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COURTS Juvenile Courts Amend Provisions Relating to Juvenile Proceedings, so as to Restrict Full-Time Juvenile Court Judges From Serving as a Judge in Another Court; Clarify the Obligation of the District Attorney Regarding a Petition in Juvenile Court; Change and Reorganize Provisions so as to Divide Into Separate Parts Those Provisions Relating to Allegedly Unruly or Delinquent Children; Conform Cross-References to Such Changes and Reorganization; Change Provisions Relating to Victim Impact Statements, Evidence, and Continuances; Clarify a Legal Provision Relating to Transfer of Legal Custody of a Child

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COURTS

Juvenile Courts: Amend Provisions Relating to Juvenile Proceedings, so as to Restrict Full-time Juvenile Court Judges From Serving as a Judge in Another Court; Clarify the Obligation of the District Attorney Regarding a Petition in Juvenile Court; Change and Reorganize Provisions so as to Divide Into Separate Parts Those Provisions Relating to Allegedly Deprived Children and Those Provisions Relating to Allegedly Unruly or Delinquent Children; Conform Cross-References to Such Changes and Reorganization; Change Provisions Relating to Victim Impact Statements, Evidence, and Continuances; Clarify a Legal Provision Relating to Transfer of Legal Custody of a Child Back to a Person whose Abuse of Alcohol or Another Drug Resulted in the Child's Deprivation; Clarify When the Juvenile Court Shall Dismiss Petitions Alleging Delinquency or Unruliness; Clarify When the Court Shall Enter Orders of Disposition; Clarify Provisions Relating to the Duration of Disposition Orders; Provide for Sealing Records in Cases When Petitions Alleging Delinquency or Unruliness Have Been Dismissed or Informally Adjusted; Repeal Conflicting Laws

CODE SECTIONS:	O.C.G.A. §§ 15-11-18 (amended), 15-11-28 (amended), 15-11-39 (amended), 15-11-41 (amended), 15-11-54 (new), 15-11-55 (amended), 15-11-56 (amended), 15-11-58 (amended), 15-11-64.1 (new), 15-11-64.2 (new), 15-11-65 (amended), 15-11-66 (amended), 15-11-70 (amended), 15-11-79 (amended), 15-11-79.2 (amended)
BILL NUMBER:	HB 127
ACT NUMBER:	934
GEORGIA LAWS:	2002 Ga. Laws 1162
SUMMARY:	The Act delineates between the situation in which there is a deprived child and the situation in which there is an unruly or delinquent child so that they will not be treated the same under

the law. Further, the Act provides that where there is a non-adjudication of a delinquent or unruly case, or where there is a child at risk of being prosecuted but there is no adjudication, the records shall be sealed.

EFFECTIVE DATE: July 1, 2002

History

The Georgia Legislature revised the entire Juvenile Court Code section in 2000.¹ HB 127 repaired some of what occurred when the Code section was revised.² Sponsors sought to resolve three issues: 1) separating deprived children from unruly or delinquent children; 2) sealing certain court records; and 3) mandating that judges appointed to the position of full-time juvenile court judge not hold the office of judge of any other class of court at the same time.³

Representative Mary Squires of the 78th District felt that because of the difference between the needs of children who are deprived, through no fault of their own, and the needs of children who are delinquent and unruly, the provisions addressing these needs should be separated in the Code section.⁴

Additionally, Representative Squires wanted to amend the section relating to the sealing of court records to include those situations where a juvenile's case was not adjudicated.⁵ This was necessary to assist these juveniles when they applied for admission into college or the military because, if they were asked questions about previous offenses, they could not say that there had been no offenses on the application.⁶ It was thought that this questioning would keep them

1. Telephone Interview with Rep. Mary Squires, House District No. 78 (Apr. 17, 2002) [hereinafter Squires Interview]; see also Audio Recording of Senate Proceedings, Jan. 28, 2002 (remarks by Sen. Doug Haines), at <http://www.state.ga.us/services/leg/audio/2002archive.html> [hereinafter Senate Audio I].

