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## COURTS, CRIMES AND OFFENSES Crimes Against the Person; Classify Battery Upon a Teacher or School Official as a Felony; Juvenile Proceedings, Parental Rights: Provide for Jurisdiction and Guidance in Juvenile Proceedings; Offenses Against Public Administration: Include Escape of a Juvenile in the General Escape Statute

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## COURTS, CRIMES AND OFFENSES

*Crimes Against the Person: Classify Battery Upon a Teacher or School Official as a Felony; Juvenile Proceedings, Parental Rights: Provide for Jurisdiction and Guidance in Juvenile Proceedings; Offenses Against Public Administration: Include Escape of a Juvenile in the General Escape Statute*

**CODE SECTIONS:** O.C.G.A. §§ 15-11-5, -14, -37 to -38, -56.1, -58 to -59, 16-5-23.1, 16-10-52 (amended)

**BILL NUMBER:** SB 132

**ACT NUMBER:** 399

**GEORGIA LAWS:** 1997 Ga. Laws 1064

**SUMMARY:** The Act relates to juvenile proceedings. It provides that superior courts shall have exclusive jurisdiction over the trial of certain felony offenses involving juveniles and also provides that those offenses are bailable only before a judge of the superior court. Further, the Act states that certain designated felonies are not subject to informal adjustment without notifying the district attorney. The Act adds battery of a teacher or other school personnel, racketeering, theft of a motor vehicle, and acts of the juvenile relating to escape to the list of "designated felonies." Furthermore, the Act specifies when the disposition of a child may be used during a proceeding. The Act increases the supervision fees in juvenile court, and specifies that counsel need only request disclosure of the court files and records of the juvenile, rather than going through the subpoena process. The Act clarifies that teachers and school officials do not have to obtain the consent of the court to get the juvenile's records. The Act also elevates battery against a teacher or other school personnel to the status of a felony. Finally, the Act includes juveniles in the general statute regarding escape.

**EFFECTIVE DATE:** April 22, 1997<sup>1</sup>

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1. The Act became effective upon approval by the Governor.

*History*

SB 132 was initiated by a group of teachers in Clayton County, Georgia, who were very concerned about school safety.<sup>2</sup> Teachers and school officials were being intimidated, coerced, and battered by students. Thus, a group of school teachers and officials began a "grass roots" campaign in order to elevate battery upon a teacher to the status of a felony.<sup>3</sup> The teachers approached legislators about their concerns, who in turn approached juvenile court judges and municipal associations in order to address any additional concerns.<sup>4</sup>

Additionally, a number of judges were concerned about Attorney General Opinion No. U95-9,<sup>5</sup> which stated that a magistrate court judge must be designated to serve as a superior court judge in order to issue a warrant for a juvenile.<sup>6</sup> SB 132 was introduced to change this and give the superior court exclusive jurisdiction over the trial of the juvenile, but allow a magistrate court judge to handle preliminary matters, such as pretrial probable cause hearings.<sup>7</sup>

A concern of the juvenile court judges was a 1996 Georgia Court of Appeals opinion regarding the escape of a juvenile.<sup>8</sup> In *In re J.B.*,<sup>9</sup> the court reversed the adjudication of a juvenile for delinquency based on escape because "the State could not show a material element of the escape charge: that [the defendant] had been charged with a felony, misdemeanor, or violation of a municipal ordinance."<sup>10</sup> As a result, the Act adds juveniles to the general statute regarding escape in order to alleviate this problem.<sup>11</sup> The Act also addresses concerns of the municipal associations, such as juveniles trafficking drugs at airports and stealing cars within cities.<sup>12</sup>

2. See Telephone Interview with Sen. Terrell Starr, Senate District No. 44 (June 9, 1997) [hereinafter Starr Interview].

3. See Telephone Interview with Rep. Greg Hecht, House District No. 97 (June 10, 1997) [hereinafter Hecht Interview].

4. See Telephone Interview with Robert E. Keller, District Attorney of Clayton County (June 9, 1997) [hereinafter Keller Interview].

5. 1995 Att'y Gen. Op. U95-9 (Ga.) (unofficial opinion).

