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COURTS

Juvenile Court Administration: Amend Article 6 of Chapter 11 of Title 15, Article 3A of Chapter 5 of Title 40, Chapter 2 of Title 42, and Chapter 1 of Title 51 of the Official Code of Georgia Annotated, Relating to Delinquency Proceedings in Juvenile Court, Suspension of Driver's License for Certain Drug Offenses, the Board and Department of Corrections, and General Tort Provisions, Respectively, so as to Enact Offender Reentry Reforms as Recommended by the Georgia Council on Criminal Justice Reform; Change Provisions Relating to Findings in a Disposition Hearing; Change Provisions Relating to Calculating Time When a Child is Delinquent and Dependent; Change Provisions Relating to Periodic Review Hearings for Children in Foster care; Provide for Permanency Planning for Children by the Department of Juvenile Justice; Provide for Court Hearings Regarding the Department of Juvenile Justice's Permanency Planning for Children; Provide for Restoration or Suspension of a Defendant's Driver's License or Issuance of a Limited Driving Permit Under Certain Circumstances; Provide for a Program and Treatment Completion Certificate That May be Issued by the Board of Corrections Under Certain Circumstances; Change Provisions Relating to Educational Programs for Adult Offenders; Provide a Rebuttable Presumption of Due Care Under Certain Circumstances When a Program and Treatment Completion Certificate Has Been Issued by the Department of Corrections; Retain Sovereign Immunity of the State; Amend Article 11 of Chapter 11 of Title 15, Chapter 15 of Title 19, and Article 1 of Chapter 3 of Title 35 of the Official Code of Georgia Annotated, Relating to the "Georgia Child Advocate for the Protection of Children Act," Child Abuse, and General Provisions for the Georgia Bureau of Investigation, Respectively, so as to Move the Responsibility of Coordinating and Supervising the Work of the Georgia Review Panel from the Child Advocate for the Protection of Children to the Director of the Georgia Bureau of Investigation or His or Her Designee; Provide for a Short Title; Provide for the Director of the Georgia Bureau of Investigation to Assist Local Child Fatality Review Committees; to Clarify

Definitions; Provide for Legislative Findings; Amend Code Section 49-5-41 of the Official Code of Georgia Annotated, Relating to Persons and Agencies Permitted Access to Child Abuse and Dependency Records, so as to Clarify Defined Terms and Change Provisions Relating to Disclosure; to Provide for Related Matters; to Repeal Conflicting Laws; and for Other Purposes.

CODE SECTIONS: O.C.G.A. §§ 15-11-600, -620, -621 (amended); 15-11-623 (new); 15-11-743 (amended); 19-15-1, -2, -3, -4 (amended); 35-3-5 (amended); 40-5-76 (amended); 42-2-5.1 (amended); 49-5-41 (amended); 51-1-54 (new).

BILL NUMBER: SB 365

ACT NUMBER: 476

GEORGIA LAWS: 2014 Ga. Laws 34

SUMMARY: The Act is the third installment of the Georgia Council on Criminal Justice Reform. This installment focuses on offender reintegration and state compliance with federal standards. The Act provides for more court involvement in delinquent and dependent juvenile matters, periodic review hearings for children in residential placement, and permanency plans for juveniles. The Act also provides for driver's license reinstatement, educational programs for certain adult offenders, and programs supporting re-entry to society for adult offenders. Finally, the Act changes the reporting structure for Review Panel and Child Abuse Protocol Committees.

EFFECTIVE DATE: July 1, 2014

History

In 2011, the General Assembly passed House Bill (HB) 265 establishing the Special Council on Criminal Justice Reform for Georgians (the Council).¹ The Council addressed the growth in spending and incarceration rates, and attempted to reduce the thirty percent recidivism rate in Georgia.² The Council produced reports in 2011, 2012, and 2013 containing recommendations for changes to the criminal and juvenile justice systems. These reports resulted in several proposed bills in corresponding years.³ While the reforms focused on the criminal justice system as a whole, the council's reports, and subsequent bills, concentrated on different aspects of the criminal justice system including adult corrections, juvenile justice, offender re-entry, and the availability of federal funds for the juvenile justice system.⁴

Criminal Justice Reform

HB 1176 was the first resulting legislation and the General Assembly unanimously passed it in 2012.⁵ This bill sought to provide for more “community-based supervision” and the use of accountability courts to help control the prison population.⁶ While it may be too early to address the success of this law, the 2014 Council Report noted that the prison population has shifted to include more dangerous offenders than in the past.⁷ This indicates the system is

1. The Georgia Council on Criminal Justice Reform, 2014 Report 7 (Jan. 2014) [hereinafter 2014 Council Report]; Jason Carruthers & Jessica Sully, *Courts, Juvenile Justice Reform*, 30 Ga. St. U.L. Rev. 63, 72 (2013); see also O.C.G.A. § 17-19-1 (West 2013) (creating “the Georgia Council on Criminal Justice Reform for the purpose of conducting periodic comprehensive reviews of criminal laws, criminal procedure, sentencing laws . . . and other issues related to criminal and accountability courts.”).

2. 2014 Council Report, *supra* note 1, at 2.

3. *Id.* at 7; Special Council on Criminal Justice Reform for Georgians, 2012 Report (Dec. 2012) [hereinafter 2012 Council Report]; Special Council on Criminal Justice Reform, 2011 Report (Nov 2011) [hereinafter 2011 Council Report].

4. See 2014 Council Report *supra* note 1; see also 2012 Council Report *supra* note 3; 2011 Council Report *supra* note 3.