2. Squires Interview, *supra* note 1; Senate Audio I, *supra* note 1.

3. Squires Interview, *supra* note 1; see also Telephone Interview with Eric John, Executive Dir. of Council of Juvenile Court Judges (May 24, 2002) [hereinafter John Interview].

4. Squires Interview, *supra* note 1.

5. HB 127, as introduced, 2001 Ga. Gen. Assem.

6. Squires Interview, *supra* note 1; see also Senate Audio I, *supra* note 1 (remarks by Sen. Doug Haines).

from getting into college.⁷ Therefore, the sponsors sought to remedy the situation by not requiring those seeking entry into college or the military to reveal any offenses that did not result in adjudication.⁸

Finally, advocates of the bill sought to increase the number of full-time juvenile court judges by providing that when a judge is appointed to serve as a full-time juvenile court judge, they cannot also hold the office of judge in any other class of court.⁹ According to Eric John, Executive Director of the Council of Juvenile Court Judges, this was “a continuation of [the] philosophy envisioned by HB 182 [in a previous legislative session,]” which sought to appoint full-time juvenile court judges.¹⁰ The idea behind this philosophy was “that juvenile court judges should dedicate their time full-time to the juvenile system.”¹¹

HB 127

Introduction

Representative Mary Squires of the 78th District sponsored HB 127.¹² After introduction on the House floor on January 11, 2001, the House sent the bill to its Judiciary Committee.¹³ That Committee favorably reported the bill, as substituted, on February 27, 2001.¹⁴ The Committee substitute struck the language concerning child support, a provision relating to the time for a hearing on a petition in juvenile court, and a provision requiring that the school superintendent be notified when a child commits a felony.¹⁵ The House unanimously passed the bill, as substituted, on March 6, 2001.¹⁶

7. Squires Interview, *supra* note 1.

8. *Id.*

9. John Interview, *supra* note 3.

10. *Id.*

11. *Id.*

12. HB 127, as introduced, 2001 Ga. Gen. Assem.

13. State of Georgia Final Composite Status Sheet, HB 127, Apr. 12, 2002.

14. *Id.*

15. Compare HB 127, as introduced, 2001 Ga. Gen. Assem., with HB 127 (HCS), 2001 Ga. Gen. Assem.

16. Georgia House of Representatives Voting Record, HB 127 (Mar. 6, 2001); State of Georgia Final Composite Status Sheet, HB 127, Apr. 12, 2002.

On March 7, 2001, the Senate read and referred the bill to its Judiciary Committee.¹⁷ On March 14, 2001, the Judiciary Committee favorably reported the bill as substituted.¹⁸ The Committee substitute included a provision that judges serving as full-time juvenile court judges shall not hold the office of judge of any other class of court in the State.¹⁹ However, the Senate did not pass HB 127 during the 2001 session.²⁰ On January 14, 2002, the Senate recommitted the bill, and the Senate Judiciary Committee favorably reported the bill on January 18, 2002.²¹ On January 28, 2002, the Senate unanimously passed HB 127 as substituted.²² On March 1, 2002, the House agreed to the Senate's substitute.²³ The House forwarded the bill to Governor Roy Barnes, who signed HB 127 into law on May 16, 2002.²⁴

The Act

Section 1 of the Act adds a new subsection (k) to Code section 15-11-18 relating to juvenile court judges.²⁵ This new subsection provides that no person serving full-time as a juvenile court judge, either appointed or elected, shall also hold the office of judge of any other class of court in the State of Georgia.²⁶ However, this section will not prevent any appointed or elected juvenile court judge from sitting as a superior court judge as provided by law.²⁷

Section 2 of the Act amends the language in Code section 15-11-28 to mandate that when a district attorney refuses to prosecute a child between the ages of 13 to 17 years in superior court, he or she causes a petition to be filed for adjudication in juvenile court.²⁸

17. State of Georgia Final Composite Status Sheet, HB 127, Apr. 12, 2002.

18. *Id.*

19. Compare HB 127, as introduced, 2001 Ga. Gen. Assem., with HB 127 (SCS), 2001 Ga. Gen. Assem.

20. State of Georgia Final Composite Status Sheet, HB 127, Apr. 12, 2002.

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. O.C.G.A. § 15-11-18 (k) (Supp. 2002).