6. *Id.*

7. See Keller Interview, *supra* note 4; Telephone Interview with Melinda C. Shepherd, Senior Staff Attorney, Counsel of Superior Court Judges (June 9, 1997) [hereinafter Shepherd Interview].

8. See Keller Interview, *supra* note 4.

9. 222 Ga. App. 252, 474 S.E.2d 111 (1996).

10. *Id.* at 253, 474 S.E.2d at 111.

11. See Keller Interview, *supra* note 4.

12. See *id.*

*SB 132*

The purpose of the Act, called the "Juvenile Justice Act of 1997,"<sup>13</sup> is to alleviate some of the discipline problems associated with juveniles and give the courts guidance in handling juvenile proceedings.<sup>14</sup> The Georgia General Assembly referred SB 132 to the Senate Judiciary Committee.<sup>15</sup> The Senate Judiciary Committee introduced a substitute that made minor changes<sup>16</sup> before it passed to the House.<sup>17</sup> The bill then went to the House Special Judiciary Committee, which offered an amendment.<sup>18</sup> The amendment version passed both Houses.<sup>19</sup> The Act was approved by the Governor and became effective on April 22, 1997.<sup>20</sup>

*Juvenile Proceedings*

The Act revises Code section 15-11-5, relating to the superior court's jurisdiction over juvenile proceedings.<sup>21</sup> Previously, the superior court had jurisdiction over any matter concerning a juvenile between the age of thirteen to seventeen alleged to have committed any of seven designated felonies.<sup>22</sup> This created problems because magistrate court judges could not issue a warrant for a juvenile, conduct a first appearance hearing, or conduct a preliminary or committal hearing for a juvenile unless they were designated a superior court judge.<sup>23</sup> The Act gives the superior court exclusive jurisdiction over *the trial* of a juvenile, rather than *any matter* concerning a juvenile.<sup>24</sup> Now, the magistrate judge may conduct the preliminary matters, and the superior court conducts the trial.<sup>25</sup> Only a superior court judge has the power to make bail requirements for the designated felonies.<sup>26</sup>

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13. 1997 Ga. Laws 1064, § 1, at 1064.

14. See Telephone Interview with Sen. Mary Margaret Oliver, Senate District No. 42 (Apr. 17, 1997).

15. See Final Composite Status Sheet, Mar. 28, 1997.

16. SB 132 (SCS), 1997 Ga. Gen. Assem.

17. See Final Composite Status Sheet, Mar. 28, 1997.

18. See *id.*; SB 132 (HCA), 1997 Ga. Gen. Assem.

19. See Final Composite Status Sheet, Mar. 28, 1997.

20. See *id.*

21. Compare 1994 Ga. Laws 1012, § 14, at 1032 (formerly found at O.C.G.A. § 15-11-5(b)(2)(A) (1994)), with O.C.G.A. § 15-11-5(b)(2)(A) (Supp. 1997).

22. 1994 Ga. Laws 1012, § 14, at 1032 (formerly found at O.C.G.A. § 15-11-5(b)(2)(A) (1994)).

23. See 1995 Att'y Gen. Op. U95-9 (Ga.) (unofficial opinion).

24. Compare O.C.G.A. § 15-11-5(b)(2)(A) (Supp. 1997), with 1994 Ga. Laws 1012, § 14, at 1032 (formerly found at O.C.G.A. § 15-11-5(b)(2)(A) (1994)).

25. See O.C.G.A. § 15-11-5(b)(2)(A) (Supp. 1997).

26. See *id.* § 15-11-5(b)(2)(A.1).

Code section 15-11-14, relating to the informal adjustment of juvenile cases, is amended by adding a new Code section.<sup>27</sup> The additional Code section provides that the district attorney or his representative must be notified before an informal adjustment of a juvenile's case occurs.<sup>28</sup> The Senate substitute changed the language of the bill from obtaining prior *consent* of the district attorney to merely *notifying* the district attorney.<sup>29</sup> The substitute changed the wording because the Act is not intended to give the district attorney veto power over informal adjudication; it is only intended as a requirement for notification so that the district attorney could voice any objections to the informal adjudication.<sup>30</sup> Although not many designated felonies are informally adjusted, district attorneys requested that this Code section be added for notification purposes.<sup>31</sup>