5. 2014 Council Report, *supra* note 1, at 2.

6. Meg Buice & Tamara Garcia, *Crimes and Offenses: Appeal or Certiorari by State in Criminal Cases*, 29 Ga. St. U.L. Rev. 290, 296–97 (2012).

7. 2014 Council Report, *supra* note 1, at 9.

focusing on higher risk, violent offenders while pursuing less drastic and expensive measures for lower level offenders.⁸

Juvenile Justice Reform

Governor Nathan Deal broadened the scope in the second phase of reform to address concerns in the Juvenile Justice system.⁹ In 2013, the General Assembly unanimously passed HB 242, which reformed the juvenile justice system.¹⁰ HB 242 strengthened evidence-based community programs while scaling back the use of incarceration for low level offenders.¹¹ The Council anticipates the reforms will save \$85 million through 2018 and hopes to avoid opening two new residential facilities, which it believes will result in further savings.¹² There is currently no indication as to the law's impact on recidivism or spending.

Offender Re-entry

In 2013, after the passage of reform bills for adult corrections and juvenile justice, the Council turned its focus to promoting re-entry of offenders into society after periods of incarceration.¹³ By promoting re-entry, the Council aims to “reduc[e] the threat of harm to persons . . . by citizens returning to their communities from prison” and to “[i]ncrease success rates of returning citizens who transition from prison.”¹⁴ It intends to reach these goals by preparing offenders before their releases and removing employment and housing barriers upon release.¹⁵ By encouraging reintegration, offenders are less likely to reoffend and return to prison in the future, thereby lowering the recidivism rate.¹⁶

8. *Id.*

9. *Id.* at 11.

10. *Id.* at 12.

11. Carruthers & Sully, *supra* note 1, at 107.

12. 2014 Council Report, *supra* note 1, at 12.

13. *Id.* at 15.

14. *Id.* at 17.

15. *Id.*

16. *Id.* at 3–4.

Availability of Federal Funds for the Juvenile Justice System

The Council also addressed the Department of Juvenile Justice's (DJJ) eligibility for federal funds for youth committed to its care. Title IV-E of the Social Security Act provides funds to states for children in out-of-home placement.¹⁷ Previously, DJJ only sought federal funds for committed youth also involved with DJJ and the Department of Family and Children Services (DFCS), resulting in a lack of federal funds for youth in out-of-home placements through DJJ with no DFCS involvement.¹⁸

Title IV-E funds are available to any state child welfare system that meets certain federal regulatory requirements.¹⁹ Some of these requirements include: (1) "[p]lacement and care responsibility must be given to the [state agency listed] in the first court order removing the child from the home;" (2) "[t]he first court order that authorizes removal from the home must provide detailed and child-specific best interest/contrary to the welfare language;" and (3) "[t]he court must certify that reasonable efforts were made to avoid the youth's removal from the home within [sixty] days."²⁰ Failure to meet these conditions cost DJJ a possible \$4.2 million in 2012 and 2013.²¹

Code section 15-11-600 previously instructed judges to find that a delinquent juvenile is in need of treatment, rehabilitation, or supervision prior to removing the child from the home.²² The previous law did not require judges to include language addressing the youth's best interest or welfare.²³ Additionally, it did not contain a requirement that courts take "reasonable efforts . . . to avoid youth's removal from the home."²⁴ While this language is used for youth placed in DFCS care, the absence of this language in delinquency cases prevented DJJ from seeking federal funding for

17. 42 USC § 672 (2006); 2014 Council Report, *supra* note 1, at 36.

18. Interview with Natalie Towns, Director of the Office of Federal Programs, Department of Juvenile Justice (May 22, 2014) [hereinafter Towns Interview].

19. 2014 Council Report, *supra* note 1, at 36.

20. *Id.*

21. *Id.*

22. O.C.G.A. § 15-11-600 (Supp. 2014).

23. *See* Towns Interview, *supra* note 18.

24. *Id.*

youth committed without a separate deprivation order including the pertinent language.²⁵

Child Fatality Reviews and Child Abuse Protocol Committees

While not addressed directly by the Council, the bills include a provision affecting the administration of Child Abuse Protocol Committee (Protocol Committee) and the Review Panel (Review Panel). In addition to services provided by DFCS case workers and DJJ personnel, counties conduct child fatality reviews and child abuse reviews to ensure that all appropriate measures are taken to protect children in the community.²⁶ The Review Panel is positioned administratively under the direction of the Office of Planning and Budget (OPB), which coordinated with the Office of the Child Advocate.²⁷ The Review Panel is comprised of district attorneys, juvenile court judges, citizens, and other professionals.²⁸ The Panel meets quarterly to review the incidents of child fatalities and report “to the Governor on the incidence of child deaths with recommendations for prevention,” giving the Governor and agencies more insight and information regarding the practices and circumstances surrounding child deaths in the community.²⁹

Similarly, the Protocol Committee is comprised of representatives from sheriffs’ offices, DFCS, district attorneys’ offices, various courts, and other organizations.³⁰ The previous law positioned the Protocol Committee under the direction of the office of the Child Advocate for the Protection of Children.³¹ The Protocol Committee ensures “coordination and cooperation between all agencies involved in a child abuse case so as to increase the efficiency of all agencies handling such cases.”³² It adopts written child abuse protocol outlining procedures for agencies to follow when handling child

25. O.C.G.A. § 15-11-181(e) (Supp. 2014) (requiring a finding as to “whether the child is a deprived child”); O.C.G.A. § 15-11-212 (Supp. 2014) (requiring disposition “best suited to the protection and physical, mental, and moral welfare of the child”).