26. *Id.*

27. *Id.*

28. Compare 2000 Ga. Laws 20, § 3, at 44 (formerly found at O.C.G.A. § 15-11-28 (1981)), with O.C.G.A. § 15-11-28 (Supp. 2002).

Section 3 of the Act simply amends the language in Code section 15-11-39, relating to commencement of proceedings, to provide that the court set a hearing no later than ten days after the filing of the petition when the child is in detention, and no later than 60 days from the date of filing when the child is not in detention.²⁹

Section 4 of the Act strikes the language of Code section 15-11-56 relating to the conduct of hearings, recordation, conduct of delinquency proceedings by the district attorney, victim impact statements, and deprivation hearings.³⁰ Additionally, this section provides that proceedings shall be recorded unless the child or the child's parent, guardian, or attorney waives recordation.³¹

Section 5 creates a new Code section, 15-11-54.³² The Act proscribes that after a deprivation hearing, if the court determines that a child is not deprived, it shall dismiss the petition and order the child dismissed from any detention or other restriction.³³ The Act further provides that if the court finds that a child is deprived, it shall also make a determination as to whether the deprivation is the result of a parent or guardian's abuse of alcohol or drugs.³⁴ The Act also provides that if the court determines from clear and convincing evidence that a child is deprived, it shall immediately make a proper disposition of the case.³⁵

Section 6 of the Act amends Code section 15-11-55 to provide that when a child's deprivation is the result of substance abuse by a parent, guardian or custodian, the court is authorized to order that legal custody not be transferred back to that person unless he or she undergoes substance abuse treatment and random drug screenings that remain negative for no less than six consecutive months.³⁶

Section 7 of the Act strikes the language in Code section 15-11-56 relating to court findings, disposition, and a determination of

29. Compare 2000 Ga. Laws 20, § 1, at 51 (formerly found at O.C.G.A. § 15-11-39 (1981)), with O.C.G.A. § 15-11-39 (Supp. 2002).

30. Compare 2000 Ga. Laws 20, § 1, at 54 (formerly found at O.C.G.A. § 15-11-41 (1981)), with O.C.G.A. § 15-11-41 (Supp. 2002).

31. *Id.*

32. O.C.G.A. § 15-11-54 (Supp. 2002).

33. *Id.*

34. *Id.*

35. *Id.*

36. Compare 2000 Ga. Laws 20, § 1, at 66 (formerly found at O.C.G.A. § 15-11-55 (1981)), with O.C.G.A. § 15-11-55 (Supp. 2002).

deprivation, delinquency, or unruliness.³⁷ The language relating to deprived, delinquent, or unruly children is taken out of this section so that the categories can be separated.³⁸

Section 8 of the Act amends Code section 15-11-56 by grammatically clarifying the language.³⁹

Section 9 of the Act amends Code section 15-11-58 by striking delinquency and unruliness from the provisions concerning family reunification and child custody and by creating a new Code section, 15-11-58.1, so that the provisions only apply to deprivation.⁴⁰

Section 10 of the Act designates two new Code sections.⁴¹ The Act inserts the provisions relating to delinquency proceedings that were removed from Code section 15-11-41 to Code section 15-11-64.1.⁴² The newly designated Code section 15-11-64.2 provides for victim impact statements and a timeline for their submission.⁴³ This language was formerly found in Code section 15-11-41.⁴⁴

Section 11 of the Act amends Code section 15-11-65 to provide that when allegations of delinquency and unruly conduct have not been established, the court shall dismiss the petition and order the child free from detention or other restrictions previously ordered in response to the alleged delinquency.⁴⁵ Further, the Act adds a new subsection (c) to allow for continuances for a reasonable period in order to obtain evidence bearing on the disposition or the child's need for rehabilitation or treatment.⁴⁶ Subsection (c) further mandates that the court give priority to proceedings in which a child is in detention or has been removed from his or her home before an order of disposition is made.⁴⁷

37. Compare 2000 Ga. Laws 20, § 1, at 66 (formerly found at O.C.G.A. § 15-11-56 (1981)), with O.C.G.A. § 15-11-56 (Supp. 2002).

