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COURTS

Juvenile Proceedings, Parental Rights: Provide for Public Access to Juvenile Court Proceedings and Records; Provide for Fingerprinting of Certain Juvenile Offenders; Provide for Victim Notification Upon Release or Parole of Violent Juvenile Offenders and School Notification of Certain Juvenile Offenders

CODE SECTIONS: O.C.G.A. §§ 15-11-28, -58 (amended), -58.1 (new), -59 to -61, -65, 49-4A-8, -9 (amended)
BILL NUMBER: SB 156
ACT NUMBER: 328
GEORGIA LAWS: 1995 Ga. Laws 619
SUMMARY: The Act provides for the fingerprinting of juveniles charged with violent crimes. The Act allows public access to juvenile proceedings and records involving certain felonies and allegations of delinquency. The Act also prohibits the sealing of any juvenile records which involve a public proceeding. Further, the Act requires that victims must be notified when any juvenile who has been adjudicated delinquent for the commission of a designated felony is released. Additionally, the Act provides for notification to schools and provides immunity to public employees from liability resulting from their failure to comply with the notification requirements.
EFFECTIVE DATE: July 1, 1995

History

Juvenile courts were originally established to protect children.¹ The reputations of juveniles who committed minor crimes, such as truancy, were protected by juvenile courts

1. *Lawmakers '95* (GPTV broadcast, Feb. 1, 1995) (videotape available in Georgia State University College of Law Library).

concerned with confidentiality.² Along the same lines, the principal purpose of the juvenile court system was to give young offenders a second chance.³ However, the types of crimes committed by juveniles, along with the ramifications of those crimes, have changed markedly.⁴

Previously, the public had no right of access to a juvenile proceeding.⁵ The judge had discretion, upon request, to open the juvenile proceeding if evidence showed that the state's or the juvenile's interest in a closed hearing was outweighed by the public's interest in an open hearing.⁶ Similarly, juvenile records could be opened to the public only by court order.⁷

In recent years, the Violence in Schools Task Force has recognized that seventy percent of the violence in Georgia schools is initiated by new students in a school district.⁸ Previously, a judge could permit a school principal or counselor to review juvenile records only in the course of counseling that juvenile.⁹ The previous law did not provide any method of tracking juvenile offenders through the public school system.¹⁰ The fingerprints of thirteen- and fourteen-year-old juveniles were taken and used only in the investigation of involuntary manslaughter, aggravated assault, burglary, motor vehicle theft, robbery, armed robbery not involving a firearm, and aggravated battery.¹¹

2. *Id.*

3. *Id.*

4. *Id.*

5. *See* 1980 Ga. Laws 416 (formerly found at O.C.G.A. § 15-11-28(c) (1994)).

6. *See* Florida Publishing Co. v. Morgan, 322 S.E.2d 233, 238 (Ga. 1984).

7. 1993 Ga. Laws 979 (formerly found at O.C.G.A. § 15-11-58 (1994)).

8. Telephone Interview with Sen. Mary Margaret Oliver, Senate District No. 42 (June 6, 1995) [hereinafter Oliver Interview].

9. 1993 Ga. Laws 979 (formerly found at O.C.G.A. § 15-11-58 (1994)).

10. Telephone Interview with Sen. Charles C. "Chuck" Clay, Senate District No. 37 (June 2, 1995) [hereinafter Clay Interview]. The fingerprinting of violent juvenile offenders allows authorities to track these students from county to county. *Id.* This notification is important because it encourages public confidence in our school systems, increases student safety, and focuses attention on juvenile crime. *Id.*

11. 1994 Ga. Laws 1012, § 26, at 1046 (formerly found at O.C.G.A. § 15-11-60(a) (1994)); *see also* Legislative Review, 11 GA. ST. U. L. REV. 81 (1994).