26. O.C.G.A. § 19-15-4(b) (2010).

27. *Id.*

28. O.C.G.A. § 19-15-4(c) (Supp. 2014).

29. O.C.G.A. § 19-15-4(a) (Supp. 2014).

30. O.C.G.A. § 19-15-2(c) (Supp. 2014).

31. O.C.G.A. § 19-15-2 (Supp. 2014).

32. O.C.G.A. § 19-15-2(f) (Supp. 2014).

abuse cases. This allows for a uniform and organized approach.³³ The Review Panel and the Protocol Committee have been valuable tools to ensure agencies are efficient and effective in addressing the well-being of children in Georgia.³⁴ Both the Protocol Committee and the Review Panel were positioned under the direction of the Office of the Child Advocate.

It is with this backdrop that several Georgia legislators proposed legislation leading to the passage of Senate Bill (SB) 365. It is the third installment of a systematic reform of the criminal justice and juvenile justice systems aimed at reducing recidivism, assisting offenders' re-entry into society, streamlining the juvenile justice system, and ensuring cost savings across the board.

Bill Tracking of SB 365

Consideration and Passage by the Senate

Senators Jesse Stone (R-23rd), Charlie Bethel (R-54th), Bill Jackson (R-24th), Butch Miller (R-49th), John Crosby (R-13th), and Bill Cowser (R-46th) sponsored SB 365.³⁵ The Senate read the bill for the first time on February 10, 2014 and referred the bill to the Judiciary Non-Civil Committee, which favorably reported the bill on February 20, 2014.³⁶ The Senate read the bill a second time on February 21, 2014 and adopted all the amendments.³⁷ The Senate read the bill a third time on February 26, 2014.³⁸

Senators Stone and Bethel offered two sets of amendments.³⁹ The first set proposed four additions, the first of which added “or the granting of a pardon from the Board of Pardons and Paroles as provided in the Constitution and Code section 42-9-42” after “Corrections” on line 213 of the bill.⁴⁰ This addition broadens the

33. O.C.G.A. § 19-15-2(a) (Supp. 2014).

34. Georgia Review Panel, Annual Report - Calendar Year 2012 7 (Jan. 2014).

35. Georgia General Assembly, SB 365, Bill Tracking, <http://www.legis.ga.gov/legislation/en-US/Display/20132014/SB/365>.

36. State of Georgia Final Composite Status Sheet, SB 365, May 1, 2014.

37. *Id.*

38. *Id.*

39. SB 365 (AM 29 2277), 2014 Ga. Gen. Assem.; SB 365 (AM 29 2287), 2014 Ga. Gen. Assem.

40. SB 365 (AM 29 2277), 2014 Ga. Gen. Assem.

scope and application of the Code section from merely certificate completers to individuals with pardons or on parole. The second addition changed the bill's language to coincide with the first amendment and legislative intent to incorporate pardons into the Code section.⁴¹ The third addition also adapted the language of the bill to coincide with the addition of pardons.⁴²

The second amendment replaced line thirty-six to clarify how consumer reporting agencies update and keep track of criminal history.⁴³ The purpose behind this amendment was to ensure the consumer reporting agencies have accurate information.⁴⁴ The Senate adopted both sets of amendments and passed the bill on February 26, 2014.⁴⁵

Consideration and Passage by the House

Representative Rich Golick (R-40th) sponsored SB 365 in the House.⁴⁶ The House read the bill for the first time on March 3, 2014 and for the second time on March 4, 2014.⁴⁷ Speaker David Ralston (R-7th) assigned the bill to the House Committee on Juvenile Justice and on March 12, 2014 the Committee favorably reported by substitute.⁴⁸ The substitute removed Section One of the bill.⁴⁹ The House read the bill for a third time March 18, 2014 and passed the bill with the adopted substitution.⁵⁰ On March 20, the Senate agreed

41. *Id.*

42. *Id.*

43. *See* SB 365 (AM 29 2287), 2014 Ga. Gen. Assem.

44. Email from Thomas Worthy, Deputy Executive Counsel, Office of the Governor & Co-Chair, Georgia Council on Criminal Justice Reform (June 23, 2014) (on file with Georgia State University Law Review). Ultimately, this amendment and its corresponding section were removed from the Act because it mandated the consumer reporting agencies to do something they do not have the ability to do, namely the ability to distinguish between accurate and inaccurate information when there is no mechanism for notice that information may have changed. *Id.*

45. State of Georgia Final Composite Status Sheet, SB 365, May 1, 2014; *See generally* SB 365 (SB 365/FA/2), 2014 Ga. Gen. Assem.

46. Ga. Gen. Assembly, SB 365, Bill Tracking, <http://www.legis.ga.gov/legislation/en-US/Display/20132014/SB/365>.

47. State of Georgia Final Composite Status Sheet, SB 365, May 1, 2014.

48. *Id.*

49. SB 365 (LC 29 6044S), 2014 Ga. Gen. Assem.

50. State of Georgia Final Composite Status Sheet, SB 365, May 1, 2014.

to the House substitute.⁵¹ The bill was sent to the Governor on March 26, 2014, and he signed it into law on April 13, 2014.⁵²

The Act

The Act is divided into two parts. Part One of the Act discusses juvenile justice and delinquency, the suspension and reinstatement of driver's licenses, special programs for adult offenders, and tort provisions in relation to the amendments made by the bill.⁵³ Part Two of the Act discusses child advocacy, child abuse, child abuse protocol committees, child fatality review committees and panels, and the powers of the GBI.⁵⁴