The Act also amends Code section 15-11-37, which enumerates the designated felonies in juvenile court.<sup>32</sup> The Act adds certain designated felonies to the list because the seriousness of the offense, coupled with a previous adjudication of delinquency, constitutes treatment as a designated felony.<sup>33</sup> A very important addition to the list of designated felonies is battery on a teacher or other school personnel.<sup>34</sup> Teachers and school officials hope that a harsher penalty on a juvenile for battery of a teacher or school official will deter some juveniles' violent behavior directed at teachers.<sup>35</sup>

In response to concerns expressed by the municipal associations, Code sections were added regarding racketeering and theft of a motor vehicle.<sup>36</sup> Municipalities requested that these additions be made because of problems with juveniles stealing cars and trafficking drugs through the airports.<sup>37</sup> Additionally, a violation of Code section 16-10-52, relating to escape, is now included as a designated felony when the juvenile has been previously adjudicated to have committed a

27. Compare O.C.G.A. § 15-11-14 (Supp. 1997), with 1986 Ga. Laws 1017, § 1, at 1017 (formerly found at O.C.G.A. § 15-11-14 (1994)).

28. O.C.G.A. § 15-11-14 (Supp. 1997).

29. Compare SB 132, as introduced, 1997 Ga. Gen. Assem., with SB 132 (SCS), 1997 Ga. Gen. Assem.

30. See Keller Interview, *supra* note 4.

31. See Shepherd Interview, *supra* note 7.

32. Compare O.C.G.A. § 15-11-37(a)(2) (Supp. 1997), with 1996 Ga. Laws 416, § 1, at 416 (formerly found at O.C.G.A. § 15-11-37(a)(2) (Supp. 1996)).

33. See Keller Interview, *supra* note 4. However, some of the designated felony acts do not require a previous adjudication of delinquency, e.g., battery on a teacher, drug trafficking, or racketeering. See Shepherd Interview, *supra* note 7.

34. See O.C.G.A. § 15-11-37(a)(2) (Supp. 1997); Keller Interview, *supra* note 4.

35. See Keller Interview, *supra* note 4.

36. See *id.*; O.C.G.A. § 15-11-37(a)(2)(B)(ix), (a)(2)(E) (Supp. 1997).

37. See Keller Interview, *supra* note 4.

designated felony.<sup>38</sup> Lawmakers believed that the escape of a juvenile was an offense that warranted more serious treatment.<sup>39</sup>

Code section 15-11-38 was added by the Senate Judiciary Committee in order to clarify when the disposition of a juvenile may be used at a hearing.<sup>40</sup> Previously, the juvenile's record could only be used in a proceeding for delinquency or unruliness or for the "establishment of conditions of bail, plea negotiations, and sentencing in felony offenses."<sup>41</sup> Lawmakers believed that the juvenile record should be available for use in other situations.<sup>42</sup> Thus, the addition broadened the Code section and allowed the disposition of a juvenile to be used in the same manner as adult records in excepted cases.<sup>43</sup>

Code section 15-11-58 was amended in order to clarify that counsel need only make a request for "the complaint, petition, order of adjudication, and order of disposition in any delinquency case."<sup>44</sup> Thus, counsel will not have to go through the subpoena process and will not have to petition the juvenile court to obtain these items.<sup>45</sup>

Code section 15-11-59 relates to access of juvenile records.<sup>46</sup> The Clayton County School District had problems with children being suspended or expelled from one school and then transferring to another school.<sup>47</sup> The schools encountered difficulties when trying to obtain the previous records of the children; thus, the Act intends to help school-related personnel obtain students' records.<sup>48</sup> Code section 15-11-59 requires that counsel for a party get the consent of the court for access to a juvenile's records.<sup>49</sup> However, "[a]ny school superintendent, principal, assistant principal, school guidance counselor, school social worker, school psychologist, . . . or school law enforcement officer . . ." does not have to obtain the consent of the court to get the juvenile's records.<sup>50</sup> Schools need to have "easy access" to juvenile records in

38. O.C.G.A. § 15-11-37(a)(2)(B)(x) (Supp. 1997); *see infra* notes 57-63 and accompanying text (regarding inclusion of juveniles in general escape statute).