SB 156

The Act has five major purposes:¹² (1) to allow for public access to most juvenile proceedings including those involving designated felonies under Code section 15-11-37 and those involving delinquency of a juvenile who has previously been adjudicated delinquent;¹³ (2) to allow for public access to records of juvenile proceedings which are open to the public;¹⁴ (3) to fingerprint violent juvenile offenders;¹⁵ (4) to share information from public proceedings with the school in which the juvenile is enrolled or is to be enrolled in the future;¹⁶ and (5) to notify victims of the release of the violent juvenile offender from custody or confinement.¹⁷

Public Access to Juvenile Court Proceedings and Records

As introduced in the Senate, the bill sought to amend Code section 15-11-28 by providing public access to juvenile hearings involving the adjudication of crimes other than "acts which are misdemeanors if committed by an adult; status offenders, as defined in Code Section 15-11-2; hearings on an allegation of sexual abuse or sexual assault; and hearings at which deprivation is an issue."¹⁸ The bill also authorized a judge to close any proceeding open to the general public for just cause.¹⁹ The original bill did not delineate the types of juvenile proceedings to which the public would be admitted.²⁰

However, the Senate Special Judiciary Committee changed this section of the bill.²¹ Rather than specifying which proceedings would remain closed to the public, the committee substitute amended the section to specify the circumstances in which the juvenile proceedings would be open.²² The Committee modeled

12. *Lawmakers '95* (GPTV broadcast, Mar. 17, 1995) (videotape available in Georgia State University College of Law Library).

13. O.C.G.A. § 15-11-28(c.1) (Supp. 1995).

14. *Id.* § 15-11-58.

15. *Id.* § 15-11-60(a).

16. *Id.* § 15-11-58.1.

17. *Id.* §§ 49-4A-8(e.1)(1)-(2), -9(b).

18. SB 156, as introduced, 1995 Ga. Gen. Assem.

19. *Id.*

20. *See id.*

21. *Compare id. with* SB 156 (SCS), 1995 Ga. Gen. Assem.

22. SB 156 (SCS), 1995 Ga. Gen. Assem.

this section after a comparable provision in a similar bill specifying those proceedings in which the public would have automatic admittance.²³ The substitute provides for general admittance to proceedings involving the allegation of a designated felony as provided in Code section 15-11-37;²⁴ the second adjudicatory hearing for delinquency, but not a hearing dealing with the allegation of sexual assault or deprivation;²⁵ and any other proceeding at the court's discretion.²⁶ This provision, as amended by the Senate Special Judiciary Committee, was passed.²⁷

The bill, as introduced, sought to amend Code section 15-11-58 by opening juvenile records in proceedings in which the general public was not excluded under Code section 15-11-28(c).²⁸ The

23. Clay Interview, *supra* note 10; SB 30, as introduced, 1995 Ga. Gen. Assem. The language contained in SB 30 was approved by the Council of Juvenile Court Judges. Oliver Interview, *supra* note 8.

24. O.C.G.A. § 15-11-28(c.1)(1) (Supp. 1995). A "designated felony" means an act: which

(A) Constitutes a second or subsequent offense under subsection (b) of Code Section 16-11-132 if committed by a person 13 to 17 years of age;

(B) If done by an adult, would be one or more of the following crimes:

(i) Kidnapping or arson in the first degree, if done by a juvenile 13 or more years of age;

(ii) Aggravated assault, arson in the second degree, aggravated battery, robbery, or armed robbery not involving a firearm, if done by a juvenile 13 or more years of age;

(iii) Attempted murder or attempted kidnapping, if done by a juvenile 13 or more years of age;

(iv) The carrying or possession of a weapon in violation of subsection (b) of Code Section 16-11-127.1;

(v) Hijacking a motor vehicle, if done by a juvenile 13 or more years of age; or

(vi) Any 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; or

(C) Constitutes an offense within the exclusive jurisdiction of the superior court

1994 Ga. Laws 1012, § 2, at 1043-44 (codified at O.C.G.A. § 15-11-37(a)(2) (1994)).

25. O.C.G.A. § 15-11-28(c.1)(2) (Supp. 1995).

26. *Id.* § 15-11-28(c.1)(3).

27. *Id.* § 15-11-28.

28. SB 156, as introduced, 1995 Ga. Gen. Assem.

Senate Special Judiciary Committee changed this language so that juvenile records would be opened only in cases in which the public was admitted under Code section 15-11-28(c.1).²⁹ The Act ultimately contained the committee substitute version of Code section 15-11-58.³⁰

Additionally, the bill, as introduced, sought to amend Code section 15-11-59 to provide the general public with access to records of juvenile proceedings involving offenses other than status offenses.³¹ The Senate Special Judiciary Committee substitute, which was ultimately passed by the Senate, did not include this amendment.³² However, the version of the bill passed by the House reinstated the amendment.³³ The amendment was also included in the conference committee substitute, which was passed by both the Senate and the House.³⁴ The conference committee amended the section to correspond with the Senate Special Judiciary Committee version of Code section 15-11-28(c) and (c.1), providing for public admittance to specified juvenile proceedings.³⁵

Sealing Records

The bill, as introduced, prohibited the sealing of records to public proceedings "unless and until" the juvenile reaches twenty-one years of age and has committed no delinquent acts for five years.³⁶ The Senate Special Judiciary Committee substitute,

29. O.C.G.A. § 15-11-58 (Supp. 1995); Clay Interview, *supra* note 10.

30. O.C.G.A. § 15-11-58 (Supp. 1995).

31. SB 156, as introduced, 1995 Ga. Gen. Assem.

32. *See* SB 156 (SCS), 1995 Ga. Gen. Assem.