Part One

Part One provides for the criminal reform components of the Act. Sections 1-1, 1-2, 1-3, and 1-4 of Part One amend Title 15 of the Official Code of Georgia Annotated, relating to delinquency proceedings in juvenile court.⁵⁵ Section 1-1 amends Article 6 of Chapter 11 of Title 15 by specifying what the court conducting the juvenile proceeding should determine.⁵⁶ The amendments to the Code section specify that the court determines whether the child's home is "contrary to such child's welfare," and if "reasonable efforts have been made to prevent or eliminate the need to remove" the child from his home.⁵⁷ The amendment also reinforces the requirement that the court hear all the evidence and determine the quality of the home life.⁵⁸

Section 1-2 provides additional amendments to Article 6 of Chapter 11 of Title 15.⁵⁹ The Act clarifies the date of entering foster care for children who allegedly commit a delinquent act and are put

51. *Id.*

52. *Id.*

53. O.C.G.A. §§ 15-11-620, -621, -623; 40-5-76; 42-2-5.1, -5.2; 51-1-54 (Supp. 2014).

54. O.C.G.A. §§ 15-11-743; 19-15-1, -2; -3, -4, -6; 35-3-5; 49-5-41 (Supp. 2014).

55. O.C.G.A. §§ 15-11-600, -620, -621, -623 (Supp. 2014).

56. O.C.G.A. § 15-11-600(a)(1) (Supp. 2014).

57. *Id.*

58. *Id.*

59. *See* O.C.G.A. § 15-11-620 (Supp. 2014).

directly in a “nonsecure residential facility” is sixty days after the date the child is removed from his home.⁶⁰ The amendment also applies the sixty day time frame to children who are moved to a non-secure residential facility from a detention center, and to children who have been in a detention center for longer than sixty days.⁶¹ If a child has been at the detention center for longer than sixty days, the date the child is said to have entered foster care is the date the child is placed in a non-secure residential facility.⁶²

Section 1-3 revises Code section 15-11-621, relating to periodic review hearings for children in foster care.⁶³ The revision guarantees that children committed to the DJJ receive periodic reviews with a DJJ administrative panel within six months of the child entering the non-secure residential facility, and every six months thereafter.⁶⁴ These administrative panel reviews are conducted the entire period the child is in the facility and the reviews must be sent to the court within five days of conducting the review.⁶⁵

Section 1-4 amends Chapter 11 of Article 15 by adding a new Code section, 15-11-623, which creates a permanency plan for children committed to DJJ.⁶⁶ The permanency plan is determined by the court, held within twelve months of the date the child enters foster care, and “every [twelve] months thereafter to make determinations including whether the permanency plan for such child is appropriate and whether reasonable efforts to finalize the permanency plan have been made by DJJ.”⁶⁷ The new Code section provides that individuals providing care for the child will receive written notice of the permanency plan hearing at least five days before the hearing, and that DJJ will submit to the court a report recommending a permanency plan for the child.⁶⁸ The section also

60. *Id.*

61. O.C.G.A. § 15-11-620(d), (f) (Supp. 2014).

62. *Id.*

63. *See* O.C.G.A. § 15-11-621 (Supp. 2014).

64. *Id.*

65. *Id.*

66. *See* O.C.G.A. § 15-11-623(a) (Supp. 2014) (“[t]he term ‘permanency plan’ means a specific written plan prepared by DJJ designed to ensure that a child is reunified with his or her family or ensure that such child quickly attains a substitute long-term home when return to such child’s family is not possible or is not in such child’s best interests.”).

67. O.C.G.A. § 15-11-623(b) (Supp. 2014).

68. *Id.*

specifies some of what that report should include and states that the court determines if DJJ has made a reasonable effort to finalize the permanency plan.⁶⁹

Section 1-5 revises Article 3A of Chapter 5 of Title 40 of the Official Code of Georgia Annotated, relating to the suspension of driver's licenses for certain drug offenses.⁷⁰ Specifically, this section revises Code section 40-5-76 by adding language stating that a judge of any court, other than the court divisions specified in part (a) of section 40-5-76, may order the Department of Driver Services to restore a defendant's driver's license "that has been or should be suspended pursuant to Code [s]ection 40-5-75 . . . or issue a defendant a limited driving permit."⁷¹ The order must be in accordance with Code section 40-5-64 and the defendant's conviction cannot directly relate to the operation of a motor vehicle.⁷² The court has discretion to determine fees paid to the department to restore the license, though the fee cannot be greater than the normal fee for such service.⁷³ Accordingly, the judge may also suspend a defendant's driver's license as a consequence of the defendant's probation violation.⁷⁴ The Act also created a "Program and Treatment Completion Certificate" in this Code section to help offenders reenter society.⁷⁵

Section 1-7, the last section of Part One, adds a new Code section: 51-1-54.⁷⁶ This addition elaborates on the Program and Treatment Completion Certificate by creating a presumption of "due care in hiring, retaining, licensing, leasing to, admitting to a school or program, or otherwise engaging in activity with the individual to whom the Program and Treatment Completion Certificate was issued or the pardon was granted."⁷⁷ This new Code section also provides that the "due care" presumption is not a waiver of the "sovereign immunity of the state" nor does the statute allow any action against

69. *Id.*

70. *See* O.C.G.A. § 40-5-76(a) (Supp. 2014).

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*

76. *See* O.C.G.A. § 51-1-54 (Supp. 2014).

