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CRIMINAL PROCEDURE

Juvenile Offenders: Provide for Incarceration with Department of Human Resources

CODE SECTION:	O.C.G.A. § 17-10-14 (new)
BILL NUMBER:	SB 301
ACT NUMBER:	762
SUMMARY:	The Act mandates that a convicted felon under age seventeen who is sentenced as an adult be committed to the Division of Youth Services of the Department of Human Resources until he or she reaches age eighteen whereupon transfer of responsibility for the inmate is made to the Department of Corrections. The remainder of the original sentence is then served under the aegis of the Department of Corrections.
EFFECTIVE DATE:	July 1, 1987

History

O.C.G.A. § 15-11-2(2)(A) defines a child as an individual less than seventeen years of age. Subsection 38 of that chapter prohibits committing to penal institutions child offenders whose cases were adjudicated by juvenile courts¹ and forbids imposing the death penalty for defendants younger than seventeen years.² O.C.G.A. § 17-9-3 permits life imprisonment; there is no restriction on the nature of confinement.

Although the Department of Corrections is authorized to assign inmates to any institution in the system, the department *may* segregate juvenile offenders in "correctional or similar institutions" or transfer "any juvenile under 18 years of age from the penal institution in which he is serving to the Department of Human Resources."³ The Youthful Offender Act of 1972 defines its subjects as males between the ages of seventeen and twenty-five.⁴ A "youthful offender" is distinguished from a "young" offender, without explanation.⁵ The Youthful Offender Act ex-

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1. O.C.G.A. § 15-11-38(c) (1982).
 2. O.C.G.A. §§ 42-5-50(b), 42-5-51(b), (d) (1982).
 3. O.C.G.A. § 42-5-52(b) (1982).
 4. O.C.G.A. § 42-7-2(7) (1982).
 5. O.C.G.A. § 42-7-8 (1982).

PLICITLY excludes punishment by death or life imprisonment after felony conviction.⁶ The Act orders "treatment" of youthful offenders in "secure institutions, including training schools, hospitals, farms, and forestry and other camps and including vocational training facilities and other institutions and agencies that will provide the essential varieties of treatment."⁷ That section also provides that "[t]o the extent possible, such institutions and facilities shall be used only for treatment of youthful offenders who have the potential and desire for rehabilitation."⁸ The Act also codifies a policy concern governing treatment alternatives, to "protect the public by correcting the antisocial tendencies of youthful offenders"⁹ The Supreme Court of Georgia fashioned its decision in *Carrindine v. Rickerts* according to its deference to the "desire of the General Assembly to separate younger prisoners who have a possibility of benefiting from these special programs when they are segregated from older and more experienced prisoners."¹⁰ The Division of Youth Services of the Department of Human Resources has the statutory duty to establish group-care facilities as an "alternative to placing any child in a common jail."¹¹ According to the Supreme Court, "the Department of Human Resources loses the right to custody at age 17 and . . . the most suitable place of incarceration is in the Youthful Offender Division of the Department of Offender Rehabilitation [Corrections]."¹² The court also based its opinion upon a former section of the Youthful Offender Act which required that an offender who has reached seventeen years of age be transferred to the Department of Corrections.¹³

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SB 301, codified at O.C.G.A. § 17-10-14, deals specifically with convicted felons under eighteen years of age who have been sentenced as adults to any type imprisonment, including life. The Act adds a new section to the title dealing with juvenile sentencing procedure. The section addresses the permissive, conflicting language regarding the placement of juveniles in correctional institutions. Juvenile courts have statutory authority to "transfer the offense for prosecution to the appropriate court having jurisdiction of the offense."¹⁴ The question left unanswered by prior law is where the juvenile's sentence should be served. The supreme

6. O.C.G.A. § 42-7-2(3) (1982).

7. O.C.G.A. § 42-7-3(a) (1982).

8. O.C.G.A. § 42-7-3(c) (1982).

9. O.C.G.A. § 47-7-2(6) (1982).

10. 236 Ga. 283, 292, 223 S.E.2d 627, 633 (1976).

11. O.C.G.A. § 49-5-8(4)(A) (1982).

12. *Carrindine v. Rickerts*, 236 Ga. at 291, 223 S.E.2d at 632.

13. GA. CODE ANN. § 77-359(b)(1)(ii) (Harrison 1981).

14. O.C.G.A. § 15-11-39(a) (1982).

court in *Carrindine v. Rickerts*¹⁵ ruled that a "juvenile whose case is properly transferred to the superior court is subject to the criminal sanctions which may be imposed by that court."¹⁶ The court refused to interpret commitment to the Division of Youth Services of the Department of Human Resources as the equivalent of a civil adjudication of delinquency:

[A]n adjudication of guilt of a juvenile in superior court is a criminal adjudication The General Assembly has expressed a statutory desire to provide separate rehabilitation and treatment for persons under 17 who are convicted of crimes but this does not change the criminal nature of the adjudication leading to their confinement.¹⁷

At issue in *Carrindine* was the transition from Department of Human Resources (DHR) commitment to an adult prison at the age of seventeen. The petitioner alleged that his transfer to DHR commitment after felony conviction as an adult meant he was classified as a juvenile and hence thereafter could not be confined to Department of Corrections supervision. The court noted that the alleged denial of due process, since there was no hearing concerning the transfer, "would not have arisen if appellant's initial commitment order had specified where appellant was to be transferred at age 17."¹⁸ Enactment of SB 301 may avoid this problem. The Act mandates that transfer from DHR to the Department of Corrections must occur when the felon reaches age eighteen. The court in *Carrindine* ruled that the transfer was administrative rather than substantive because the facilities of the Youthful Offender Division and the Division of Youth Services of DHR were not "functionally different."¹⁹

SB 301 was introduced to address the inequity in the law that resulted when children, tried as adults, were convicted of a felony and placed in adult facilities. The purpose of the Act is to dispel any permissive, conflicting statutory language about the treatment of juvenile offenders. An intent is expressed that no child convicted of a felony and sentenced as an adult be placed in an adult prison, irrespective of any mitigating effect of the Youthful Offender Act.²⁰

Prior to passage of the Act, judges, in their discretion, had been ordering that individuals under the age of eighteen be held in separate correctional facilities for juveniles. SB 301 requires that this separation occur. The state must appropriate money to juvenile facilities for the Act to have the desired effect, because within the juvenile offender population

15. 236 Ga. 283, 223 S.E.2d 627 (1976).

16. *Id.* at 285, 223 S.E.2d at 629.

17. *Id.* at 286, 223 S.E.2d at 629-30.

18. *Id.* at 291, 223 S.E.2d at 632.

19. *Id.* at 292, 223 S.E.2d at 633.

20. Telephone interview with Senator Floyd Hudgins, Senate District No. 15 (May 29, 1987).

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there are separate groups — first time offenders and chronic, violent offenders. The intent of the Act will best be served if these groups are separated, a result difficult to obtain without adequate funding.²¹

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21. Telephone interview with Bette Rosenzweig, Deputy Director, Juvenile Justice Coordinating Council (July 6, 1987).