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COURTS, DOMESTIC RELATIONS Juvenile Proceedings, Parental Rights: Provide Procedure for Taking Unruly Child into Custody and Detention of Unruly Child; Child Custody Proceedings: Permit Court Discretion in Awarding Visitation and Custody to a Parent Who Has Committed One or More Acts of Family Violence

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COURTS, DOMESTIC RELATIONS

Juvenile Proceedings, Parental Rights: Provide Procedure for Taking Unruly Child into Custody and Detention of Unruly Child; Child Custody Proceedings: Permit Court Discretion in Awarding Visitation and Custody to a Parent Who Has Committed One or More Acts of Family Violence

CODE SECTIONS:	O.C.G.A. §§ 15-6-77,[1] 15-11-17, -19 to -20, 19-9-1, -3 (amended), -7 (new)
BILL NUMBER:	HB 498
ACT NUMBER:	399
GEORGIA LAWS:	1995 Ga. Laws 863
SUMMARY:	The Act provides that a child may be taken into custody if a parent or guardian has contacted a law enforcement agency and reported that child absent or if a child violates a state or local curfew, only when a holding facility for unruly children is available. The Act grants authority to counties and municipalities to establish such holding facilities. The Act also provides factors that a judge may consider when determining custody and visitation rights after the court has made a finding of family violence. The Act enumerates specific orders that a judge may issue pertaining to visitation by a parent who has committed family violence.
EFFECTIVE DATE:	July 1, 1995

History

The Act addresses two distinct but related issues. The first is the problem of unruly children, including runaways. The second is the problem of family violence and child custody.

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1. The Act amends O.C.G.A. § 15-6-77 relating to fees of superior court clerks in family violence cases. This amendment will not be addressed further.

Unruly Children

Early intervention may be a solution to teenage problems such as vandalism, gang activity, truancy, and runaways.[2] To that end, many counties and municipalities have passed laws imposing curfews on teenagers.[3] Moreover, parents often call police asking for help to control their runaway children.[4] The curfew laws and parents' requests for help in dealing with runaway children have strained police and court resources.[5] Some police officers have even stopped enforcing curfew laws because they end up "babysitting" the violators for three to four hours until they can be turned over to their parents.[6] The only other option police officers had was to leave the children unattended in the police station lobby, which raised liability problems.[7] Hence, there was a clear need for a safe, supervised place to deal with these violators.[8] The Act provides for local municipalities to establish such facilities to hold unruly children.[9] The Act also addresses the problem of runaway children because they too may be detained in the holding facility.[10] The key to this legislation is parental involvement and notification.[11]

Family Violence and Child Custody

When a family suffers from domestic violence, there is a misconception that a divorce will end the violence.[12] Children suffer in a variety of ways, from physical and mental abuse to learning violent behaviors which follow them throughout their

2. Telephone Interview with Rep. Jeffrey L. "Jeff" Williams, House District No. 83 (Apr. 24, 1995) [hereinafter Williams Interview].
3. *Id.*
4. *Id.*
5. *Id.*
6. *Id.*
7. *Id.*
8. *Id.*
9. O.C.G.A. § 15-11-19(e)(2) (Supp. 1995).
10. Williams Interview, *supra* note 2; O.C.G.A. § 15-11-19(e)(2) (Supp. 1995).
11. Williams Interview, *supra* note 2.
12. Telephone Interview with Sylvia Caley, Atlanta Legal Aid Society, Inc. (Apr. 26, 1995) [hereinafter Caley Interview]. Ms. Caley is also a member of the State Commission on Family Violence. *Id.*

lives.[13] HB 498, which was introduced as SB 120, was a part of Lieutenant Governor Pierre Howard's legislative package.[14] The bill was written by Sylvia Caley, a lawyer for Atlanta Legal Aid, in her capacity as a member of the State Commission on Family Violence.[15] The Commission members met with the Lieutenant Governor and promised him that they would focus on the needs of children in domestic violence cases.[16]

HB 498

Unruly Children

To combat the problem of runaways and provide parents with help at the earliest possible moment,[17] the Act allows a law enforcement officer or officer of the court to take a child into custody when a parent has contacted a law enforcement agency and reported the child absent without permission.[18] To combat the growing problems of vandalism, truancy, and gang activity,[19] the Act provides that a law enforcement officer can take a child who is in violation of curfew into custody.[20]