77. *Id.*

the state, agency, or department if either fails to issue a certificate or grant a pardon.⁷⁸

Part Two

Section 2-2 of the Act amends Code section 15-11-743, relating to the duties of the Child Advocate for the Protection of Children.⁷⁹ The amendment removes several parts of the original Code section, specifically that the child advocate coordinate and supervise the Review Panel and provide staffing and support for it as needed.⁸⁰ It also specifies that the Child Advocate is responsible for reporting a child's death to the local child fatality review committee as defined in Code section 19-15-1.⁸¹

Section 2-3 revises paragraphs (5), (7), (8), and (10) of Code section 19-51-1.⁸² The revision removes paragraph (5) entirely.⁸³ It removes the requirement that the Panel oversee the child fatality review process and report to the Governor about child deaths.⁸⁴ Paragraph (8)'s revision changes the definition of Protocol Committee.⁸⁵ The Committee is no longer defined as a "multiagency child abuse protocol committee" but just a "multiagency committee."⁸⁶ The revision also removes the requirement that the Protocol Committee develop local protocols to investigate and prosecute child abuse.⁸⁷ Paragraph (10)'s edits also remove the Protocol Committee's charge to review particular child deaths.⁸⁸

Section 2-4 of the Act revises Code section 19-15-2.⁸⁹ Much of the revision clarifies the language of the Code section.⁹⁰ In subsections (a) and (b) the revision elaborates that the purpose of the Protocol Committee is "for the investigation and prosecution of alleged cases

78. *Id.*

79. *See* O.C.G.A. § 15-11-743 (Supp. 2014).

80. *Id.*

81. *Id.*

82. *See* O.C.G.A. § 19-15-1 (Supp. 2014).

83. *Compare* O.C.G.A. § 19-15-1 (Supp. 2014) *with* O.C.G.A. § 19-15-1 (West 2013).

84. *See* O.C.G.A. § 19-15-1 (West 2013).

85. O.C.G.A. § 19-15-1(8) (Supp. 2014)

86. *Compare* O.C.G.A. § 19-15-1 (Supp. 2014) *with* O.C.G.A. § 19-15-1 (West 2013).

87. *Id.*

88. *Id.*

89. *See* O.C.G.A. § 19-15-2 (Supp. 2014).

90. *Id.*

of child abuse.”⁹¹ Subsection (c)’s revision clarifies who designates the representatives that serve on the Protocol Committee.⁹² The revision also removes the deadline of “July 1, 2001” from subsection (h), and in subsection (i) the bill revises the Code section to require the protocol committee to issue a report no later than the first day of July each year.⁹³ In subsection (j) the bill removes the July deadline and instead specifies that each member of the protocol committee receive training within twelve months of appointment.⁹⁴ In subsection (k) the revision clarifies the kind of exploitation the protocol committee considers as “sexual” exploitation.⁹⁵ Furthermore, the revision removes the time limit on the protocol and clarifies that the protocol does not create any rights (substantive or procedural) enforceable in any civil or criminal matter.⁹⁶ The revision also specifies that the protocol does not “limit or otherwise restrict a prosecuting attorney in the exercise of his or her discretion nor in the exercise of any otherwise lawful litigative prerogatives.”⁹⁷

Section 2-5 amends Code section 19-15-3, relating to multiagency child fatality review committees.⁹⁸ The amendments simplify the Code section’s language by removing unnecessary and repetitive phrases.⁹⁹ The amendments also specify the committee’s task as reviewing “all deaths as set forth in subsection (e)” of 19-5-3 “to determine manner and cause of death and if the death was preventable.”¹⁰⁰ The Code section specifies who comprises the review committee and only one amendment was made to this section. The amendment changed the Board of Public Health Department to a county public health department representative.¹⁰¹ Amendments to this Code section remove the term “local” from the description of the review committee and replace the phrase “Georgia Child Fatality

91. O.C.G.A. § 19-15-2 (a), (b) (Supp. 2014).

92. O.C.G.A. § 19-15-2 (c) (Supp. 2014).

93. O.C.G.A. § 19-15-2(h), (i) (Supp. 2014).

94. O.C.G.A. § 19-15-2(j) (Supp. 2014).

95. *Compare* O.C.G.A. § 19-15-2(k) (Supp. 2014) *with* O.C.G.A. § 19-15-2 (West 2014).

96. O.C.G.A. § 19-15-2(k).

97. *Id.*

98. *See* O.C.G.A. § 19-15-3 (Supp. 2014).

99. *Id.*

100. O.C.G.A. § 19-15-3 (Supp. 2014).

101. *Compare* O.C.G.A. § 19-15-3 (Supp. 2014) *with* O.C.G.A. § 19-15-3 (West 2013).

