

House Bill 642 (AS PASSED HOUSE AND SENATE)

By: Representatives Benfield of the 67th, Squires of the 78th, Allen of the 117th, Dix of the 76th, Ragas of the 64th and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 1 of Chapter 11 of Title 15 of the Official Code of Georgia Annotated,
2 relating to juvenile proceedings, so as to provide that the Department of Juvenile Justice shall
3 provide for the cost of care and support of children in the temporary custody of the
4 department; to provide for the regulation of discovery and inspection in juvenile cases; to
5 provide for conditions, limitations, and procedures with respect thereto; to provide for
6 applicability; to provide for disclosure of evidence and reciprocal discovery; to provide for
7 exceptions; to provide for continuing duties to disclose; to provide for production of
8 statements of witnesses; to provide for court orders with respect to failure to comply; to
9 provide for other matters relative to the foregoing; to provide for an effective date and
10 applicability; to repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 style="text-align:center">**SECTION 1.**

13 Article 1 of Chapter 11 of Title 15 of the Official Code of Georgia Annotated, relating to
14 juvenile proceedings, is amended in Code Section 15-11-8, relating to expenses charged to
15 counties, by striking paragraph (2) of subsection (a) and inserting in lieu thereof a new
16 paragraph (2) to read as follows:

17 "(2) The cost of care and support of a child temporarily placed in or committed by the
18 court to the legal custody of an individual or a public or private agency other than the
19 Department of Juvenile Justice, but the court may order supplemental payments, if such
20 are necessary or desirable. The cost of care and support of a child temporarily placed in
21 or committed to the legal custody of the Department of Juvenile Justice shall be provided
22 by the Department of Juvenile Justice;".

23 style="text-align:center">**SECTION 2.**

24 Said article is further amended by adding a new Part 4A following Part 4 to read as follows:

"Part 4A

15-11-43.

(a) *Request for discovery.* In all cases in which a child is charged with having committed a delinquent act as defined in Code Section 15-11-2, other than a juvenile traffic offense, the child, his or her attorney, or his or her parent or guardian shall, upon written request to the person or entity having actual custody, control, or possession of the material to be produced, have full access to the following for inspection, copying, or photographing:

(1) A copy of the complaint;

(2) A copy of the petition;

(3) The names and last known addresses and telephone numbers of each witness to the occurrence which forms the basis of the charge;

(4) A copy of any written statement made by the child or any witness;

(5) Transcriptions, recordings, and summaries of any oral statement of the child or of any witness, except the product of counsel;

(6) Any scientific or other report which is intended to be introduced at the hearing or that pertains to physical evidence which is intended to be introduced;

(7) Photographs and any physical evidence which is intended to be introduced at the hearing; and

(8) Copies of the police incident report and supplemental report, if any, regarding the occurrence which forms the basis of the charge.

(b) *Reciprocal discovery.* If the child, his or her attorney, or his or her parent or guardian requests disclosure of information pursuant to subsection (a) of this Code section, it shall be the duty of the child, his or her attorney, or his or her parent or guardian to promptly make the following available for inspection, copying, or photographing to the prosecuting attorney or the entity who is prosecuting the case:

(1) The names and last known addresses and telephone numbers of each witness to the occurrence which forms the basis of the defense;

(2) Any scientific or other report which shall be introduced at the hearing or that pertains to physical evidence which shall be introduced; and

(3) Photographs and any physical evidence which shall be introduced at the hearing.

(c) *Timing of response to discovery.* A request for discovery or reciprocal discovery shall be complied with promptly and not later than 48 hours prior to the adjudicatory hearing except when later compliance is made necessary by the timing of the request. If the request for discovery is made fewer than 48 hours prior to the adjudicatory hearing, the discovery response shall be produced in a timely manner. If, subsequent to providing a discovery

1 response in compliance with this Code section, the existence of additional discovery is
2 found, it shall be promptly provided to the person making the discovery request.

3 (d) *Alibi.* (1) Upon written request by the prosecuting attorney or entity who is
4 prosecuting the case, stating the time, date, and place at which the alleged delinquent act
5 was committed, the child, his or her attorney, or his or her parent or guardian shall serve
6 upon the prosecuting attorney a written notice of the child's intention to offer a defense
7 of alibi. Such notice by the child, his or her attorney, or his or her parent or guardian shall
8 state the specific place or places at which the child claims to have been at the time of the
9 alleged delinquent act and the names, addresses, dates of birth, and telephone numbers
10 of the witnesses, if known to the child, his or her attorney, or his or her parent or
11 guardian, upon whom the child intends to rely to establish such alibi unless previously
12 supplied.

13 (2) The prosecuting attorney or entity prosecuting the case shall serve upon the child, his
14 or her attorney, or his or her parent or guardian a written notice stating the names,
15 addresses, dates of birth, and telephone numbers of the witnesses, if known to the state,
16 upon whom the state intends to rely to rebut the child's evidence of alibi unless
17 previously supplied.

18 (e) *Order granting discovery; limitations sanctions.* If a request for discovery is refused,
19 application may be made to the court for a written order granting discovery. Motions for
20 discovery shall certify that a request for discovery was made and was refused. An order
21 granting discovery shall require reciprocal discovery. Notwithstanding the provisions of
22 subsection (a) of this Code section, the court may deny, in whole or in part, or otherwise
23 limit or set conditions concerning the discovery response upon a sufficient showing by a
24 person or entity to whom a request for discovery is made that disclosure of the information
25 would:

26 (1) Jeopardize the safety of a party, witness, or confidential informant;

27 (2) Create a substantial threat of physical or economic harm to a witness or other person;

28 (3) Endanger the existence of physical evidence;

29 (4) Violate a privileged communication; or

30 (5) Impede the criminal prosecution of a minor who is being prosecuted as an adult or
31 the prosecution of an adult charged with an offense arising from the same transaction or
32 occurrence.

33 (f) *Failure to comply.* If at any time during the course of the proceedings it is brought to
34 the attention of the court that a person or entity has failed to comply with an order issued
35 pursuant to this Code section, the court may grant a continuance, prohibit the party from
36 introducing in evidence the information not disclosed, or enter such other order as the court
37 deems just under the circumstances.

1 (g) *Court discretion.* Nothing contained in this Code section shall prohibit the court from
2 ordering the disclosure of any information that the court deems necessary and appropriate
3 for proper adjudication.

4 (h) *Confidentiality of discovery responses.* Any material or information furnished to the
5 child, his or her attorney, or his or her parent or guardian pursuant to this part shall remain
6 in the exclusive custody of the child, his or her attorney, or his or her parent or guardian
7 and shall only be used during the pendency of the case and shall be subject to such other
8 terms and conditions as the court may provide."

9 **SECTION 3.**

10 (a) Section 1 of this Act shall become effective upon its approval by the Governor or upon
11 its becoming law without such approval.

12 (b) Except as otherwise provided in subsection (a) of this section, this Act shall become
13 effective on July 1, 2002, and shall apply to all cases in which a petition is filed on or after
14 that date.

15 **SECTION 4.**

16 All laws and parts of laws in conflict with this Act are repealed.