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COURTS Juvenile Proceedings, Parental Rights: Provide that the Superior Court Shall Have Exclusive Jurisdiction over Matters Concerning Children Thirteen to Seventeen Years of Age Who are Alleged to Have Committed Certain Violent Felonies; Provide that the Department of Corrections Shall Have Custody over Juveniles Ages Thirteen to Seventeen Who Are Convicted of Certain Violent Felonies; Provide for Notification to the Superior Court When a Person Charged With Certain Violent Felonies Appears Thirteen to Seventeen Years of Age; Provide That a Juvenile May Serve Up to Ninety Days in a Youth

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Development Center for a Delinquent Act; Amend the Definition of Designated Felony Act; Provide for Fingerprinting of Juveniles Sentenced to the Department of Corrections; Provide for Housing of Juveniles Committed to the Department of Corrections

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COURTS

Juvenile Proceedings, Parental Rights: Provide that the Superior Court Shall Have Exclusive Jurisdiction over Matters Concerning Children Thirteen to Seventeen Years of Age Who Are Alleged to Have Committed Certain Violent Felonies; Provide that the Department of Corrections Shall Have Custody over Juveniles Ages Thirteen to Seventeen Who Are Convicted of Certain Violent Felonies; Provide for Notification to the Superior Court When a Person Charged With Certain Violent Felonies Appears Thirteen to Seventeen Years of Age; Provide that a Juvenile May Serve Up to Ninety Days in a Youth Development Center for a Delinquent Act; Amend the Definition of Designated Felony Act; Provide for Fingerprinting of Juveniles Sentenced to the Department of Corrections; Provide for Housing of Juveniles Committed to the Department of Corrections

CODE SECTIONS: O.C.G.A. §§ 15-11-5 (amended), -5.1 (new), -20, -35, -37, -60, 17-10-14 (amended)
BILL NUMBER: SB 440
ACT NUMBER: 1125
SUMMARY:

The Act provides measures and procedures to enhance school safety and changes the penalty provisions relating to the crimes of aggravated assault and aggravated battery when these crimes are committed against a student or teacher or other school personnel within a school safety zone.¹ The Act also provides that juvenile offenders who commit certain violent felonies including murder, voluntary manslaughter, rape, aggravated sodomy, aggravated child molestation, aggravated sexual battery, and armed robbery committed with a firearm shall be tried as adults in the superior court. Upon conviction, these juvenile offenders will be sentenced directly to the custody of the Department of Corrections for placement in designated youth confinement units operated by the Department of Corrections.

Juveniles thirteen to seventeen who are sentenced to the custody of the Department of Corrections are to be housed in a designated youth confinement unit until age seventeen, at

1. This *Peach Sheet* discusses only the provisions of SB 440 dealing with Juvenile Proceedings.

which point they may be housed in any Department of Corrections unit. Fingerprints of all juveniles sentenced to the custody of the Department of Corrections may be processed in the same manner as adult fingerprints. After investigation and for extraordinary cause, the superior court or district attorney may transfer jurisdiction over a juvenile offender ages thirteen to seventeen alleged to have committed certain violent felonies to the appropriate juvenile court. The superior court may transfer any case of a juvenile ages thirteen to seventeen alleged to have committed certain violent felonies to the appropriate juvenile court for disposition if the juvenile was convicted of a lesser included offense by the superior court. A designated felony act includes juvenile cases transferred from the exclusive jurisdiction of the superior court to the juvenile court. The Act provides that an official in charge of a jail or adult detention facility must notify the superior court if a person appearing to be thirteen to seventeen years old, who is alleged to have committed certain violent felonies, is admitted to the facility. If a court concludes that a child committed a delinquent act, the court may sentence the juvenile to up to ninety days in a regional youth development center.