Review Panel” with simply “panel.”¹⁰² Subsection (e) was amended by adding child abuse as a child death eligible for review by the committee.¹⁰³ The Act also amends subsection (g) by creating a duty for the medical examiner or coroner to provide the protocol committee of the county where the child lived with copies of all information and reports required by subsections (i) and (j) of Code section 19-15-3.¹⁰⁴ The Act expanded paragraph (3) of subsection (k) of the Code section to include how service, objections, and enforcement of subpoenas authorized by the Code section are handled.¹⁰⁵ The amendment specifies that the procedures set in Chapter 13 of Title 24 govern the subpoenas.¹⁰⁶ Again, these revisions also remove the July 2001 deadline set in the statute and change it in subsection (o) to the first day of July each year.¹⁰⁷ The other amendments to this Code section serve the purpose of referring to the review committee as the “local child fatality review committee” and clarify word choice.¹⁰⁸

Section 2-6 revises Code section 19-15-4, relating to the Review Panel.¹⁰⁹ The Act amends subsection (a)’s language stating the Review Panel is defined in paragraph (7) of Code section 19-15-1 and adds that the panel “shall oversee the local child fatality review process and report to the Governor on the incidence of child deaths with recommendations for prevention.”¹¹⁰ The revision to subsection (b) changes the coordinator of the panel’s work from the Office of the Child Advocate for the Protection of Children to the director of the Georgia Bureau of Investigation or his or her designee.¹¹¹ The revision to subsection (b) also changes the panel’s attachment from OPB to the Division of Forensic Sciences of the Georgia Bureau of Investigation (GBI), and that it is now coordinated within the division as well.¹¹² Two additional panel members were added by the

102. *Id.*

103. O.C.G.A. § 19-15-3(e).

104. O.C.G.A. § 19-15-3(g) (Supp. 2014).

105. O.C.G.A. § 19-15-3(k)(3) (Supp. 2014).

106. *Id.*

107. O.C.G.A. § 19-15-3(o) (Supp. 2014).

108. *See generally* O.C.G.A. § 19-15-3 (Supp. 2014).

109. *See* O.C.G.A. § 19-15-4 (Supp. 2014).

110. O.C.G.A. § 19-15-4(a) (Supp. 2014).

111. O.C.G.A. § 19-15-4(b) (Supp. 2014).

112. *Id.*

revision in subsection (c): a member of the state board of education appointed by the governor and the commissioner of early care and learning.¹¹³ Subsection (i) received several amendments as well. First, the panel now reports to the chairperson of the Senate Judiciary Committee instead of the Judicial Committee of the Senate, and the same for the House of Representatives.¹¹⁴ The amendment also adds “shall,” mandating that the panel make a recommendation to reduce such fatalities cause by other than natural causes.¹¹⁵

Section 2-7 of the Act amends subsections (b), (g), and (i) of Code section 19-15-6, relating to the use of information and records of protocol committees, review committees, and panels.¹¹⁶ In subsection (b), the Act changes the phrase “panel protocol committee or review committee” to “protocol committee, review committee, or panel.”¹¹⁷ Subsection (g) is amended by clarifying that the members of the protocol committee, review committee or panel are not subject to civil liability or subject to criminal prosecution for any disclosures authorized by the Code section.¹¹⁸ Finally, subsection (i) is amended by removing the term “child abuse” from the title of the protocol committee.¹¹⁹

Section 2-8 of the Act amends Article 1 of Chapter 3 of Title 35 of the Official Code of Georgia Annotated.¹²⁰ It covers the powers and duties of the GBI. The amendment adds two subsections to the Code section. First the new subsection (c) states the director of the GBI coordinates and supervises the work of the Review Panel or should designate a person within the bureau who will.¹²¹ The new subsection (d) states that the director report the death of any child to the chairperson of the review committee for the county where the child resided.¹²² The director does not have to do this if the county medical examiner or coroner has provided this information already.¹²³ The

113. O.C.G.A. § 19-15-4(c) (Supp. 2014).

114. O.C.G.A. § 19-15-4(i) (Supp. 2014).

115. *Id.*

116. *See* O.C.G.A. § 19-15-6(b), (g), (i) (Supp. 2014).

117. O.C.G.A. § 19-15-6(b) (Supp. 2014).

118. O.C.G.A. § 19-15-6(g) (Supp. 2014).

119. O.C.G.A. § 19-15-6(i) (Supp. 2014).

120. *See* O.C.G.A. § 35-3-5 (Supp. 2014).

121. O.C.G.A. § 35-3-5(c) (Supp. 2014).

122. O.C.G.A. § 35-3-5(d) (Supp. 2014).

123. *Id.*

Act also changes old subsection (c) to (e) to coincide with the re-lettering.

Section 2-9 is a statement of intent from the General Assembly for making all the above and below discussed amendments to the Code sections.¹²⁴ The General Assembly's purpose behind the bill was to "provide for transparency" in the investigations involving child abuse and fatalities to protect the children of the state.¹²⁵ Disclosure of information and sharing between the agencies and departments in the state is the best way to do this.¹²⁶

Section 2-10 of the Act revises paragraphs (6), (7.1) and (6) of subsection (a), paragraph (5) of subsection (c), and subsection (e) of Code section 49-5-41.¹²⁷ First, in paragraph (6) of subsection (a), the bill changes a reference to child abuse or neglect "that results in a child fatality or near fatality" to "child abuse or neglect involving a fatality or near fatality."¹²⁸ This broadens the scope of the Code section. The Act's amendment also adds records and information that can be redacted from requested records.¹²⁹ This includes:

- (A) Any records of law enforcement or prosecution agencies in any pending investigation or prosecution of criminal activity contained within the child abuse, neglect, or dependency records;
- (B) Medical and mental health records made confidential by other provisions of law;
- (C) Privileged communications of an attorney;
- (D) The identifying information of a person who reported suspected child abuse;
- (E) Information that may cause mental or physical harm to the sibling or other child living in the household of the child being investigated;
- (F) The name of a child who is the subject of reported child abuse or neglect;
- (G) The name of any parent or other person legally responsible for the child who is the subject of reported child abuse or neglect, provided that such person is not under investigation for the reported child abuse or neglect; and
- (H) The name of any member of the household of the child who is the subject of

124. 2014 Ga. Laws 34, § 2-9, at 49.

