

3-1-1987

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H. Woodall

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Recommended Citation

H. Woodall, *COURTS Juveniles: Redefine Designated Felony Act*, 3 GA. ST. U. L. REV. (1987).

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COURTS

Juveniles: Redefine Designated Felony Act

CODE SECTION:	O.C.G.A. § 15-11-37 (amended)
BILL NUMBER:	SB 215
ACT NUMBER:	699
SUMMARY:	The Act amends Georgia's Designated Felony Law by providing that a juvenile will be subject to the provisions of the Designated Felony Law if the juvenile commits an act which would be a felony if committed by an adult and the juvenile has been adjudicated three times previously for acts which, if done by an adult, would have been felonies.
EFFECTIVE DATE:	July 1, 1987

History

Georgia's juvenile justice system has several purposes.¹ First, it seeks to advance the best interest of the child brought into the system,² and second, it seeks to protect the state's citizens from juvenile crime.³ The two goals are not always congruent, but the system represents a workable compromise between the rehabilitation of delinquent youth and the protection of citizens. One way in which the legislature implemented this compromise is by providing a separate juvenile court system, one which recognizes that child offenders should be treated differently than adult criminals.⁴

A child brought before the juvenile court is not charged with a crime per se; instead, a petition is filed with the court alleging that the child is delinquent.⁵ A juvenile who commits what would be a crime if the act were done by an adult is said to have committed a delinquent act.⁶ On the other hand, a juvenile who commits an unlawful act which would not be a crime if committed by an adult (for example, truancy or running

1. See O.C.G.A. § 15-11-1 (1985).

2. See O.C.G.A. § 15-11-37(c)(1) (Supp. 1987).

3. See O.C.G.A. § 15-11-37(c)(4) (Supp. 1987).

4. O.C.G.A. § 15-11-3(a) (Supp. 1987) (authorizing, but not funding, the creation of a juvenile court in every county in the state).

5. O.C.G.A. § 15-11-2(6)(A) (Supp. 1987).

6. *Id.*

away from home), is considered a status offender and not a delinquent.⁷ That is, the act is unlawful only because of the offender's status as a juvenile.

The juvenile court has broad discretion in dealing with a child who is adjudicated a delinquent.⁸ Because of the unique situation of youth offenders, the state's juvenile code provides juvenile court judges with several options when dealing with a child adjudicated delinquent.⁹ Although not convicted of a crime, the child can be ordered to pay restitution,¹⁰ serve a period of probation,¹¹ or be committed to the custody and care of the Department of Human Resources, Division of Youth Services.¹²

The Division of Youth Services maintains several Youth Development Centers throughout the state for the incarceration and training of adjudicated delinquents and other children committed to its care. Incarcerated children participate in activities designed to foster their desire and ability to function as law-abiding citizens.¹³ The majority of children in the state's Youth Development Center are not violent offenders needing long-term incarceration to protect society. Accordingly, the Division of Youth Services enjoys broad discretion in deciding when a child in its care no longer needs to be in custody.¹⁴

Dissatisfied that some children who have committed particularly violent crimes are being released from custody too quickly, however, the legislature has passed laws reducing or eliminating the Division's discretion to discharge certain offenders from its custody.¹⁵ In order to ensure that the certain youthful criminals are removed from society and closely monitored, the Designated Felony Law requires that courts follow certain procedures when children commit certain designated felony acts, and that offenders sentenced to restrictive custody serve a minimum of twelve months in a Youth Development Center.¹⁶ When a child is charged with committing any of the designated felonies listed in the statute, the court

7. O.C.G.A. § 15-11-2(11) (Supp. 1987).

8. *See, e.g., C.P. v. State*, 167 Ga. App. 374, 375, 306 S.E.2d 688, 689 (1983) (juvenile court may "explore all additional avenues, including psychiatric and sociological studies, which would enable him to provide a solution for the youngster and his family aimed at making the child a secure, law-abiding member of society").

9. *Id.* at 376, 306 S.E.2d at 689-90 (construing the juvenile code as permitting the juvenile court discretion to order restitution under O.C.G.A. § 17-14-5 (1982)).

10. O.C.G.A. § 15-11-35(a)(5) (1985).

11. O.C.G.A. § 15-11-35(a)(2) (1985).

12. *See* 1980 Op. Att'y Gen. No. 80-160.

13. *Id.* at 365 (purpose of incarceration is rehabilitation).

14. DEPARTMENT OF HUMAN RESOURCES, DIVISION OF YOUTH SERVICES, YOUTH DEVELOPMENT CENTER STATISTICAL DATA FILE (Sept. 14, 1987) (indicating that only 15.6% of youth serving in Youth Development Center in fiscal year 1987 were designated felons of superior court commitments) (copy on file at Georgia State University Law Review office).

15. O.C.G.A. § 15-11-37(e) (Supp. 1987).

16. O.C.G.A. § 15-11-37(e)(1)(B) (Supp. 1987).

must make a specific written determination whether the delinquent requires restrictive custody. Once a child is committed to the Division of Youth Services for an act listed in the Designated Felony Law, the Division may not release him prior to the expiration of the order without the court's permission.¹⁷

The intent of the Designated Felony Law is to place under close state scrutiny or incarceration any child who commits acts which, if committed by an adult, would be violent felonies punishable by a lengthy jail sentence.¹⁸ Historically, the law has never included the lesser, nonviolent felonies.

SB 215

The Act amends the Code to include nonviolent offenses, under certain circumstances, within the listing of designated felony acts in the Designated Felony Law. The Act adds another circumstance in which the court must comply with the provisions of the Designated Felony Law.¹⁹ The new law provides that if a child has been adjudicated delinquent three times previously for felony acts not listed in the Designated Felony Law, the court must comply with the Designated Felony Law in any future proceedings in which the same child is accused of any act which would be a felony if committed by an adult.²⁰ Thus, any adult felony act, if committed by a child, is now within the purview of the Designated Felony Law if the child has committed nondesignated felonies three times previously.

As introduced, SB 215 would have required compliance with the procedures of the Designated Felony Law if the child had been adjudicated twice previously for nondesignated felonies.²¹ The Senate mitigated the bill's harshness when it amended the bill to require three adjudications, not two.²²

The new law, however, does represent a departure from past policy. The Designated Felony Law now encompasses nonviolent felony acts. In its original form, the Designated Felony Law covered only the worst of the violent felonies. It assured that the most violent juveniles would be dealt with according to the severity of their crimes. Now, the legislature

17. O.C.G.A. §§ 15-11-37(b), -37(e)(1)(D) (Supp. 1987).

18. *Id.*; see also O.C.G.A. § 15-11-37(a)(2) (Supp. 1987) (listing violent felonies which if committed by a juvenile, require the court to make a special finding as to whether the child requires restrictive custody).

19. O.C.G.A. § 15-11-37(a)(2)(E) (Supp. 1987).

20. *Id.*

21. SB 215, as introduced, 1987 Ga. Gen. Assem.

22. SB 215 (SFA), 1987 Ga. Gen. Assem.

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has determined that a child who is a nonviolent, three-time offender is the legal and penal equivalent of a violent juvenile offender.

H. Woodall