EFFECTIVE DATE: May 1, 1994

History

One of the most serious problems facing Georgians is exposure to violent crime.² Juvenile violence also has been on the rise.³ Arrests for Georgians age sixteen and under for violent crimes rose from 1040 in 1990 to 1803 in 1992.⁴ Juvenile courts have been clogged with cases involving "hardened youth."⁵ Consequently, Governor Zell Miller proposed legislation allowing the "adult" courts to hear cases in which

2. Telephone Interview with Sen. Mark Taylor, Senate District No. 12 (Mar. 29, 1994) [hereinafter Taylor Interview].

3. Rhonda Cook, *Juvenile Violence Raises Legislative Ire*, ATLANTA J. & CONST., Jan. 9, 1994, at H2.

4. *Id.*

5. Telephone Interview with Sen. Guy Middleton, Senate District No. 50 (Mar. 29, 1994).

juveniles are accused of committing certain violent felonies.⁶ Even the United States Senate “toughened its crime bill last November when it adopted an amendment by Senator Carol Moseley-Braun, D-Ill., under which 13-year-olds would be prosecuted as adults when they commit crimes with guns.”⁷ Many juveniles perceive the juvenile justice system as a joke, but the Georgia General Assembly hoped to change this perception with SB 440.⁸

Prior to the passage of SB 440, juvenile courts had concurrent criminal jurisdiction with superior courts over “a child who is alleged to have committed a delinquent act which would be considered a crime if tried in a superior court for which the child may be punished by loss of life, or confinement for life in the penitentiary.”⁹ Thus, juvenile cases were tried in the juvenile court unless the juvenile court transferred its jurisdiction to the superior court through a lengthy transfer hearing procedure.¹⁰ If a juvenile was transferred to the superior court, the court could sentence the juvenile to the Department of Corrections.¹¹ Otherwise, any person under the age of seventeen convicted of a felony was committed to the Department of Children and Youth Services until the person reached age seventeen.¹² Upon reaching seventeen, the person was transferred to the Department of Corrections to serve the remainder of the sentence.¹³ Prior to the passage of the Act, if a person was brought to an adult detention facility and the official in charge believed the person was or appeared to be under the age of seventeen, this official was required to inform the juvenile court.¹⁴

Juveniles also received disparate treatment with regard to the confidentiality of their crimes. Fingerprints of juveniles, if allowed to be taken, had to be kept separate from those of adults.¹⁵ Moreover, fingerprints of juveniles were maintained on a local basis only, and

6. Cook, *supra* note 3.

7. *Juvenile Justice: Should 13-year-olds Who Commit Crimes With Firearms be Tried as Adults?*, ABA J., Mar. 1994, at 46. The amendment passed by a vote of 64-23 and covers murder, attempted murder, rape, armed robbery, and aggravated assault and aggravated sexual assault when firearms are used. *Id.* The amendment does allow juveniles to have their records cleared at age eighteen and ensures that the juveniles will not be jailed with adults. *Id.*

8. Taylor Interview, *supra* note 2.

9. 1973 Ga. Laws 882, 883-84, amended by 1994 Ga. Laws 1012, § 14 (codified at O.C.G.A. § 15-11-5 (1994)).

10. *See* 1973 Ga. Laws 882, 883-84; O.C.G.A. § 15-11-39 (1994) (transfer hearing procedures).

11. 1990 Ga. Laws 1930, 1936 (formerly found at O.C.G.A. § 17-10-14(b) (1990)).

12. 1992 Ga. Laws 1983, 1997 (formerly found at O.C.G.A. § 17-10-14(a) (Supp. 1993)).

13. *Id.*

14. 1989 Ga. Laws 1716, 1717 (formerly found at O.C.G.A. § 15-11-20(d) (1990)).