125. *Id.*

126. *Id.*

127. *Id.*

128. Compare O.C.G.A. § 49-5-41(a)(6) (West 2013) with O.C.G.A. § 49-5-41(a)(6) (Supp. 2014).

129. O.C.G.A. § 49-5-41(a)(6) (Supp. 2014).

reported child abuse or neglect, provided that such person is not under investigation for the reported child abuse or neglect.¹³⁰

Paragraph (7.1) is amended with word choice modifications. The “Child Abuse Protocol Committee” is removed and replaced with “protocol committee, as such term is defined in Code section 19-15-1.”¹³¹ Additionally, “Georgia Network of Children’s Advocacy Centers” is changed to “Children’s Advocacy Centers of Georgia.”¹³² Paragraph (8) is amended by changing the language “Review Panel or protocol committee or subcommittee” to “review committee or protocol committee” to match the other amendments made by the bill.¹³³

Paragraph (5) of subsection (c) is amended by removing “county child abuse protocol committee or task force” and replacing it with “protocol committee, as such term is defined in Code section 19-15-1.”¹³⁴ Furthermore, the Act adds a paragraph to subsection (e), stating that except as provided in paragraph (2) of subsection (e) and notwithstanding any other provisions of law, the child abuse dependent records shall not be confidential and are subject to Article 4 of Chapter 18 of Title 50 if the records apply to a child who meets the standards laid out in subsections (A)–(C) of the Code section.¹³⁵ The permissible redactions under paragraph (2) are as follows:

Medical and mental health records made confidential by other provisions of law; (B) privileged communications of an attorney; (C) the identifying information of a person who reported suspected child abuse; (D) the name of a child who suffered a near fatality; (E) the name of any sibling of the child who suffered the fatality or near fatality; and (F) Any record of law enforcement or prosecution agencies in any pending

130. *Id.*

131. O.C.G.A. § 49-5-41(a)(7.1) (Supp. 2014).

132. *Id.*

133. O.C.G.A. § 49-5-41(a)(8) (Supp. 2014).

134. O.C.G.A. § 49-5-41(c)(5) (Supp. 2014).

135. O.C.G.A. § 49-5-41(e) (Supp. 2014).

investigation or prosecution of criminal activity contained within the child abuse neglect or dependency records.¹³⁶

Analysis

Juvenile Justice

Reforms in the juvenile justice system were implemented to capture more federal dollars to help pay for children placed in nonresidential care.¹³⁷ The new statutory requirements regarding judicial findings, administrative reviews, and permanency planning for juveniles aligns Georgia's law with the standards set by the federal government, allowing Georgia to gain access to more federal Title IV-E funds.¹³⁸

By adding the requirement that judges finding a youth delinquent also hear evidence as to the appropriateness of the current residence, the state opens up the possibility of getting substantial federal support. The Council estimated that if the "contrary to the welfare" language were included in 2012 and 2013 delinquency cases, Georgia would have had access to an additional \$4.2 million.¹³⁹ This money could go to support the juvenile justice system and ensure that youth in Georgia are getting the best care and are receiving appropriate rehabilitative services while in DJJ custody.

SB 365 also takes a step forward for the protection of youth taken out of the home and placed in nonresidential care. Sections 1-1, 1-2, 1-3, and 1-4 all give new requirements for the courts and DJJ during the adjudication stage as well as during the youth's placement.¹⁴⁰ Section 1-1 requires that the judge make a finding that the "child's continuation in his or her home is contrary to such child's welfare" and that "reasonable efforts have been made" to keep him or her at home.¹⁴¹ This requirement ensures the court is not interfering with a

136. *Id.*

137. See Interview with Thomas Worthy, Deputy Executive Counsel, Office of the Governor & Co-Chair, Georgia Council on Criminal Justice Reform (Apr. 14, 2014) [*hereinafter* Worthy Interview]; see also Towns Interview, *supra* note 18.

138. See Towns Interview, *supra* note 18; see also Worthy Interview, *supra* note 137.

139. 2014 Council Report, *supra* note 1 at 36.

140. O.C.G.A. §§ 15-11-600, -620-21, -623 (Supp. 2014).

141. O.C.G.A. § 15-11-600(a)(1) (Supp. 2014).

parent's fundamental liberty interest in raising his or her child without having a sufficient reason for doing so, reducing the likelihood of a constitutional challenge.¹⁴² It also places the child's needs and health at the center of the decision.¹⁴³ Rather than simply discussing the actions of the youth and possible punishment, courts are now required to discuss the best disposition for the child's wellbeing and development.

Section 1-3 also helps protect youth in nonresidential placement by requiring periodic reviews of their placement.¹⁴⁴ Title IV-E includes this requirement to ensure that a youth's placement continues to be appropriate and safe.¹⁴⁵ The Review Panel's findings are transmitted to the court, ensuring additional oversight over the process and the continued need for the placement.¹⁴⁶ Section 1-4 provides an added protection against unnecessary placement by requiring a permanency plan every twelve months.¹⁴⁷ This provision ensures youth are not left in nonresidential care for indefinite periods of time without a documented plan for placement.¹⁴⁸ Permanency plans consider whether the child should be placed with the parents, placed for adoption, or enrolled in an independent living program.¹⁴⁹

Overall, the latest revision of the juvenile justice system is designed to capture federal dollars; however, it provides many other benefits as a result. The federal requirements are designed to increase oversight in to the placement of children and ensure that placement is both necessary and appropriate.¹⁵⁰ In the future, this will increase the quality of care provided for juveniles and decrease the number of

