Article 11 makes it a misdemeanor for any individual to willfully interfere with an investigation conducted by the Office of the Child Advocate for the Protection of Children.[291]

Second, Article 11 creates the Child Advisory Advocate Committee.[292] Among other things, the Committee is responsible for

284. O.C.G.A. § 15-11-725. During the trial the child bears the burden of proof. O.C.G.A. § 15-11-724 (Supp. 2013).
285. O.C.G.A. § 15-11-740(a) (Supp. 2013).
286. O.C.G.A. §§ 15-11-740 to -747 (Supp. 2013).
287. O.C.G.A. § 15-11-740(b) (Supp. 2013).
288. O.C.G.A. §§ 15-11-740(b), -743(1) to (7), -744(a) (Supp. 2013).
289. O.C.G.A. § 15-11-743(1) (Supp. 2013).
290. O.C.G.A. § 15-11-744(a) to (c) (Supp. 2013).
291. O.C.G.A. § 15-11-745(b) (Supp. 2013). Article 11 also prohibits both discrimination and retaliation against individuals that file a complaint with the Office of the Child Advocate for the Protection of Children. O.C.G.A. § 15-11-745(a) (Supp. 2013).
292. O.C.G.A. § 15-11-747 (Supp. 2013).

providing a report on the effectiveness of the Office of the Child Advocate for the Protection of Children.[293]

Part II–The Placement of Juvenile Offenders

Part II amends Code section 42-5-52 by allowing the DJJ to transfer a juvenile age sixteen or older who has committed a designated felony act to the Department of Corrections if the juvenile "presents a substantial danger to any person at or within a DJJ facility."[294]

Part III—Department of Juvenile Justice and Children and Youth Services

Part III amends certain provisions within Chapter 4A of Title 49 pertaining to the DJJ. The Act defines several new key terms, including "child in need of services," "detention assessment," "evidence based programs or practices," "juvenile detention facility," "recidivism," "risk and needs assessment," and "risk assessment."[295] The Act further amends Code section 49-4A-2 by adding three additional duties for the Board of Juvenile Justice. First, the Act requires the Board to consult with the Governor's Office for Children and Families and the Council of Juvenile Court Judges in the development of detention assessment, risk assessment, and risk and needs assessment tools and to validate those tools at least every five years.[296] Second, the Act requires the Board ensure that evidence based programs and practices are used with children committed to the DJJ.[297] Third, the Act requires the DJJ to collect and analyze data and

293. O.C.G.A. § 15-11-747(b) (Supp. 2013). The Committee also meets to discuss patterns of treatment and service of children, policy, and potential improvements. O.C.G.A. § 15-11-747(b)(1) to (3) (Supp. 2013).

294. O.C.G.A. § 42-5-52(b) (Supp. 2013).

295. O.C.G.A. § 49-4A-1(2) to (11) (2013). Code section 49-4A-1(1) also clarifies that "Board" means Board of Juvenile Justice. O.C.G.A § 49-4A-1(1) (2013).

296. O.C.G.A. § 49-4A-2(b)(3) (2013); s*ee also supra* note 219 and accompanying text for discussion about mandated use of risk assessment tools.

297. O.C.G.A. § 49-4A-2(b)(4) (2013); *see also* O.C.G.A. § 49-4A-3(b) (2013). Moreover, the Act requires that any contracts DJJ makes with service providers to delinquent children be performance-based and include "financial incentives or consequences based on the results achieved by the contractor." O.C.G.A. § 49-4A-7(c) (2013).

performance outcomes and provide an annual report to the Governor and legislature.[298] Finally, Part III amends various statutes to replace terms such as "youth development center" and "regional youth detention center" with "secure residential facility" and "nonsecure residential facility."[299]

Part IV—Cross References

Part IV amends sixty-two Code sections.[300] Many of the amendments within Part IV merely renumber related statutes to correspond with the rewrite of the juvenile justice code.[301] Other amendments change the wording of a related Code section to correspond with the language used within the Act.[302] Further, some amendments reflect the recommendations of stakeholders, such as law enforcement.[303] Part IV also adds Code section 15-19-6.1 which

298. O.C.G.A. § 49-4A-2(b)(5) (2013); *see also* discussion *supra* note 202 and accompanying text. Additionally, the Act specifies the data that must be recorded to evaluate the effectiveness of treatment methods. O.C.G.A. § 49-4A-8(n)(1) (2013). The Act authorizes DJJ to access all required records from the courts and law enforcement agencies and requires DJJ to cooperate and coordinate with courts, the Governor's Office for Children and Families, and all other agencies involved in the data collection. O.C.G.A. § 49-4A-8(n)(1) and (2) (2013).