15. 1971 Ga. Laws 709, amended by 1994 Ga. Laws 1012, § 26 (codified at O.C.G.A. § 15-11-60 (1994)).

were not distributed unless required by a national emergency.¹⁶ Finally, upon reaching the age of twenty-one and presenting a criminal record with no offenses after the age of sixteen, a juvenile could apply to have his fingerprints removed from the files.¹⁷

SB 440

Jurisdiction Over Juveniles Committing Certain Violent Felonies

The Act gives the superior court exclusive jurisdiction over all matters relating to children ages thirteen to seventeen who are accused of murder, voluntary manslaughter, rape, aggravated sodomy, aggravated child molestation, aggravated sexual battery, or armed robbery if committed with a firearm.¹⁸ Previous law gave the juvenile court concurrent jurisdiction with the superior court over a juvenile alleged to have committed a crime which was punishable by loss of life or confinement for life in a penal institution if tried in the superior court.¹⁹

Although the Act expands the superior court's jurisdiction, it also provides for the transfer of certain cases to the juvenile court under certain conditions.²⁰ After indictment and investigation, and for extraordinary cause, the superior court may transfer a case involving a child thirteen to seventeen years of age if the case is under its exclusive jurisdiction but not punishable by loss of life, imprisonment for life without parole, or confinement for life in a penal institution.²¹ After investigation but before indictment, and for extraordinary cause, the district attorney may decline to prosecute a child thirteen to seventeen years of age in superior court.²² Any case transferred to the juvenile court by the district attorney is subject to the designated felony provisions.²³ If the superior court convicts a juvenile of a lesser

16. *Id.*

17. *Id.*

18. O.C.G.A. § 15-11-5(b)(2)(A) (1994).

19. 1973 Ga. Laws 882, 883-84.

20. O.C.G.A. § 15-11-5(b)(2)(B) (1994).

21. *Id.* This section also provides that "[a]ny such transfer shall be appealable by the State of Georgia pursuant to Code section 5-7-1." *Id.* When the superior court transfers a case pursuant to this subsection "jurisdiction shall vest in the juvenile court and jurisdiction of the superior court shall terminate." *Id.*

22. *Id.* § 15-11-5(b)(2)(C) (1994). This section also provides that "[u]pon declining such prosecution in the superior court, the district attorney shall immediately withdraw the case and lodge it in the appropriate juvenile court for adjudication." *Id.*

23. *Id.* These sections provide:

Any case transferred by the district attorney to the juvenile court pursuant to this subparagraph shall be subject to the designated felony provisions of Code Section 15-11-37 and the transfer of the case from superior court to juvenile court shall constitute notice to the child that

included offense, not listed as one of the violent felonies above, the court may transfer the case to the appropriate juvenile court for disposition.²⁴ A transfer for disposition terminates the jurisdiction of the superior court.²⁵

The section of the Act relating to trying juveniles as adults went through several changes before being passed by the General Assembly. The Senate Judiciary Committee substitute bill provided that the superior court have exclusive jurisdiction over juveniles ages thirteen to seventeen who committed murder, voluntary manslaughter, armed robbery, aggravated battery, rape, aggravated sodomy, aggravated child molestation, aggravated sexual battery, kidnapping, or arson in the first degree.²⁶

The House Judiciary Committee substantially amended SB 440.²⁷ The House Judiciary Committee substitute deleted aggravated battery, kidnapping, and arson in the first degree from the list of violent felonies that gave the superior court exclusive jurisdiction.²⁸ These crimes were placed in the designated felony section.²⁹ The House thought enforcement of those crimes would be effective within the juvenile justice system; thus, it was not necessary for the superior court to hear cases regarding aggravated battery, kidnapping, and arson in the first degree.³⁰ The House also agreed that there would be too many trivial incidents with juveniles that could be technically characterized as kidnapping, aggravated battery, and arson in the first degree which would clog the superior court docket.³¹ For the same reasons, the House substitute limited the jurisdiction of the superior court in cases involving armed robbery to those cases in which the

such case is subject to the designated felony provisions of Code Section 15-11-37.

Id. For discussion of the designated felony provisions, see *infra* notes 55-58 and accompanying text.

24. *Id.* § 15-11-5(b)(2)(D) (1994) provides:

The superior court may transfer any case involving a child 13 to 17 years of age alleged to have committed any offense enumerated in subparagraph (A) of this paragraph and convicted of a lesser included offense not included in subparagraph (A) of this paragraph to the juvenile court of the county of the child's residence for disposition. Upon such a transfer by the superior court, jurisdiction shall vest in the juvenile court and jurisdiction of the superior court shall terminate.

