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COURTS Juvenile Proceedings, Parental Rights: Provide for Stay of Certain Proceedings Regarding a Child Who May Be Incompetent; Provide for Competency Hearings and Notice and Procedures Relating to Hearings; Provide for Plan Managers, Competency Plans, and Meetings; Provide for Commitment of Child to Certain Agencies; Provide for Continuing Jurisdiction Over Children Determined to Be Incompetent

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COURTS

Juvenile Proceedings, Parental Rights: Provide for Stay of Certain Proceedings Regarding a Child Who May Be Incompetent; Provide for Competency Hearings and Notice and Procedures Relating to Hearings; Provide for Plan Managers, Competency Plans, and Meetings; Provide for Commitment of Child to Certain Agencies; Provide for Continuing Jurisdiction Over Children Determined to Be Incompetent

CODE SECTIONS	O.C.G.A. §§ 15-11-150 to -155 (new)
BILL NUMBER:	HB 417
ACT NUMBER:	312
GEORGIA LAWS:	1999 Ga. Laws 507
SUMMARY:	The Act provides how and when a court can declare a child mentally incompetent at a delinquency or unruly conduct hearing. The Act sets forth procedures for a court to find a child incompetent and to declare any child who is determined to be mentally incompetent dependent on the court. The Act provides a mechanism for the development and implementation of a competency plan for the treatment, habilitation, support, or supervision of any child who the court deems incompetent to participate in an adjudication or disposition hearing.
EFFECTIVE DATE:	July 1, 1999

History

Prior to the Act's passage, Georgia law did not provide a process to protect certain due process rights of juveniles.[1] Specifically, no protection existed for mentally incompetent juveniles involved in delinquency or unruly conduct hearings.[2] Georgia law provides for a process to address adult defendants who plead mental incompetency

1. *See* Telephone Interview with Rep. Stephanie Stuckey, House District No. 67 (Apr. 20, 1999) [hereinafter Stuckey Interview].
2. *See id.*

under Code section 17-7-130.[3] However, prior to the Act's passage, no similar process existed for courts to judge juveniles mentally incompetent when the juveniles could not understand the nature of the delinquency proceedings or assist in their defense.[4]

In 1996, the State filed a petition alleging delinquency in Georgia juvenile court accusing a twelve-year-old boy, S.H., of aggravated sodomy.[5] S.H. possessed the mental capabilities of a six-year-old and an Intelligence Quotient of forty.[6] His guardian ad litem testified during the juvenile court hearing that S.H. could not tell the difference between right and wrong.[7] The juvenile court observed that S.H. "is not a mean or violent child but is recreating events that have occurred to him and he does not realize the wrong of his actions."[8] The juvenile court also observed that S.H.'s counsel had "no defense due to the lack of his client's ability to assist him."[9] S.H. could not assist his counsel in his own defense.[10]

Judge Sanford Jones, Juvenile Court Judge of Fulton County, found that S.H. had committed the act of aggravated sodomy.[11] The court also found S.H. mentally incompetent.[12] The juvenile's attorney moved to have him declared incompetent to stand trial.[13] Judge Jones denied the motion because "Georgia law does not provide a statutory framework in order to protect juveniles [sic] rights not to be tried in a delinquency proceeding while they are incompetent."[14] Despite the questions about S.H.'s capacity, Judge Jones had to proceed with the adjudicatory hearing because no Georgia statute set forth a process to find a juvenile mentally incompetent.[15]

The Court of Appeals reversed Judge Jones's decision.[16] The defense argued that the juvenile court violated S.H.'s due process rights.[17] The Court of Appeals agreed with the defense that S.H. could