The House Judiciary Committee amended this portion of the bill to provide that when an officer takes a child into custody,

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13. *Id.*
14. *Id.*
15. *Id.* SB 120 was patterned on a legislative model developed by the National Council of Juvenile and Family Court Judges. *Id.* The Georgia State Commission on Family Violence approved of the work of this National Council and decided to make one aspect of the recommendations—the effect of domestic violence on children—part of the Commission's legislative agenda for the 1995 session. *Id.* Ms. Caley provided the model language prepared by the National Council to Legislative Counsel at the Capitol who in turn drafted the bill. *Id.* The Lt. Governor made SB 120 part of his legislative package. *Id.*
16. *Id.* When the Georgia State Commission on Family Violence was sworn into existence in November 1992, Lt. Governor Howard attended the ceremony and asked that the Commission focus part of the work on the needs of children. *Id.* The Commission made an affirmative decision to make children the focus of the 1995 legislative agenda. *Id.* Lt. Governor Howard incorporated SB 120 into his package and made the decision as to which Senator would carry the bill. *Id.*
17. Williams Interview, *supra* note 2.
18. O.C.G.A. § 15-11-17(a)(6) (Supp. 1995).
19. Williams Interview, *supra* note 2.
20. O.C.G.A. § 15-11-17(a)(7) (Supp. 1995).

either because of a parental request or violation of a curfew, there must be a holding facility for unruly children available.[21] These holding facilities must be separate from other juvenile facilities and adult holding facilities.[22] Children must not be isolated from other children or restrained in a cell unless they are disruptive in the holding facility.[23] The goal of the Act is to create a safe place where these children can be supervised until their parents are notified and can retrieve them.[24] If children are not released to a parent or guardian within twelve hours, they may be placed in shelter care or in a juvenile detention facility.[25]

The Act grants counties and municipalities authorization to establish these holding facilities.[26] Representative Jeffrey L. "Jeff" Williams believes that most communities can use existing facilities, such as gymnasiums and courtrooms, rather than building special facilities for this purpose.[27] The holding facilities will serve as the beginning phase of the juvenile intake process, allowing the police to bring children to the facility and immediately return to their jobs.[28] These facilities will allow counties to do "curfew sweeps," without requiring judges to stay at the courthouse all night, because the children can be sent home with parents and given a date to return to court.[29]

Representative Williams found support for this bill from both the Council of Juvenile Court Judges and the Gwinnett County police force.[30] On the House floor, he also garnered the support

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21. *Id.* § 15-11-17(a)(6)-(7).

22. Williams Interview, *supra* note 2; *see also* O.C.G.A. § 15-11-19(e)(1) (Supp. 1995).

23. O.C.G.A. § 15-11-19(e)(2) (Supp. 1995).

24. Williams Interview, *supra* note 2. The Act provides that "[i]mmediately after a child is brought into such a facility, every effort shall be made to contact the parent or guardian." O.C.G.A. § 15-11-19(e)(2) (Supp. 1995).

25. O.C.G.A. § 15-11-20(e) (Supp. 1995).

26. *Id.* § 15-11-19(e)(2).

27. Williams Interview, *supra* note 2. Federal law allows for less restrictive holding facilities for juvenile delinquents. Williams Interview, *supra* note 2. Additionally, federal funding is available for these types of "community partnerships." Williams Interview, *supra* note 2. The Governor's Council of Children & Youth Services has already received $1.2 million to pay for these types of programs. Williams Interview, *supra* note 2.