Id.

25. *Id.*

26. SB 440 (SCS), 1994 Ga. Gen. Assem.

27. See SB 440 (HCS), 1994 Ga. Gen. Assem.

28. *Id.*

29. Taylor Interview, *supra* note 2.

30. *Id.*

31. Telephone Interview with Rep. Denmark Groover, Jr., House District No. 125 (Sept. 30, 1994) [hereinafter Groover Interview].

armed robbery was committed with a firearm.³² The House substitute also deleted a provision from the Senate version allowing the superior court to transfer a case to the juvenile court for disposition when a juvenile was convicted of a lesser included offense.³³ However, this provision was added again to the bill on the House floor and remains in the Act.³⁴ This provision was re-inserted to provide more leniency, especially for first offenders, and to encourage plea bargains to lesser-included offenses.³⁵

The House substitute allowed the superior court to transfer cases to the juvenile court provided certain conditions were met.³⁶ Under the House substitute, the superior court was required to wait until after indictment to transfer a case, and could transfer only after investigation and for extraordinary cause.³⁷ In addition, any transfer by the superior court would be appealable by the State of Georgia.³⁸ The House substitute also provided that when the district attorney transfers a case to the juvenile court, the case would be subject to the designated felony provisions of Code section 15-11-37.³⁹ Transfer of such a case would constitute notice to the juvenile that the case would be subject to the designated felony provisions.⁴⁰

Custody of the Department of Corrections

The Act adds new Code section 15-11-5.1 which provides that a juvenile convicted of any offense listed in Code section 15-11-5 "shall be committed to the custody of the Department of Corrections; provided, however, that [the] juvenile in the custody of the Department of Corrections shall be housed in a designated youth confinement unit until reaching the age of 17" even though the "juvenile was tried and convicted as an adult in superior court."⁴¹ The designated youth confinement units must be designed to ensure that juveniles are housed entirely separate from adult offenders in the same facility.⁴² The separation is necessary because "we don't want juveniles learning

32. *Id.*; SB 440 (HCS), 1994 Ga. Gen. Assem.

33. SB 440 (HCS), 1994 Ga. Gen. Assem.

34. SB 440 (HFA), 1994 Ga. Gen. Assem; O.C.G.A. § 15-11-5(b)(2)(D) (1994).

35. Telephone Interview with Rep. Charles Thomas, House District No. 100 (Mar. 23, 1994).

36. SB 440 (HCS), 1994 Ga. Gen. Assem.

37. *Id.*

38. *Id.*

39. *Id.*; see *infra* notes 55-58 and accompanying text.

40. SB 440 (HCS), 1994 Ga. Gen. Assem. This provision was incorporated into the Act. O.C.G.A. § 15-11-5(b)(2)(B) (1994).

41. O.C.G.A. § 15-11-5.1 (1994).

42. *Id.*

lessons from hardened criminals.”⁴³ The youth confinement unit must be made to facilitate rehabilitation of juveniles, “which shall mean that a youth confinement unit shall be of a nondormitory design whenever possible and whenever such facilities become available and staffed by personnel who have received specialized training in the field of juvenile justice.”⁴⁴ All of these youth confinement units shall provide juveniles with “life skills training, academic or vocational training, and substance abuse and violence prevention counseling to the extent that appropriations are available for such activities.”⁴⁵

The House Committee on Judiciary substitute bill added certain provisions to the version of the bill passed by the Senate.⁴⁶ The House substitute required that juveniles be housed completely separate from adults incarcerated in the same facility and that the facility be of a nondormitory design and adequately staffed with personnel who have specialized training in the juvenile justice field.⁴⁷ The House substitute also added the language providing that juveniles housed in a youth confinement unit must receive academic and vocational training when funds are available for such training.⁴⁸