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3. *See* 1995 Ga. Laws 1250 (codified at O.C.G.A. § 17-7-130 (1997)).
4. *See* Stuckey Interview, *supra* note 1.
5. *See In re* S.H., 220 Ga. App. 569, 469 S.E.2d 810 (1996).
6. *See id.*
7. *See id.*
8. *Id.* at 570, 469 S.E.2d at 811.
9. *Id.* at 572, 469 S.E.2d at 812.
10. *See id.*
11. *See id.* at 569, 469 S.E.2d at 810.
12. *See id.* at 570, 469 S.E.2d at 810.
13. *See id.*
14. *Id.*
15. *See id.*; Stuckey Interview, *supra* note 1.
16. *See In re* S.H., 220 Ga. App. at 572, 469 S.E.2d at 810.
17. *See id.* at 570-71, 469 S.E.2d at 811.

not understand the nature of the delinquency proceedings and could not assist his counsel with his own defense.[18] The Court of Appeals agreed that to adjudge S.H. delinquent violated his due process rights.[19]

The Court of Appeals remanded the case to juvenile court.[20] In light of the Court of Appeals' opinion, Judge Jones had no choice but to dismiss the aggravated sodomy charge against S.H.[21] To subject S.H. to adjudication would violate his due process rights and no procedure existed for S.H. to be found mentally incompetent.[22]

An Overview of the Act

Following the reversal of the decision in *In re S.H.*, Judge Jones encouraged legislators to pass a statute to remedy the lack of procedures to find a juvenile mentally incompetent.[23]

The Act provides that if the court has any reason to believe a child may qualify as incompetent,[24] the court can stay a delinquency or unruly conduct hearing.[25] The court can then order a qualified examiner to evaluate the child's competency; the examiner must submit a written report to the court.[26] The court then holds a competency hearing.[27] If the court judges a child mentally incompetent and dependent upon the court, the court appoints a plan manager.[28] The plan manager must submit a competency plan to the court that must be reviewed in a disposition hearing and every six months thereafter.[29]

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18. *See id.* at 571-72, 469 S.E.2d at 811-12.

19. *See id.* at 571, 469 S.E.2d at 811. "Neither the Fourteenth Amendment nor the Bill of Rights is for adults alone." *Id.*

20. *See id.* at 572, 469 S.E.2d at 812.

21. Telephone Interview with Eric John, Executive Director of the Council of Juvenile Court Judges of Georgia (Apr. 20, 1999) [hereinafter John Interview].

22. *See In re* S.H., 220 Ga. App. at 571, 469 S.E.2d at 811.

23. *See* John Interview, *supra* note 21.

24. *See* O.C.G.A. § 15-11-151(5) (Supp. 1999) (" 'Mentally Competent' means having sufficient present ability to understand the nature and objectives of the proceedings against himself or herself, to comprehend his or her own situation in relation to the proceedings and to render assistance to the defense attorney in the preparation and presentation of his or her case.").

25. *See id.* § 15-11-152(a).

26. *See id.* § 15-11-152(a)-(d).

27. *See id.* § 15-11-153(a)-(e).

28. *See id.* § 15-11-151(6).

29. *See id.* § 15-11-155(a). The "competency plan" is to include information concerning supervision and protection of the community and child, treatment, habilitation, support,

Judge Jones, who was President of the Council of Juvenile Court Judges of Georgia at the time, along with the Juvenile Judges Council, formed a Council committee to develop the legislation.[30] The Committee included psychologists, defense attorneys, and juvenile judges.[31] The Committee worked several years to develop HB 417.[32]

The bill was first introduced late in the 1998 session.[33] The bill's sponsors hoped this would encourage the legislators to think about the bill over the summer.[34]

Consideration by the House Judiciary Committee

The House Judiciary Committee made very few changes to the language in HB 417 that Representatives Stephanie Stuckey of the 67th District, Jim Martin of the 47th District, and Tom Bordeaux of the 151st District originally introduced.[35] In the original bill, the proposed language of Code section 15-11-153(c) would have placed the burden of proof on the state to prove the child "not competent" during the competency hearing.[36] The House Judiciary Committee changed this so that the burden of proving the child "competent" rested on the state.[37] The House Judiciary Committee also deleted proposed language of Code section 15-11-153(c) in the original version that would have shifted the burden of proof to the child's attorney when that attorney raised the issue of incompetence.[38]

Changes Made in the Final Version of the Bill

Representatives Stuckey, Martin, and Taper offered a House floor substitute to the bill, which eventually passed both the House and the Senate.[39] The Fulton County District Attorney's Office, specifically,

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support services, and identification of individuals responsible for each element of the plan. *See id.* § 15-11-154(b)(1)-(4).

