

House Bill 642

By: Representatives Stuckey 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 for the comprehensive regulation of
3 discovery and inspection in juvenile cases; to provide a short title; to provide for conditions,
4 limitations, and procedures with respect thereto; to provide for definitions; to provide for
5 applicability; to provide for disclosure of evidence by the prosecutor; to provide for
6 exceptions; to provide for continuing duties to disclose; to provide for production of
7 statements of witnesses; to provide for court orders with respect to failure to comply; to
8 provide for lists of witnesses; to provide for other matters relative to the foregoing; to
9 provide for an effective date and applicability; to repeal conflicting laws; and for other
10 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 by adding a new Part 4.1 following Part 4 to read as
15 follows:

16 style="text-align:center">"Part 4.1

17 15-11-43.

18 This part shall be known and may be cited as the 'Juvenile Discovery Act.'

19 15-11-43.1.

20 As used in this part, the term:

21 (1) 'Possession, custody, or control of the state or prosecutor' means an item which is
22 within the possession, custody, or control of the prosecutor; members of his or her staff;
23 other governmental personnel; any others who have participated in the screening
24 investigation, or evaluation of the case; or any law enforcement agency involved in the
25 investigation of the case being prosecuted.

1 (2) 'Prosecutor' means the district attorney or any person designated by the district
2 attorney to prosecute delinquency cases in juvenile court.

3 (3) 'Respondent' means any child who is alleged to be delinquent.

4 (4) 'Statement of a witness' means:

5 (A) A written or recorded statement, or copies thereof, made by the witness that is
6 signed or otherwise adopted or approved by the witness;

7 (B) A substantially verbatim recital of an oral statement made by the witness that is
8 recorded contemporaneously with the making of the oral statement and is contained in
9 a stenographic, mechanical, electrical, or other recording or a transcription thereof; or

10 (C) A summary of the substance of a statement made by a witness contained in a
11 memorandum, report, or other type of written document but does not include notes or
12 summaries made by counsel.

13 (5) 'Witness' does not include the respondent.

14 15-11-43.2.

15 (a) Upon written request of the respondent, the prosecutor shall disclose to the respondent
16 the following no later than three days following the commencement of proceedings under
17 Code Section 15-11-35, except for proceedings charging juvenile traffic offenses,
18 unruliness, or deprivation:

19 (1) A list of witnesses which includes the name, address, telephone number, and date of
20 birth of persons whom the prosecutor intends to call as a witness at any hearing or trial
21 and the nature of the witnesses' relationship to each other and to the prosecutor;

22 (2) Any statement of any witness that is the possession, custody, or control of the
23 prosecutor that relates to the subject matter concerning the testimony of a witness which
24 he or she intends to call as a witness at any hearing or trial;

25 (3) Any relevant written or recorded statements made by the respondent, or copies
26 thereof, within the possession, custody, or control of the prosecutor and that portion of
27 any written record containing the substance of any relevant oral statement made by the
28 respondent, whether before or after arrest, in response to interrogation by any person then
29 known to the respondent to be a law enforcement officer or member of the prosecutor's
30 staff. The prosecutor shall also disclose to the respondent the substance of any other
31 relevant oral statement made by the respondent, before or after arrest, in response to
32 interrogation by any person then known by the respondent to be a law enforcement
33 officer or member of the prosecutor's staff if the state intends to use that statement at any
34 hearing or trial. The prosecutor shall also disclose to the respondent the substance of any
35 other relevant written or oral statement made by the respondent while in custody, whether
36 or not in response to interrogation. Statements of co-respondents that are attributable to

1 the respondent and arguably admissible against the respondent at any hearing or trial also
2 shall be disclosed under this paragraph;

3 (4) Any report or written statement of any expert if the prosecutor intends to introduce
4 it in evidence at any hearing or trial. Said reports or written statements include scientific
5 tests, experiments, and comparisons; results of physical or mental examinations;
6 behavioral observations; and investigations of the respondent's school, social, or family
7 background;

8 (5) Any report or record, whether or not made in connection to a particular case, of the
9 respondent's involvement with law enforcement, judicial, welfare, school, or other public
10 agencies;

11 (6) Books, papers, documents, photographs, tangible objects, audio and visual tapes,
12 films and recordings, or copies or portions thereof which are within the possession,
13 custody, or control of the prosecutor and are intended for use by the prosecutor as
14 evidence at any hearing or trial or which were obtained from or belong to the respondent;

15 (7) Any record of prior convictions or prior adjudications of delinquency of persons
16 whom the prosecutor intends to call as a witness at the hearing or trial; and

17 (8) Any other paper, document, material, or information within the possession, custody,
18 or control of the prosecutor which tends to mitigate or negate the allegation of the petition
19 or the seriousness thereof.

20 (b) The prosecutor shall disclose the material and information listed in subsection (a) of
21 this Code section to the respondent in any manner agreed to by the prosecutor and
22 respondent or by:

23 (1) Notifying the respondent that the material and information may be inspected,
24 obtained, tested, copied, or photographed during specified reasonable times; and

25 (2) Making available to the respondent at the time specified such material and
26 information and providing suitable facilities; or

27 (3) Making arrangements for the respondent to obtain said materials and information for
28 testing, copying, and photographing.

29 (c) The prosecutor is responsible for ensuring that his or her office obtains the material and
30 information listed in subsection (a) of this Code section from the various law enforcement
31 and investigative personnel in sufficient time to comply with subsection (a) of this Code
32 section.

33 (d) If, subsequent to compliance with subsection (a) of this Code section or an order
34 pursuant thereto, the prosecutor discovers additional material or information which is
35 subject to disclosure under this part, the prosecutor shall promptly notify the respondent
36 of the existence of such additional material or information and make this additional
37 information or material available to the respondent. If such material or information is

1 discovered during any hearing or trial, the prosecutor shall immediately notify the court
2 and the respondent.

3 15-11-43.3.

4 The prosecutor is not required to disclose legal research or records, correspondence,
5 reports, or memoranda to the extent such materials contain opinions, theories, or
6 conclusions of the prosecutor or members of the prosecutor's staff.

7 15-11-43.4.

8 (a) Upon motion by the prosecutor, the judge shall have the discretion and authority to
9 order that certain information or materials be exempt from disclosure. Said information
10 or material shall be filed with the clerk under seal until such time as it may be needed for
11 purposes of appeal or as otherwise ordered by the court.

12 (b) Any material or information furnished to the respondent pursuant to this part shall
13 remain in the exclusive custody of the respondent and shall only be used during the
14 pendency of the case and shall be subject to such other terms and conditions as the court
15 may provide.

16 15-11-43.5.

17 If at any time during the course of the proceedings it is brought to the attention of the court
18 that the prosecutor has failed to comply with the requirements of this part, the court may
19 order the prosecutor to permit the discovery or inspection or interview of the witness, grant
20 a continuance, or enter such other order as it deems just under the circumstances. Upon a
21 showing of a willful violation of this part, the court may prohibit the prosecutor from
22 introducing the evidence not disclosed or presenting the witness not disclosed or may enter
23 such other order as it deems just under the circumstances."

24 **SECTION 2.**

25 This Act shall become effective on July 1, 2001, and shall apply to all cases docketed on or
26 after that date.

27 **SECTION 3.**

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