299. *See, e.g.*, O.C.G.A. §§ 49-4A-5, -7 (2013).

300. O.C.G.A. § 1-2-8 (Supp. 2013); O.C.G.A. § 5-7-1(a)(6) (2013); O.C.G.A. § 13-3-20 (Supp. 2013); O.C.G.A. § 15-8-6.1 (Supp. 2013); O.C.G.A. §§ 15-23-7(e), -10 (Supp. 2013); O.C.G.A. § 16-5-45(a)(1) and (3) (Supp. 2013); O.C.G.A. § 16-10-52(a)(3) (Supp. 2013); O.C.G.A. §§ 16-11-101.1(c)(3), -127.1(b) (Supp. 2013); O.C.G.A. § 16-11-132(d) (Supp. 2013); O.C.G.A. § 16-12-1(a) to (c) (Supp. 2013); O.C.G.A. § 16-12-141.1(c), (e), (g) (Supp. 2013); O.C.G.A. § 17-4-25.1 (2013); O.C.G.A. §§ 17-7-50.1, -130 (2013); O.C.G.A. §§ 17-10-1(e), -14 (2013); O.C.G.A. § 17-14-2(5) (2013); O.C.G.A. § 17-15-13(d) (2013); O.C.G.A. § 17-16-2(c) (2013); O.C.G.A. §§ 19-7-1(b), -(5)(b)(1) (Supp. 2013); O.C.G.A. § 19-7-22(d) (Supp. 2013); O.C.G.A. §§ 19-8-10(a)(4), -11(a)(3)(D), -13(g) (Supp. 2013); O.C.G.A. §§ 19-10A-4, -6 (Supp. 2013); O.C.G.A. § 19-13-20 (Supp. 2013); O.C.G.A. § 20-1A-30(3) (Supp. 2013); O.C.G.A. §§ 20-2-133(b)(1), -670(b), -671, -690.2(c) and (g), -699, -751.2(d), -766.1, -768(a) (Supp. 2013); O.C.G.A. § 20-3-660(1)(B) (Supp. 2013); O.C.G.A. § 24-6-603(b) (2013); O.C.G.A. § 24-12-21(q) (2013); O.C.G.A. § 31-22-9.2(c) (Supp. 2013); O.C.G.A. § 35-3-33(c) (Supp. 2013); O.C.G.A. § 35-8-2(7)(B), (8)(B) and (8)(B.1) (Supp. 2013); O.C.G.A. § 36-32-10 (Supp. 2013); O.C.G.A. § 40-5-75(g) (Supp. 2013); O.C.G.A. § 40-6-391(l) (Supp. 2013); O.C.G.A. § 44-5-41 (Supp. 2013); O.C.G.A. §§ 45-9-81(7), -101(7) (Supp. 2013); O.C.G.A. §§ 45-20-1(a), -6(a) (Supp. 2013); O.C.G.A. §§ 49-5-3(3), (5), (12), (16), -8(a)(1) and (2), -41(e), -60(3), -110(2), -131(2), -154, -281(a)(15) and (18) (2013); O.C.G.A. § 52-7-12 (Supp. 2013).

301. *See, e.g.*, O.C.G.A. § 5-7-1 (Supp. 2013) (replacing Code section 15-11-28 with 15-11-560).

302. *See, e.g.*, O.C.G.A. § 16-5-45(a)(1) (Supp. 2013) (changing "deprived" to "dependent" and "unruly" to "child in need of services").