33. *See* SB 156 (HCSFA), 1995 Ga. Gen. Assem.

34. O.C.G.A. § 15-11-59(6) (Supp. 1995).

35. *Id.* § 15-11-59(b). Rep. Kip Klein proposed the language of subsection (b), which simply provides that the records of juveniles may not be closed when the offense committed is one in which the public has admittance to the proceeding pursuant to O.C.G.A. § 15-11-28(c) and (c.1). *Id.*; *Lawmakers '95* (GPTV broadcast, Jan. 24, 1995) (videotape available in Georgia State University College of Law Library). The change made by the conference committee was necessary to bring Code section 15-11-59 in line with changes previously made in Code section 15-11-28. *Lawmakers '95* (GPTV broadcast, Mar. 8, 1995) (videotape available in Georgia State University College of Law Library).

36. SB 156, as introduced, 1995 Ga. Gen. Assem.

passed by the Senate, deleted this provision.³⁷ However, the version passed in the House prohibited the sealing of juvenile records compiled in proceedings open to the public under Code section 15-11-28(c) or (c.1).³⁸ The conference committee incorporated the language from the House version, but added a qualification.³⁹ The conference committee substitute gives the court discretion to seal records, resulting in a compromise between those who would seal records and those who believed it would defeat the underlying purpose of the Act to seal records of proceedings that had originally been open to the public.⁴⁰

Additionally, the Act authorizes court clerks to store juvenile records by computer,⁴¹ thus simplifying the tracking of juvenile offenders and their records from county to county.⁴²

Fingerprinting of Certain Juvenile Offenders

The Act amends Code section 15-11-60 to allow for the fingerprinting of violent juvenile offenders.⁴³ The bill, as introduced, provided that a juvenile shall be fingerprinted if charged with the commission of a delinquent act or an act that would constitute a felony if committed by an adult.⁴⁴ The Senate Special Judiciary Committee omitted the provision relating to

37. Compare *id.* with SB 156 (SCS), 1995 Ga. Gen. Assem.

38. SB 156 (HCSFA), 1995 Ga. Gen. Assem. The Committee reasoned that if it allowed for public admittance, but allowed the court to seal records, the purpose of the Act would not be served. Clay Interview, *supra* note 10.

39. O.C.G.A. § 15-11-61 (Supp. 1995).

40. Clay Interview, *supra* note 10. This struggle persisted throughout the evolution of the bill. Clay Interview, *supra* note 10.

41. O.C.G.A. § 15-11-65(c.1) (Supp. 1995).

42. *Lawmakers '95* (GPTV broadcast, Jan. 24, 1995) (videotape available in Georgia State University College of Law Library); Clay Interview, *supra* note 10.

43. O.C.G.A. 15-11-60 (Supp. 1995); see also *Lawmakers '95* (GPTV broadcast Jan. 24, 1995) (videotape available in Georgia State University College of Law Library). During a Senate Special Judiciary Committee meeting discussing SB 30, Sen. Clay expressed the need for fingerprinting of juvenile offenders as a means of tracking violent school-age offenders: "[The fingerprinting of certain violent juvenile offenders would] truly be a realistic means of hopefully tracking and tracing and getting a handle on the more violent juvenile offenders. Without some level of fingerprinting, how do you really have a valuable tool to track offenders throughout the state?" *Id.*

44. SB 156, as introduced, 1995 Ga. Gen. Assem.

delinquent acts and also amended the bill to provide for the fingerprinting of juveniles charged with a designated felony or an offense that would subject them to superior court jurisdiction.⁴⁵ The House passed this version.⁴⁶ The conference committee amended the bill to provide for fingerprinting of juveniles charged with crimes that constitute burglary if committed by an adult; the House and Senate passed this version.⁴⁷ The conference committee included burglary because it often leads to more violent crimes, is likely to involve violent confrontations, and causes great public outrage.⁴⁸