30. *See* John Interview, *supra* note 21.
31. *See id.*
32. *See* Stuckey Interview, *supra* note 1.
33. *See* John Interview, *supra* note 21.
34. *See id.*
35. *See* HB 417, as introduced, 1999 Ga. Gen. Assem.
36. *See id.*
37. *Compare* HB 417, as introduced, 1999 Ga. Gen. Assem., *with* HB 417 (HCS), 1999 Ga. Gen. Assem.
38. *Compare* HB 417, as introduced, 1999 Ga. Gen. Assem., *with* HB 417 (HCS), 1999 Ga. Gen. Assem.
39. *See* O.C.G.A. §§ 15-11-150 to -155 (Supp. 1999).

Assistant District Attorney Lyn Armstrong suggested many of the changes in that final version of the bill.[40] Ms. Armstrong suggested most of these changes to reduce the learning curve of the attorneys who will implement the Act.[41] The District Attorney's Office wanted this Act to closely mirror the adult competency statute, Code section 17-7-130, with which the District Attorney's Office was already familiar.[42]

Representative Stuckey pointed out, however, the differences between the Act and the adult system of determining competency.[43] For instance, in the juvenile system, the Act requires a case plan to help rehabilitate the child.[44]

The term "competent" in the original bill was changed to "mentally competent" in the final version so it would more closely conform with the adult competency statute.[45] The floor substitute added to the proposed language of Code section 15-11-150 the following language: "the provisions of this article shall not apply to any case in which the superior court has jurisdiction pursuant to Code section 15-11-5.1."[46]

Representative Stuckey pointed out that juveniles who are charged with one of the seven crimes in that Code section would not ever appear in juvenile court.[47] The crimes in that Code section include murder, voluntary manslaughter, rape, aggravated sodomy, aggravated child molestation, aggravated sexual battery, and armed robbery with a firearm.[48]

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40. *See* Telephone Interview with Lyn Armstrong, Fulton County Assistant District Attorney (May 14, 1999) [hereinafter Armstrong Interview]; John Interview, *supra* note 21; Stuckey Interview, *supra* note 1.

41. *See* Armstrong Interview, *supra* note 40.

42. *See id.*

43. *See* Stuckey Interview, *supra* note 1.

44. *See id.* Representative Stuckey reported that with this Act there is a huge emphasis on juvenile rehabilitation. The purpose of the juvenile court is to rehabilitate the juveniles the court encounters. *See id.*

45. *Compare* HB 417, as introduced, 1999 Ga. Gen. Assem., *with* O.C.G.A. §§ 15-11-150 to -155 (Supp. 1999).

46. O.C.G.A. § 15-11-150 (Supp. 1999). Code section 15-11-5.1 concerns the commitment of a 13 to 17-year-old child to the custody of the Department of Corrections when the child has been tried and convicted as an adult in superior court for any one of the "seven deadly sins." 1994 Ga. Laws 1012 (codified at O.C.G.A. § 15-11-5.1 (1994)).

47. *See* Stuckey Interview, *supra* note 1.

48. *See* O.C.G.A. § 15-11-5.1 (1999); *see also* Lyn K. Armstrong, *"Committable for Mental Illness": Is this a True Challenge to Transfer*, GA. B.J., Oct. 1998, at 32.