Notification of Superior Court by Official of Jail

The Act requires an “official in charge of a jail or other facility for the detention of adult offenders” to inform the superior court if a person who is admitted to the facility appears to be thirteen to seventeen years old and is alleged to have committed one of the offenses listed in Code section 15-11-5.⁴⁹ The official must also deliver the apparent juvenile to the court or “to a detention facility designated by the court.”⁵⁰ This section of the Act remained the same throughout the legislative process and was passed in its original form.⁵¹

Serving in a Regional Youth Development Center

The Act provides that after a juvenile is found to have committed a delinquent act, the court may “order the child to serve up to a

43. Groover Interview, *supra* note 31.

44. O.C.G.A. § 15-11-5.1 (1994).

45. *Id.*

46. *See* SB 440 (HCS), 1994 Ga. Gen. Assem.

47. *Id.*

48. *Id.* Both House changes were incorporated into the final version. O.C.G.A. § 15-11-5.1 (1994).

49. O.C.G.A. § 15-11-20(d) (1994).

50. *Id.*

51. *See* SB 440, as introduced, 1994 Ga. Gen. Assem.; SB 440 (SCS), 1994 Ga. Gen. Assem.; SB 440 (HCS), 1994 Ga. Gen. Assem.; O.C.G.A. § 15-11-20(d) (1994).

maximum of 90 days in a regional youth development center.⁵² This sentence may be in addition to any other treatment or rehabilitation ordered by the court.⁵³ This provision was first introduced in the House Judiciary Committee substitute and remained the same in the passed version of the Act.⁵⁴

Designated Felony Provisions

The Act amended the definition of "designated felony act" in Code section 15-11-37.⁵⁵ A designated felony act includes a "second or subsequent offense" under Code section 16-11-132 if done by a juvenile thirteen to seventeen years of age.⁵⁶ The definition also includes acts done by a juvenile thirteen to seventeen years old which, if done by an adult, would be arson in the first degree, kidnapping in the first degree, aggravated assault, arson in the second degree, aggravated battery, robbery, armed robbery not involving a firearm, attempted murder, attempted kidnapping, or carrying or possession of a weapon in violation of Code section 16-11-127.1(b).⁵⁷ An offense within the exclusive jurisdiction of the superior court pursuant to Code section 15-11-5 that is transferred by the superior court or district attorney to the juvenile court for adjudication constitutes a designated felony act.⁵⁸

The House Committee on Judiciary changed some of the provisions of the bill passed by the Senate relating to the definition of a designated felony act.⁵⁹ The House substitute made minor modifications to the list of designated felony acts, including listing armed robbery not involving a firearm.⁶⁰ These modifications were added to encompass the crimes deleted from the list of designated felonies in Code section 15-11-5.⁶¹ The House substitute added the section labeling cases within the exclusive jurisdiction of the juvenile court and transferred to the juvenile court by the district attorney as designated felony acts to comport with the new Act provisions of Code section 15-11-5.⁶² The Act

52. O.C.G.A. § 15-11-35(b) (1994).

53. *Id.*

54. *See* SB 440 (HCS), 1994 Ga. Gen. Assem.; O.C.G.A. § 15-11-35(b) (1994).

55. *See* O.C.G.A. § 15-11-37(2) (1994).

56. *Id.* O.C.G.A. § 16-11-132 relates to the possession and carrying of firearms. *Id.* § 16-11-132 (1994).

57. *Id.* § 15-11-37(2) (1994). In addition, a designated felony includes "[a]ny other act which, if done by an adult, would be a felony, if the juvenile committing the act has three times previously been adjudicated delinquent for acts which, if done by an adult, would have been felonies." *Id.* § 15-11-37(2)(v) (1994).

58. *Id.* § 15-11-37(2)(c) (1994).

59. *See* SB 440 (HCS), 1994 Ga. Gen. Assem.