In essence, the Act requires that every juvenile be fingerprinted and photographed when taken into custody if charged with an act that would constitute burglary if committed by an adult, charged with a designated felony, or charged with an offense in which the superior court has exclusive or concurrent jurisdiction, other than those status offender crimes enumerated in Code section 15-11-2.⁴⁹ These fingerprints and photographs must be filed separately from adult records.⁵⁰ The Act makes these fingerprints and photographs available as provided by this Code section and by the court.⁵¹ The previous Code provisions that set age and crime restrictions on the ability to fingerprint juveniles were deleted.⁵²

45. SB 156 (SCS), 1995 Ga. Gen. Assem. These offenses include murder, voluntary manslaughter, rape, aggravated sodomy, aggravated child molestation, aggravated sexual battery, or armed robbery if committed with a firearm. 1994 Ga. Laws 1012, § 14 (codified at O.C.G.A. § 15-11-5(b)(2)(A) (1994)).

46. Compare 1994 Ga. Laws 1012, § 14 (codified at O.C.G.A. § 15-11-5(b)(2)(A) (1994)) with SB (HCSFA), 1995 Ga. Gen. Assem.

47. O.C.G.A. § 15-11-60 (Supp. 1995).

48. Clay Interview, *supra* note 10. Burglary is the most common aggravated offense committed by juveniles. Clay Interview, *supra* note 10.

49. O.C.G.A. § 15-11-60(a) (Supp. 1995).

50. *Id.*

51. *Id.*

52. 1994 Ga. Laws 1012, § 26, at 1046 (formerly found at O.C.G.A. § 15-11-60(a)-(b) (1994)). See also *supra* notes 10-11 and accompanying text, which describes the information deleted in subsection (a). Subsection (b) formerly provided for the fingerprinting of children between the ages of thirteen and seventeen years in the investigation of crimes over which the superior court has exclusive or concurrent jurisdiction. 1994 Ga. Laws 1012 (formerly found at O.C.G.A. § 15-11-60(b) (1994)).

The Act requires that fingerprints and photographs, along with names, addresses, and the offense charged, be made available, at the court's discretion, to the Department of Family and Children Services and the school superintendent.⁵³ The superintendent may then disseminate this information to teachers or counselors.⁵⁴ Finally, the Act deletes Code section 15-11-60(f), which dealt with latent fingerprints.⁵⁵

School Notification

The Act adds Code section 15-11-58.1.⁵⁶ The Senate Special Judiciary Committee substitute mandated written notice to the school superintendent within fourteen days when a child was adjudicated delinquent for the second or subsequent time or was involved in a designated felony.⁵⁷ The Committee was concerned about public safety; it did not want children who were picked up for carrying a gun on Saturday night sitting in school Monday morning with the faculty unaware of what had transpired.⁵⁸ The House committee substitute extended this notice period to thirty days.⁵⁹ The conference committee substitute, passed by both the Senate and the House, also allowed the court thirty days to provide written notice.⁶⁰

Victim Notification

The Act amends Code section 49-4A-8 to require the Department of Children and Youth Services to notify victims when a juvenile adjudicated delinquent for the commission of a designated felony is released from confinement or custody.⁶¹ The Act also amends Code section 49-4A-9 to require the Commissioner of the Department of Corrections to notify victims

53. O.C.G.A. § 15-11-60(c) (Supp. 1995).

54. *Id.*

55. *Compare id.* § 15-11-60 with 1994 Ga. Laws 1012 (formerly found at O.C.G.A. § 15-11-60(f) (1994)).

56. O.C.G.A. § 15-11-58.1 (Supp. 1995).

57. SB 156 (SCS), 1995 Ga. Gen. Assem.

58. Clay Interview, *supra* note 10.

59. SB 156 (HCS), 1995 Ga. Gen. Assem.; Clay Interview, *supra* note 10. The court needed the thirty days to provide written notification for logistical reasons. Clay Interview, *supra* note 10.

60. O.C.G.A. § 15-11-58.1 (Supp. 1995).

61. *Id.* §§ 49-4A-8(e.1)(2), -9(b).

when such a juvenile is released or paroled.⁶² The victim notification provisions contain disclaimers of liability for any harm caused by a failure to notify the victim if a good faith effort was made to provide such notification.⁶³

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62. *Id.*

63. *Id.*