28. Williams Interview, *supra* note 2.

29. Williams Interview, *supra* note 2.

30. Williams Interview, *supra* note 2.

of representatives from the inner-city districts because they saw the danger of children being detained in unsuitable facilities.[31]

As introduced, the bill provided that children who were violating local curfew ordinances would be taken into custody.[32] A House floor amendment struck the words "local" and "ordinance"[33] because the prior language was too narrow and would not include state-wide curfews such as the one in Governor Zell Miller's DUI bill.[34]

Family Violence and Child Custody

HB 498 was significantly changed when the Senate attached an amendment to the bill pertaining to family violence and child custody.[35] This amendment was originally introduced as SB 120 by Senator Richard O. Marable.[36] SB 120 was held up in the House Rules Committee and would not have passed this year had it not been attached to HB 498.[37]

When the amendment was introduced in the House, Representative Williams was concerned with the issue of germaneness.[38] After attending a meeting with the Speaker of the House and being assured that the issue had been discussed with the Attorney General, Representative Williams agreed that since both bills were related to child custody issues, they were germane.[39]

In recent years, two national groups, the National Association of Juvenile and Family Court Judges and the American Bar Association Commission on Children, have addressed how states should confront the problem of domestic violence and children.[40] Sylvia Caley, who researched the bill on behalf of the State

31. Williams Interview, *supra* note 2.
32. HB 498, as introduced, 1995 Gen. Assem.
33. HB 498 (HCSFA), 1995 Ga. Gen. Assem.
34. Williams Interview, *supra* note 2.
35. HB 498 (SFA), 1995 Ga. Gen. Assem.
36. Caley Interview, *supra* note 12.
37. Caley Interview, *supra* note 12.
38. Williams Interview, *supra* note 2.
39. Williams Interview, *supra* note 2. HB 498 related to the State taking custody of children, whereas SB 120 related to custody between parents when there is a finding of family violence. Williams Interview, *supra* note 2.
40. Caley Interview, *supra* note 12.

Commission on Family Violence, notes: "A divorce decree does not mean that there is no more opportunity for violence."[41]

Significant changes were made to title 19 of the Code that are intended to guide judges in their determination of custody when there has been a finding of family violence.[42] There is an overwhelming concern that judges do not think about, or do not acknowledge, domestic violence in divorce cases.[43] Consequently, Code section 19-9-1, relating to general custody proceedings, and Code section 19-9-3, relating to cases in which the custody of a minor is in dispute between the parents, were amended in the Senate to provide factors that a court must consider when the court has made findings of family violence.[44]

The word "must" was changed to "may" when it returned to the House, and the bill was passed by the House and Senate with that change.[45] This change was implemented by Representative Roy E. Barnes, because he believes it is unnecessary to mandate the factors a judge must consider.[46] He stated that judges usually will do what is right and their discretion in these cases should not be undermined.[47] Representative Barnes noted that existing legislation addresses this problem; therefore, this bill is redundant.[48] He analogized the need to order judges to consider family violence to the need to instruct them to consider whether a parent is a drug addict.[49]

Although the bill was changed to provide that a judge *may* consider the listed factors, within the factors themselves, the words "the court *shall* consider" remain.[50] Because of this inconsistency, it is unclear whether, under the Act, the court is required or has discretion to consider the factors.[51] Ms. Caley

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41. Caley Interview, *supra* note 12.
42. Caley Interview, *supra* note 12; O.C.G.A. §§ 19-9-1, -3 (Supp. 1995).
43. Caley Interview, *supra* note 12.
44. HB 498 (SFA), 1995 Ga. Gen. Assem.; Caley Interview, *supra* note 12.
45. *Compare* HB 498 (SFA), 1995 Ga. Gen. Assem. *with* O.C.G.A. § 19-9-1(a)(1) (Supp. 1995).
46. Telephone Interview with Rep. Roy E. Barnes, House District No. 33 (Apr. 24, 1995) [hereinafter Barnes Interview].
47. *Id.*
48. *Id.*
49. *Id.*
50. *Compare* HB 498 (SFA), 1995 Ga. Gen. Assem. *with* O.C.G.A. § 19-9-3(a)(3) (Supp. 1995).
51. *See infra* notes 52-55 and accompanying text.

stated that she believes this language would still require the judge to consider these factors after a finding of family violence.[52] Representative Williams stated that he was comfortable with the "shall" language because the court would most likely consider these factors anyway.[53] He also stated that he would have preferred "may" to "shall," but this detail was overlooked.[54] Representative Barnes believes that the bill will be read to allow the judge discretion and that the "shall" language will not override the "may" language.[55]