303. *See* O.C.G.A. § 17-4-25.1 (2013); *see also* House Committee Feb. 13 Video, *supra* note 1, at 26 min., 34 sec. (testimony by Hon. Michael P. Boggs, Co-Chair of the Special Council on Criminal Justice Reform and Judge in the Court of Appeals of Georgia).

modifies the definition of prosecuting attorney.[304] The amended definition acknowledges that state, county, and local governments have limited resources.[305] Consequently, in some circumstances, a district attorney may not be available to represent the state in juvenile court proceedings.[306] The amended definition of prosecuting attorney permits the court to appoint a qualified attorney to represent the state in prosecuting a delinquency case.[307] This amendment ensures that, where a district attorney is unable to represent the state because of staffing concerns, a qualified attorney represents the state's interests.[308]

Analysis

The rewrite of Georgia's Juvenile Court Code was a massive undertaking spanning the breadth of nearly a decade.[309] The resulting Act reflects years of public input, well-researched and documented improvements, and thoughtful collaboration among diverse stakeholders.[310] The unanimity of the Act's passage during the 2013 legislative session speaks volumes of its quality.[311] However, the sheer length of the Act suggests revisions will likely follow in future legislative sessions.[312] Furthermore, the Act's sponsors suggest that while the Act sets forth a solid foundation for an improved juvenile court code, certain ongoing juvenile justice reform efforts are likely to occur within the next few years to address areas of the juvenile justice system not contemplated by the Act.[313] For example, the proposed model code developed in 2008 contained recommendations to "[i]ncrease the age of juvenile court jurisdiction to 18 for all children" and to "[r]epeal SB 440 and all other automatic waiver

304. O.C.G.A. § 15-18-6.1 (Supp. 2013).
305. *See* House Committee Feb. 19 Video, *supra* note 67, at 0 min., 0 sec. (remarks by Rep. Wendell Willard (R-51st)).
306. *Id*.
307. O.C.G.A. § 15-18-6.1(d) (Supp. 2013).
308. O.C.G.A. § 15-18-6.1 (Supp. 2013); *see also* House Committee Feb. 19 Video, *supra* note 67, at 20 min., 59 sec. (remarks by Rep. Wendell Willard (R-51st)).
309. *See* Carter Interview, *supra* note 6.
310. *Id.*
311. *See* Oliver Interview, *supra* note 5.
312. *See* Carter Interview, *supra* note 6.
313. *See* Oliver Interview, *supra* note 5; *see also* Willard Interview, *supra* note 23.

laws and allow only for discretionary judicial waiver of juvenile court jurisdiction through a transfer hearing[,]"[314] but neither were included in the Act due to their potentially divisive nature.[315] Finally, legislative action may be necessary to address concerns over how the changes required by HB 242 will be initially funded.

SB 440 was enacted in 1994 in response to a rise in juvenile violent crime clogging up juvenile courts with "'hardened youth.'"[316] SB 440 granted the superior courts exclusive jurisdiction over juveniles accused of murder, voluntary manslaughter, rape, aggravated sodomy, aggravated child molestation, aggravated sexual battery, and armed robbery committed with a firearm.[317] Prior to passage of SB 440, juvenile courts had concurrent jurisdiction with superior courts over those offenders and a lengthy hearing was required to transfer a case from juvenile to superior court.[318] SB 440 generally eliminated the juvenile court's jurisdiction over cases involving the aforementioned crimes while permitting the district attorney to decline to prosecute such children and allowing the superior court to transfer jurisdiction to the juvenile court under certain circumstances.[319] Nearly two decades after the passage of SB 440, some legislators, including Representative Oliver (D-82nd), questioned the efficacy of trying juveniles as adults.[320] However, aware the topic would likely entail extensive debate, some sponsors of the HB 242 felt it would be wise to table the issue for future legislative action in order to assure passage of the Act.[321]

Likewise, sponsors of the Act chose to table debate about raising the age of juvenile court jurisdiction to age eighteen.[322] Georgia is one of only twelve states that does not establish seventeen as the upper age limit of juvenile court jurisdiction.[323] Raising the age

314. McGrath, *supra* note 7, at v.
315. *See* Willard Interview, *supra* note 23.
316. Amy Wolverton, *Juvenile Proceedings, Parental Rights,* 11 Ga. St. U. L. Rev. 81, 82 (1994).
317. *See* O.C.G.A. § 15-11-560(b) (Supp. 2013) (formerly codified at Code section 15-11-5(b)(2)(A)).
318. Wolverton, *supra* note 316, at 83.
319. *Id.*
320. *See* Oliver Interview, *supra* note 5.
321. *See* Willard Interview, *supra* note 23.
322. *Id.*
323. Sarah Alice Brown, Trends in Juvenile Justice State Legislation: 2001–2011, Nat'l Conference of State Legislatures, 4 (2012), *available at* http://www.ncsl.org/documents/cj/trendsinjuvenilejustice.pdf.