39. *See* Keller Interview, *supra* note 4.

40. *See id.*

41. 1996 Ga. Laws 823, § 1, at 824 (formerly found at O.C.G.A. § 15-11-38 (Supp. 1996)).

42. *See* Keller Interview, *supra* note 4.

43. *See* O.C.G.A. § 15-11-38(b) (Supp. 1997).

44. *Compare id.* § 15-11-58(b), *with* 1995 Ga. Laws 619, § 2, at 620 (formerly found at O.C.G.A. § 15-11-58(b) (Supp. 1996)).

45. *See* Keller Interview, *supra* note 4.

46. 1995 Ga. Laws 619, § 4, at 621 (formerly found at O.C.G.A. § 15-11-59 (Supp. 1996)).

47. *See* Starr Interview, *supra* note 2.

48. *See id.*

49. O.C.G.A. § 15-11-59(c)(2) (Supp. 1997).

50. *Id.* § 15-11-59(c)(8).

order to be familiar with the children who are attending the school and thus alleviate discipline problems.<sup>51</sup>

### *Battery on a Teacher or School Official*

Code section 16-5-23.1 is amended by adding a subsection making battery of a teacher or other school personnel a felony.<sup>52</sup> This was one of the more important purposes of the Act.<sup>53</sup> Teachers and school officials were being intimidated and attacked by their students, which led them to talk to legislators about making battery a felony.<sup>54</sup> The amendment made battery of a teacher or school official punishable by imprisonment for one to five years or a fine of not more than \$10,000, or both.<sup>55</sup> Teachers hope that a more severe punishment will deter the students' violent behavior towards teachers.<sup>56</sup>

### *Escape of a Juvenile*

Code section 16-10-52, the general statute relating to escape, is amended to include juveniles in its scope.<sup>57</sup> The addition to this Code section was made in reaction to a Georgia Court of Appeals case, *In re J.B.*<sup>58</sup> A material element of escape is that the individual has been convicted previously of a felony, misdemeanor, or violation of a municipal ordinance.<sup>59</sup> *In re J.B.* illustrated that adjudication of a juvenile was not included in the scope of the escape statute; thus, a juvenile could not commit the offense of escape.<sup>60</sup> As a result, the Act includes juveniles in the statute to alleviate the problem faced in *In re J.B.*<sup>61</sup> Under the Act, the penalties are the same for a juvenile as an adult. A person who escapes and has been convicted of a felony or misdemeanor shall be punished by not less than one year nor more than ten years incarceration.<sup>62</sup> Any other person who has been

51. See Hecht Interview, *supra* note 3.

52. Compare O.C.G.A. § 16-5-23.1(h) (Supp. 1997), with 1996 Ga. Laws 449, § 1, at 449 (formerly found at O.C.G.A. § 16-5-23.1 (1996)).

53. See Starr Interview, *supra* note 2.

54. See Hecht Interview, *supra* note 3.

55. O.C.G.A. § 16-5-23.1(h) (Supp. 1997).

56. See Keller Interview, *supra* note 4.

57. Compare O.C.G.A. § 16-10-52(a) (Supp. 1997), with 1989 Ga. Laws 329, § 1, at 330 (formerly found at O.C.G.A. § 16-10-52(a) (1996)).

58. 222 Ga. App. 252, 474 S.E.2d 111 (1996); see also Keller Interview, *supra* note 4.

59. See 1989 Ga. Laws 329, § 1, at 330 (codified at O.C.G.A. § 16-10-52(a)(1) (1996)).

60. See *In re J.B.*, 222 Ga. App. at 253, 474 S.E.2d at 111.

61. O.C.G.A. § 16-10-52(a)(3) to (4) (Supp. 1997); see Keller Interview, *supra* note 4.

62. See O.C.G.A. § 16-10-52(b) (Supp. 1997).

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convicted of the offense of escape shall be punished for a misdemeanor.<sup>63</sup>

*Alycen G. Adams*

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63. *See id.*