

House Bill 172

By: Representatives Benfield of the 56th, Post 1, Bordeaux of the 125th, Dix of the 70th, Post 2, Willard of the 40th and Walker of the 115th

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 regulation of discovery and
3 inspection in juvenile cases; to provide for conditions, limitations, and procedures with
4 respect thereto; to provide for applicability; to provide for disclosure of evidence and
5 reciprocal discovery; to provide for exceptions; to provide for continuing duties to disclose;
6 to provide for production of statements of witnesses; to provide for court orders with respect
7 to failure to comply; to provide for other matters relative to the foregoing; to provide for an
8 effective date and applicability; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

11 Article 1 of Chapter 11 of Title 15 of the Official Code of Georgia Annotated, relating to
12 juvenile proceedings, is amended by adding a new Part 7A following Part 7 to read as
13 follows:

14 "Part 7A

15 15-11-75.

16 (a) *Request for discovery.* In all cases in which a child is charged with having committed
17 a delinquent act as defined in Code Section 15-11-2, the child shall, upon written request
18 to the person or entity prosecuting the case having actual custody, control, or possession
19 of the material to be produced, have full access to the following for inspection, copying,
20 or photographing:

- 21 (1) A copy of the complaint;
22 (2) A copy of the petition;

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

3 (4) A copy of any written statement made by the child or any witness that relates to the
4 subject matter concerning the testimony of the witness that the prosecuting attorney or
5 entity prosecuting the case intends to call as a witness;

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

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

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

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

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

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

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

22 (3) Photographs and any physical evidence which are intended to be introduced at the
23 hearing; and

24 (4) A copy of any written statement made by any witness that relates to the subject
25 matter concerning the testimony of the witness that the child intends to call as a witness.

26 (c) *Timing of response to discovery*. A request for discovery or reciprocal discovery shall
27 be complied with promptly and not later than 48 hours prior to the adjudicatory hearing
28 except when later compliance is made necessary by the timing of the request. If the request
29 for discovery is made fewer than 48 hours prior to the adjudicatory hearing, the discovery
30 response shall be produced in a timely manner. If, subsequent to providing a discovery
31 response in compliance with this Code section, the existence of additional evidence is
32 found, it shall be promptly provided to the person or child making the discovery request.

33 (d) *Alibi*. (1) Upon written request by the prosecuting attorney or entity prosecuting the
34 case stating the time, date, and place at which the alleged delinquent act was committed,
35 the child shall serve upon the prosecuting attorney or entity prosecuting the case a written
36 notice of the child's intention to offer a defense of alibi. Such notice by the child shall

1 state the specific place or places at which the child claims to have been at the time of the
2 alleged delinquent act and the names, addresses, dates of birth, and telephone numbers of the
3 witnesses, if known to the child, upon whom the child intends to rely to establish such alibi
4 unless previously supplied. A request for alibi evidence shall be complied with promptly and
5 not later than 48 hours prior to the adjudicatory hearing except when later compliance is
6 made necessary by the timing of the request. If the request for alibi evidence is made fewer
7 than 48 hours prior to the adjudicatory hearing, the alibi evidence shall be produced in a
8 timely manner. If the defendant withdraws the notice of intention to rely upon an alibi
9 defense, the notice and intention to rely upon an alibi defense are not admissible. However
10 the prosecuting attorney or entity prosecuting the case may offer any other evidence
11 regarding alibi.

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

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

- 24 (1) Jeopardize the safety of a party, witness, or confidential informant;
25 (2) Create a substantial threat of physical or economic harm to a witness or other person;
26 (3) Endanger the existence of physical evidence;
27 (4) Disclose privileged information; or
28 (5) Impede the criminal prosecution of a minor who is being prosecuted as an adult or
29 the prosecution of an adult charged with an offense arising from the same transaction or
30 occurrence.

31 (f) *Failure to comply.* If at any time during the course of the proceedings it is brought to
32 the attention of the court that a person or entity has failed to comply with an order issued
33 pursuant to this Code section, the court may grant a continuance, prohibit the party from
34 introducing in evidence the information not disclosed, or enter such other order as the court
35 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 pursuant to this part shall remain in the exclusive custody of the child and shall only
6 be used during the pendency of the case and shall be subject to such other terms and
7 conditions as the court may provide."

8 **SECTION 2.**

9 This Act shall become effective on July 1, 2003, and shall apply to all cases in which a
10 petition is filed on or after that date.

11 **SECTION 3.**

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