would create uniformity with recent constitutional determinations about permissible punishments for children under eighteen by the U.S. Supreme Court based on the latest research about adolescent brain development and maturity.[324] Sponsors of the Act recognized that it was premature to attempt to raise the juvenile court jurisdictional age due to a lack of information about the fiscal impact and whether the DJJ was equipped to handle the influx of cases involving seventeen year olds.[325] Interestingly, however, research indicates that moving sixteen and seventeen year old juveniles from the adult criminal justice system into the juvenile justice system generally gives a $3 return in benefits for every $1 in cost.[326] Time will tell whether legislation broadening the juvenile courts' jurisdiction will be introduced or passed, but the debate will likely involve asking who should bear the costs of prosecuting and punishing this cohort of children.

In fact, while the Act sets forth a vision and framework for many much-needed changes, only time will tell if the earmarked money and anticipated savings will sufficiently fund the changes the Act requires of counties and courts throughout the state. For instance, Governor Nathan Deal (R) pledged $5 million of his budget for the 2014 fiscal year to fund evidence based community alternatives to detention.[327] As of the June 21, 2013 deadline for grant applications, grant proposals amounting to $10.2 million—over double the amount allocated—were submitted by 57 of Georgia's 159 counties.[328] Some counties are concerned that the additional costs of many expanded juvenile court requirements will fall on local taxpayers in the absence of sufficient state funding.[329] For example, in Chatham County, there

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324. *See, e.g.*, Miller v. Alabama, 132 S. Ct. 2455, 2458 (2012) (holding mandatory life without parole for juveniles under eighteen unconstitutional), Graham v. Florida, 560 U.S. 48, 130 S. Ct. 2011, 2030 (2010) (holding life without parole for non-homicide juvenile offenders under eighteen unconstitutional), Roper v. Simmons, 543 U.S. 551, 568, 125 S. Ct. 1183, 1194 (2005) (holding the death penalty for juveniles under eighteen unconstitutional).

325. *See* Willard Interview, *supra* note 23.

326. Brown, *supra* note 323, at 4–5.

327. *See* Willard Interview, *supra* note 23.

328. Rhonda Cook, *Applications for Grants Could Cover 75 Percent of Kids at Risk of Becoming Criminals*, ATLANTA J.-CONST., July 4, 2013, *available at* http://www.ajc.com/news/applications-for-grants-could-cover-75-percent-of-/nYc3b/. Grant monies totaling $4.7 million were awarded to forty-four counties in July 2013. *Juvenile Programs in 44 Counties Awarded New Grants,* JUSTGeorgia, www.justga.org/juvenile-programs-in-44-counties-awarded-new-grants (last visited July 28, 2013).

329. Marcus E. Howard, *Chatham County Braces for Juvenile Justice Reform Costs*, SAVANNAH

are concerns over how to fund the new requirement that delinquent and dependent juveniles all be represented by counsel.[330] Moreover, the requirement that the district attorney's office handle certain responsibilities previously handled by court workers is also projected to increase costs.[331] In order to allay some of these fears, Governor Deal (R) pledged to continue to support state funding as long as he is governor.[332] The Governor further anticipates the Act will save the state a significant amount of money which will subsequently be re-invested in the local programs producing documented positive results in their communities.[333] Overall, optimism is reasonable based on the research provided by the Pew Center to the Governor's Special Council that found the changes required by HB 242 will save taxpayer dollars in the long run.[334] Even so, local counties are understandably nervous about implementing the changes as they await the investment from those projected savings.

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MORNING NEWS, June 15, 2013, *available at* http://www.savannahnow.com/news/2013-06-15/chatham-county-braces-juvenile-justice-reform-costs#.UexbEY2yCn9.

330. *Id.*

331. *Id.*

332. *See* Willard Interview, *supra* note 23.

333. *Id.* Once the Act goes into effect, a savings of as much as $85 million is expected over a five year period. Cook, *supra* note 328.

334. Council Report, *supra* note 36, at 2.