142. Emilie Stoltzfus, Cong. Research Serv., R42794, Child Welfare: State Plan Requirements under the Title IV-E Foster Care, Adoption Assistance, and Kinship Guardianship Assistance Program 5 (2012). The U.S. Supreme Court emphasized that, while the "family is not beyond regulation," the "freedom of personal choice in matters of marriage and family life is one of the liberties protected by the Due Process Clause." *Moore v. East Cleveland*, 431 U.S. 494, 499 (1976) (holding that an ordinance which made it illegal for a grandson to live with his grandparents was unconstitutional as a violation of the due process clause because there was only a "tenuous relation" to the ends being served); *see also In Re William L.*, 383 A.2d 1228, 1247 n.30 (Pa. 1977) (stating that delinquent behavior alone does not justify state interference with the parents' fundamental interest in raising their children).

143. Stoltzfus, *supra* note 142, at 5.

144. O.C.G.A. § 15-11-621(b) (Supp. 2014).

145. Stoltzfus, *supra* note 142, at 9–10.

146. O.C.G.A. § 15-11-621(b) (Supp. 2014).

147. O.C.G.A. § 15-11-623 (Supp. 2014).

148. *See* Stoltzfus, *supra* note 142, at 5.

149. *Id.* at 10.

150. *Id.*

youth currently placed, resulting in additional savings.¹⁵¹ Additionally, by adding additional measures to ensure the need for continued placement, the state is avoiding possible constitutional challenges to the interference with the parents' care of the child.¹⁵²

Offender Re-entry

Sections 1-5, 1-6, and 1-7 are designed to assist offenders' re-entry into society and ultimately lower the recidivism rate.¹⁵³ Offenders are more likely to successfully re-enter society and refrain from committing additional crimes if they are able to find and maintain employment.¹⁵⁴ Section 1-5 assists offenders in gaining employment by allowing them to obtain a driver's license.¹⁵⁵ In a state with limited public transportation, the lack of a driver's license can be a difficult hurdle to manage, especially when an offender is required to report to their job or a parole office.¹⁵⁶ By permitting judges to restore an offender's driver's license, the General Assembly is removing one barrier to employment and improving their chances of successfully reintegrating into society.¹⁵⁷

Section 1-6 and 1-7 remove additional barriers to re-entry by providing offenders with training and support while they are in detention and documentation of that training upon their release.¹⁵⁸ The Act creates a program that teaches new vocational skills, addresses substance abuse problems, and helps find housing upon release, all of which have been noted as barriers to successful re-entry.¹⁵⁹ By obtaining this certificate, the offender demonstrates that he gained marketable skills during his detention and demonstrated

151. *See id.*

152. *Id.*

153. 2014 Council Report *supra* note 1, at 16-17; *see also* Worthy Interview, *supra* note 142.

154. Re-Entry Policy Council, Report of the Re-Entry Policy Council: Charting the Safe and Successful Return of Prisoners to the Community 423 (Jan 2005) [hereinafter Re-Entry Policy Council Report] (on file with Georgia State University Law Review); 2014 Council Report *supra* note 1, at 21.

155. O.C.G.A. § 40-5-76(b) (Supp. 2014); 2014 Council Report, *supra* note 1, at 26; *see also* Worthy Interview, *supra* note 137.

156. Re-Entry Policy Council Report, *supra* note 154, at 387; *see also* Worthy Interview, *supra* note 142.

157. *See* Worthy Interview, *supra* note 137.

158. O.C.G.A. §§ 42-2-5.2; 51-1-54 (Supp. 2014).

159. O.C.G.A. § 42-2-5.2 (Supp. 2014); *see also* Worthy Interview, *supra* note 137.

efforts toward successful re-entry.¹⁶⁰ The certificate gives employers more confidence in hiring offenders that used their incarceration time to improve their skill set.¹⁶¹

Section 1-7 also provides the employers some added protection against liability due to their decision to hire offenders.¹⁶² By providing a presumption of due care, this certificate lessens employers' hesitation to hire offenders.¹⁶³ With the certificate, employers can be confident that the offender has used his time to gain skills and the employer will be afforded a rebuttable presumption of due care.¹⁶⁴ Additionally, since the bill simply allows the issuance of a certificate of completion for the program, the law is not likely to receive any challenges in the courts.

Review Panels

Section Two of the Act made changes to the Review Panel and the Protocol Committee.¹⁶⁵ The Act reorganized the structure of the Review Panel and Protocol Committee and placed them under the GBI.¹⁶⁶ This change allows them to continue to work with the communities to address instances of child abuse and child fatalities while accessing GBI resources.¹⁶⁷ Additionally, this change of structure allows more oversight from the GBI into the work of the Review Panel and Protocol Committee.¹⁶⁸ Overall, the Act better aligns the entities and provides for additional transparency and accountability.

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160. O.C.G.A. § 42-2-5.2 (Supp. 2014), *see also* Worthy Interview, *supra* note 137.

161. *See* Worthy Interview, *supra* note 137.

162. O.C.G.A. § 51-1-54 (Supp. 2014); *see also* Worthy Interview, *supra* note 142.

163. *See* Worthy Interview, *supra* note 137.

164. *Id.*

165. O.C.G.A. §§ 15-11-743; 19-15-1, -2, -3, -4, -5; 49-5-41 (Supp. 2014).

166. O.C.G.A. § 19-15-4(b) (Supp. 2014).

167. Interview with Senator Charlie Bethel (R-54) (Apr. 2, 2014).

168. *Id.*