Definitions

The House floor substitute changed the proposed language in Code section 15-11-151 concerning a "mental competency proceeding," to include hearings that a court conducts to determine whether a child qualifies as mentally competent "to participate in adjudication, a disposition hearing, or a transfer proceeding held pursuant to this chapter."[49]

Qualified Examiner

The Act provides that if the court has any reason to believe a child may qualify as incompetent, the court, on its own motion or on the motion of the child's attorney, any guardian ad litem for the child, or the state can stay the proceedings at any time during a delinquency or unruly conduct hearing.[50] After the proceeding is stayed, the court can then order an evaluation of the child's competency by a qualified examiner.[51]

Within thirty days of the court order requiring the evaluation, the qualified examiner must submit a written report to the court that states the reasons for the evaluations, procedures followed by the examiner, and results of a mental status examination.[52] The court may order examinations by other qualified examiners upon a showing of good cause.[53]

The language "[t]he Attorney for the state shall provide (police or court records)" in the original bill was changed to "the probation officers of juvenile court shall provide (police or court records)" to the qualified examiner.[54] The final version of the bill specified what items the qualified examiner's report "shall" contain, rather than what the report "may" contain.[55]

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49. *Compare* HB 417, as introduced, 1999 Ga. Gen. Assem., *with* O.C.G.A. § 15-11-151 (Supp. 1999).

50. *See* O.C.G.A. § 15-11-152(a) (Supp. 1999).

51. *See id.* § 15-11-152(a)-(b). A "qualified examiner" is a "licensed psychologist or psychiatrist who has expertise in child development and has received training in forensic evaluation procedures through formal instruction, professional supervision, or both." *Id.* § 15-11-151(7).

52. *See id.* § 15-11-152(c)-(d)(3).

53. *See id.* § 15-11-152(g).

54. *Compare* HB 417, as introduced, 1999 Ga. Gen. Assem., *with* O.C.G.A. § 15-11-152(b) (Supp. 1999).

55. *Compare* HB 417, as introduced, 1999 Ga. Gen. Assem., *with* O.C.G.A. § 15-11-152(c) (Supp. 1999).

The final version of the bill added Code section 15-11-152(d)(1), which states that if the qualified examiner deems the child incompetent, the examiner's report to the court should contain "[a] diagnosis made as to whether there is a substantial probability that the child will attain mental competency to participate in adjudication, a disposition hearing, and a transfer hearing in the foreseeable future."[56]

The Fulton County District Attorney's office successfully persuaded the General Assembly to add a requirement that "the district attorney or a member of his or her staff" receive copies of the qualified examiner's report.[57]

The final version deleted the provision in the original version of the bill specifying that the information used in the qualified examiner's report could not be used to gather additional evidence against the child.[58] The sponsors made the change at the request of the Fulton County District Attorney's office.[59]

Mental Competency Hearing

A court holds a mental competency hearing after the examiner completes the evaluation report.[60] If the court deems the child mentally competent at the hearing, the delinquency or unruly conduct hearings resume.[61] If the court declares the child incompetent, the child can be "adjudicated dependent by the court."[62]

The final version of the bill added that "ten days' prior written notice of the hearing shall be served on the district attorney, for all mental competency proceedings in which the district attorney, or a member of the district attorney's staff, may participate."[63] The sponsors made this change at the urging of the Fulton County District

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56. O.C.G.A. § 15-11-152(d)(1) (Supp. 1999).

57. *Id.* § 15-11-152(f). *See* Armstrong Interview, *supra* note 40; Stuckey Interview, *supra* note 1.

58. *Compare* HB 417, as introduced, 1999 Ga. Gen. Assem., *with* O.C.G.A. § 15-11-152 (Supp. 1999).

59. *See* Stuckey Interview, *supra* note 1.

60. *See* O.C.G.A. § 15-11-153(a)-(e) (Supp. 1999).

61. *See id.* § 15-11-153(d).

62. *Id.* § 15-11-153(e). If a child is judged to be dependent on the court, he or she "shall not be subject to discretionary transfer to superior court, adjudication, disposition, or modification of disposition as long as such incompetency exists." *Id.* However, if the court determines that the child is a resident of another Georgia county, the court "may transfer the proceeding to the county of the child's residence." *Id.* § 15-11-154(a).

63. *Id.* § 15-11-153(a).