60. *See id.*

61. Groover Interview, *supra* note 31.

62. SB 440 (HCS), 1994 Ga. Gen. Assem.

as passed adopted all of the House substitute changes.⁶³ The Act's final version included cases transferred by the superior court to juvenile court as designated felony acts.⁶⁴

Fingerprinting of Juveniles Sentenced to the Custody of the Department of Corrections

The Act provides that “[a]ll juveniles sentenced to the custody of the Department of Corrections shall be fingerprinted.”⁶⁵ These fingerprints will be processed in the same manner as the fingerprints of adult inmates to further administrative convenience.⁶⁶ A child may apply to have the fingerprints removed from fingerprint files if either no petition of delinquency is filed, the case is transferred to the juvenile court pursuant to Code section 15-11-13, or the child is not adjudicated delinquent.⁶⁷ This provision gives a juvenile the additional protection of removing the juvenile's identity from criminal files if it appears the juvenile does not belong in the criminal system.⁶⁸ The Act deleted language requiring fingerprints of children to be kept separate from adults' fingerprints.⁶⁹ The Act also removed the provision restricting dissemination of child fingerprints on a local-only basis, unless the interest of national security requires otherwise.⁷⁰ Finally, the Act deleted a clause that allowed a juvenile who had reached the age of twenty-one to have the juvenile's fingerprints removed from the files if the juvenile had no criminal record of an offense after reaching sixteen years of age.⁷¹

In the version of the bill passed by the Senate, the Senate provided that fingerprints of a thirteen to fourteen-year-old juvenile may be taken and filed during investigation of involuntary manslaughter, aggravated assault, burglary, and motor vehicle theft.⁷² The House substitute added robbery, armed robbery not involving a firearm, and

63. Compare *id.* with O.C.G.A. § 15-11-37(2) (1994).

64. O.C.G.A. § 15-11-37(2) (1994).

65. *Id.* § 15-11-60(c) (1994).

66. *Id.*; Groover Interview, *supra* note 31.

67. O.C.G.A. § 15-11-60(e) (1994). O.C.G.A. § 15-11-13 requires cases involving children that are pending in any court as criminal proceedings or quasi-criminal proceedings to be transferred to juvenile court unless exclusive jurisdiction is in the superior court under O.C.G.A. § 15-11-5(b). *Id.* § 15-11-13 (1994). “Child” is defined in subsection (2) of Code section 15-11-2. *Id.* § 15-11-2(2) (1994).

68. Groover Interview, *supra* note 31.

69. O.C.G.A. § 15-11-60(b) (1994).

70. *Id.*

71. Compare *id.* § 15-11-60(e) (1994) with 1971 Ga. Laws 709.

72. SB 440 (SCSFA), 1994 Ga. Gen. Assem.

aggravated battery to this list.⁷³ The General Assembly adopted the fingerprint provisions as suggested by the House.⁷⁴

Housing a Juvenile Committed to the Custody of the Department of Corrections

The Act provides that a juvenile convicted of a felony for an offense under the exclusive jurisdiction of the superior court shall be committed to the custody of the Department of Corrections.⁷⁵ The Department of Corrections, the traditional adult facility, is the "appropriate authority for juveniles being treated as adults."⁷⁶ However, these juveniles committed to the Department of Corrections must be kept in a designated youth confinement unit until they reach the age of seventeen.⁷⁷ Upon reaching age seventeen, the juveniles may be "housed in any other unit designated by the Department of Corrections."⁷⁸ The provisions regarding the housing of a juvenile committed to the Department of Corrections did not undergo changes during the legislative process and were enacted as passed by the Senate.⁷⁹

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73. SB 440 (HCS), 1994 Ga. Gen. Assem.

74. Compare O.C.G.A. § 15-11-60(a) (1994) with SB 440 (HCS), 1994 Ga. Gen. Assem.

75. O.C.G.A. § 17-10-14(c) (Supp. 1994).

76. Groover Interview, *supra* note 31.

77. O.C.G.A. § 17-10-14(c) (Supp. 1994).

78. *Id.*

79. SB 440 (SCSFA), 1994 Ga. Gen. Assem.; SB 440 (HCS), 1994 Ga. Gen. Assem.; O.C.G.A. § 17-10-14(c) (Supp. 1994).