38. Squires Interview, *supra* note 1.

39. Compare 2000 Ga. Laws 20, § 1, at 54 (formerly found at O.C.G.A. § 15-11-58 (1981)), with O.C.G.A. § 15-11-58 (Supp. 2002).

40. Compare 2000 Ga. Laws 20, § 1, at 75 (formerly found at O.C.G.A. § 15-11-58 (1981)), with O.C.G.A. § 15-11-58.1 (Supp. 2002).

41. O.C.G.A. §§ 15-11-64.1, .2 (Supp. 2002).

42. O.C.G.A. § 15-11-64.1 (Supp. 2002); 2000 Ga. Laws 20, § 1, at 54 (formerly found at O.C.G.A. § 15-11-41 (1981)).

43. O.C.G.A. § 15-11-64.2 (Supp. 2002).

44. 2000 Ga. Laws, 20 § 1, at 54 (formerly found at O.C.G.A. § 15-11-41 (1981)).

45. Compare 2000 Ga. Laws 20, § 1, at 81 (formerly found at O.C.G.A. § 15-11-65 (1981)), with O.C.G.A. § 15-11-65 (Supp. 2002).

46. *Id.*

47. *Id.*

Section 12 of the Act amends Code section 15-11-66 by replacing the language “adjudicatory hearing” with “dispositional hearing,” pursuant to Code section 15-11-65.⁴⁸

Section 13 of the Act amends Code section 15-11-70 to provide that an order of disposition involving delinquency or unruliness, except to appoint a guardian of a child, shall continue in effect for no more than two years.⁴⁹ However, the court may extend this time if a hearing is held prior to the expiration of the order, reasonable notice and an opportunity to be heard is given to all affected parties, there is a finding that the extension is necessary to accomplish the purposes of the order, and the extension does not exceed two years from the expiration of the original order.⁵⁰ Alternatively, the court may terminate an order of disposition of a delinquent or unruly child, or its extension, if the court deems that the purposes of the order have been accomplished.⁵¹ Finally, the Act provides that all orders affecting a child adjudicated as delinquent or unruly terminate when that child reaches 21 years of age.⁵²

Section 14 of the Act amends Code section 15-11-79 relating to inspection of court files and records to designate the requirements of Code section 15-11-56(a) as one of the subsections to which 15-11-79 shall be subject.⁵³

Section 15 of the Act amends Code section 15-11-79.2 to include that when a petition or complaint alleging delinquency or unruliness is dismissed and not adjudicated, those files and records shall remain sealed.⁵⁴

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48. Compare 2000 Ga. Laws 20, § 1, at 81-83 (formerly found at O.C.G.A. § 15-11-66 (1981)), with O.C.G.A. § 15-11-66 (Supp. 2002).

49. Compare 2000 Ga. Laws 20, § 1, at 86 (formerly found at O.C.G.A. § 15-11-70 (1981)), with O.C.G.A. § 15-11-70 (Supp. 2002).

50. *Id.*

51. *Id.*

52. *Id.*

53. Compare 2000 Ga. Laws 20, § 1, at 90-91 (formerly found at O.C.G.A. § 15-11-79 (1981)), with O.C.G.A. § 15-11-79 (Supp. 2002).

54. Compare 2000 Ga. Laws 20, § 1, at 92 (formerly found at O.C.G.A. § 15-11-79.2 (1981)), with O.C.G.A. § 15-11-79.2 (Supp. 2002).