Attorney's office so the Act would more closely conform with the adult statute.[64] The final version deleted a provision that would have required that the order of the mental competency hearing shall be determined by the court.[65]

In the final version of the bill, the burden for proving the child is mentally incompetent was shifted to the child at the suggestion of the District Attorney's office so the Act would more closely conform with the adult statute.[66] The Act provides that the court may dismiss a proceeding without prejudice if the juvenile's alleged act is a misdemeanor if committed by an adult.[67]

Competency Plan

Once the court adjudges a child dependent on the court, it must appoint a "plan manager"[68] who must submit a "competency plan" to the court "within 30 days of the court's adjudication of dependency."[69] The competency plan should include information concerning supervision and protection of the community and the child, treatment, habilitation, support, support services, and identification of individuals responsible for each element of the plan.[70] The Act provides that the competency plan is to be developed at a meeting of all "relevant parties."[71]

The Act provides that the court can transfer a hearing "unless the act alleged would be a felony if committed by an adult."[72] The House made this change to clarify that the Act does not affect SB 440, which lists the "seven deadly sins"; if the state charges a juvenile with these crimes, it tries him or her in adult court.[73] Because children who

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64. *See* Stuckey Interview, *supra* note 1.

65. *Compare* HB 417, as introduced, 1999 Ga. Gen. Assem., *with* O.C.G.A. § 15-11-153 (Supp. 1999).

66. *See* Stuckey Interview, *supra* note 1.

67. *See* O.C.G.A. § 15-11-153(e) (Supp. 1999).

68. *Id.* § 15-11-154(b). "[A] person who is under the supervision of the court and is appointed by the court to convene a meeting of all relevant parties for the purpose of developing a competency plan." *Id.* § 15-11-151(6).

69. *Id.*

70. *See id.* § 15-11-154(b)(1) to (4).

71. *See id.* § 15-11-154(c)(1)(A) to (G). "Relevant parties" include any parent, guardian, legal custodian, child's attorney, state's attorney, guardian ad litem of the child, mental health or mental retardation representatives, probation officer, and a representative of the child's school. *See id.*

72. *Id.* § 15-11-154(a).

73. *See* Armstrong, *supra* note 40; Stuckey Interview, *supra* note 1.

allegedly commit one of these crimes would not even be in juvenile court, this Act would not apply.[74]

The Act deletes the requirement that services in the plan must be provided "in the least restrictive environment."[75]

Disposition Hearing

The court must hold a "disposition hearing" to approve the competency plan within thirty days after the competency plan is submitted to the court.[76] The child's condition and competency plan must be reviewed every six months thereafter.[77] If the child has allegedly committed an act that would be a felony if committed by an adult, the court shall "retain jurisdiction of the child for up to two years after the date or the order of adjudication."[78] If the child has allegedly committed an action that would be a misdemeanor if committed by an adult, "the court shall retain jurisdiction of the child for up to 120 days following the disposition order. . . ."[79]

The final version added "if the court dismisses the petition, the state may seek to refile petitions alleging felonies if the child is later determined to be mentally competent."[80] The state may "also seek transfer to superior court if the child is later determined to be mentally competent."[81] The final version also specified that "the district attorney or a member of his or her staff may seek civil commitment pursuant to Chapters 3 and 4 of Title 37."[82]

Concerning when one can petition for a rehearing, the final version also changed "Reasonable grounds to believe that the child's mental condition has changed" to "reasonable grounds to believe that the child is now mentally competent."[83]

Jennifer Burch Dempsey

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74. *See* Stuckey Interview, *supra* note 1.
75. O.C.G.A. § 15-11-54 (Supp. 1999).
76. *See id.* § 15-11-155(a) (Supp. 1999).
77. *See id.*
78. *Id.* § 15-11-155(g)(1).
79. *Id.* § 15-11-155(g)(2).
80. *Id.* § 15-11-155(e).
81. *Id.*
82. *Id.* § 15-11-155(f); *see* Stuckey Interview, *supra* note 1.
83. *Compare* HB 417 (HCS), 1999 Ga. Gen. Assem., *with* O.C.G.A. § 15-11-155(h) (Supp. 1999).