The Act provides that when the court has made a finding of family violence, the court shall consider the safety of the victims and the perpetrator's history of violence in making custody or visitation determinations.[56] Additionally, if an abused spouse has left the children for a reasonable period of time to relocate as a result of domestic violence, the court shall not consider the children abandoned by that parent.[57] This has been a problem in cases in which parents who were victims of spousal abuse left the home to find shelter from the abuse and courts deemed them to have abandoned their children.[58] This section provides abused parents with the chance to escape the abuse without losing custody of their children following the breakup of the family.[59]

These factors are only an issue when there has been an actual finding of family violence, not simply an allegation of family violence.[60] When there is a prior history of abuse, the state can be more intrusive in making custody decisions.[61]

The Senate amendment also added Code section 19-9-7, allowing a court to award visitation privileges to a parent who has committed acts of family violence only if it finds that there is

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52. Caley Interview, *supra* note 12.

53. Williams Interview, *supra* note 2. The factors are: (1) the court shall consider as primary the safety of the child and parent victims, and (2) the court shall consider the perpetrator's history of violence. O.C.G.A. § 19-9-1 (Supp. 1995).

54. Williams Interview, *supra* note 2.

55. Barnes Interview, *supra* note 46.

56. O.C.G.A. § 19-9-1(a)(2)(A)-(B) (Supp. 1995).

57. *Id.* § 19-9-1(a)(2)(C).

58. Caley Interview, *supra* note 12.

59. Caley Interview, *supra* note 12.

60. Williams Interview, *supra* note 2.

61. Williams Interview, *supra* note 2.

adequate protection for the safety of the victims.[62] This section was formulated in response to studies showing the harmful effects on children living in an abusive environment and establishing that the abuse does not necessarily end with divorce.[63] Violence is a control issue; often a batterer will continue to find a way to control, long past the divorce.[64] Therefore, protecting the children and the parent who has been abused is paramount.[65]

Thus, in the new Code section, the court is given discretion to order measures calculated to protect the children.[66] The court may order exchanges of a child to occur in a protected setting,[67] may order visits to be supervised,[68] may order the perpetrator to complete counseling,[69] may order the perpetrator to stay sober,[70] may prohibit overnight visits,[71] may require the posting of a bond,[72] or may impose any other condition that the court deems necessary to protect the child or any other family member.[73] The bill did not indicate that parents who commit violence on their spouses or children must be prohibited from any visitation or custody rights because that would clearly diminish judicial discretion and would not have passed in the Senate or the House.[74]

The amendment also deleted part of Code section 19-9-1 stating that "[n]othing in this Code section shall be interpreted to deny the noncustodial parent the right to reasonable visitation determined by the court as in other cases."[75] This deletion was necessary to avoid a conflict with the purpose of new Code

62. O.C.G.A. § 19-9-7 (Supp. 1995).
63. Caley Interview, *supra* note 12.
64. Caley Interview, *supra* note 12.
65. Caley Interview, *supra* note 12.
66. Caley Interview, *supra* note 12; O.C.G.A. § 19-9-7 (Supp. 1995).
67. O.C.G.A. § 19-9-7(a)(1) (Supp. 1995).
68. *Id.* § 19-9-7(a)(2). The court may also require payment to offset the costs of the supervision. *Id.* § 19-9-7(a)(5).
69. *Id.* § 19-9-7(a)(3).
70. *Id.* § 19-9-7(a)(4).
71. *Id.* § 19-9-7(a)(6).
72. *Id.* § 19-9-7(a)(7).
73. *Id.* § 19-9-7(a)(8).
74. Caley Interview, *supra* note 12.
75. 1986 Ga. Laws 1000, § 1, at 1001 (formerly found at O.C.G.A. § 19-9-1(a) (Supp. 1993)).

section 19-9-7: to protect child victims of domestic violence.[76] Senator Marable, however, proposed SB 246, which would in essence return that language to the statute.[77] SB 246, which did not pass, would have added a section stating that the court is encouraged to grant the noncustodial parent rights to reasonable visitation.[78]

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76. Caley Interview, *supra* note 12.
77. Caley Interview, *supra* note 12.
78. *See* SB 246, as introduced, 1995 Ga. Gen. Assem.; Caley Interview, *supra* note 12.