

House Bill 670

By: Representatives Thomas of the 33rd, Post 2, Bunn of the 63rd, Oliver of the 56th, Post 2, Moraitakis of the 42nd, Post 4, Orrock of the 51st, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 5-7-1 of the Official Code of Georgia Annotated, relating to orders,
2 decisions, and judgments that are appealable, so as to delete a provision for orders
3 transferring cases from a superior court to a juvenile court; to amend Chapter 11 of Title 15
4 of the Official Code of Georgia Annotated, relating to juvenile proceedings, so as to provide
5 that the juvenile court has original concurrent jurisdiction over certain acts committed by
6 children under 17 years of age; to amend Chapter 10 of Title 17 of the Official Code of
7 Georgia Annotated, relating to sentence and punishment, so as to change certain provisions
8 relating to punishment for serious violent offenses; to change certain provisions relating to
9 the committal of a person under the age of 17 who is convicted of a felony; to amend Title
10 42 of the Official Code of Georgia Annotated, relating to penal institutions, so as to provide
11 for the transfer of certain offenders who are incarcerated within the Department of
12 Corrections; to provide for parole eligibility for certain offenders; to provide specific powers
13 and duties to the Board of Pardons and Paroles concerning certain persons; to change certain
14 provisions relating to a child's confinement within the Department of Corrections; to amend
15 Code Section 49-4A-9 of the Official Code of Georgia Annotated, relating to sentence of
16 youthful offenders, so as to change certain provisions related to a child's confinement within
17 the Department of Corrections; to provide for related matters; to provide an effective date;
18 to provide for applicability; to repeal conflicting laws; and for other purposes.

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

21 Code Section 5-7-1 of the Official Code of Georgia Annotated, relating to orders, decisions,
22 and judgments that are appealable, is amended by striking subsection (a) and inserting in lieu
23 thereof a new subsection (a) to read as follows:

24 "(a) An appeal may be taken by and on behalf of the State of Georgia from the superior
25 courts, state courts, City Court of Atlanta, and juvenile courts and such other courts from
26 which a direct appeal is authorized to the Court of Appeals of Georgia and the Supreme

1 Court of Georgia in criminal cases and adjudication of delinquency cases in the following
2 instances:

3 (1) From an order, decision, or judgment setting aside or dismissing any indictment,
4 accusation, or petition alleging that a child has committed a delinquent act or any count
5 thereof;

6 (2) From an order, decision, or judgment arresting judgment of conviction or
7 adjudication of delinquency upon legal grounds;

8 (3) From an order, decision, or judgment sustaining a plea or motion in bar, when the
9 defendant has not been put in jeopardy;

10 (4) From an order, decision, or judgment suppressing or excluding evidence illegally
11 seized or excluding the results of any test for alcohol or drugs in the case of motions
12 made and ruled upon prior to the impaneling of a jury or the defendant being put in
13 jeopardy, whichever occurs first; or

14 (5) From an order, decision, or judgment of a court where the court does not have
15 jurisdiction or the order is otherwise void under the Constitution or laws of this state; or

16 ~~(6) From an order, decision, or judgment of a superior court transferring a case to the
17 juvenile court pursuant to subparagraph (b)(2)(B) of Code Section 15-11-28."~~

18 SECTION 2.

19 Chapter 11 of Title 15 of the Official Code of Georgia Annotated, relating to juvenile
20 proceedings, is amended by striking subsection (b) of Code Section 15-11-28, relating to
21 jurisdiction of the juvenile court, and inserting in lieu thereof a new subsection (b) to read
22 as follows:

23 "*(b) Criminal jurisdiction.*

24 ~~(1) Except as provided in paragraph (2) of this subsection, the~~ The court shall have
25 concurrent jurisdiction with the superior court over a child who is alleged to have
26 committed a delinquent act which would be considered a ~~crime~~ serious violent felony as
27 defined in Code Section 17-10-6.1 if tried in a superior court ~~and for which the child may~~
28 ~~be punished by loss of life, imprisonment for life without possibility of parole, or~~
29 ~~confinement for life in a penal institution;~~ provided, however, that the juvenile court
30 shall have original jurisdiction and shall not be divested of jurisdiction unless a proper
31 transfer hearing in accordance with Code Section 15-11-30.2 has been held.

32 ~~(2)(A) The superior court shall have exclusive jurisdiction over the trial of any child~~
33 ~~13 to 17 years of age who is alleged to have committed any of the following offenses:~~

34 ~~(i) Murder;~~

35 ~~(ii) Voluntary manslaughter;~~

36 ~~(iii) Rape;~~

1 ~~(iv) Aggravated sodomy;~~

2 ~~(v) Aggravated child molestation;~~

3 ~~(vi) Aggravated sexual battery; or~~

4 ~~(vii) Armed robbery if committed with a firearm.~~

5 ~~(A.1) The granting of bail or pretrial release of a child charged with an offense~~
6 ~~enumerated in subparagraph (A) of this paragraph shall be governed by the provisions~~
7 ~~of Code Section 17-6-1.~~

8 ~~(B) After indictment, the superior court may after investigation and for extraordinary~~
9 ~~cause transfer any case involving a child 13 to 17 years of age alleged to have~~
10 ~~committed any offense enumerated in subparagraph (A) of this paragraph which is not~~
11 ~~punishable by loss of life, imprisonment for life without possibility of parole, or~~
12 ~~confinement for life in a penal institution. Any such transfer shall be appealable by the~~
13 ~~State of Georgia pursuant to Code Section 5-7-1. Upon such a transfer by the superior~~
14 ~~court, jurisdiction shall vest in the juvenile court and jurisdiction of the superior court~~
15 ~~shall terminate. Any case transferred by the superior court to the juvenile court pursuant~~
16 ~~to this subparagraph shall be subject to the designated felony provisions of Code~~
17 ~~Section 15-11-63 and the transfer of the case from superior court to juvenile court shall~~
18 ~~constitute notice to the child that such case is subject to the designated felony~~
19 ~~provisions of Code Section 15-11-63.~~

20 ~~(C) Before indictment, the district attorney may, after investigation and for~~
21 ~~extraordinary cause, decline prosecution in the superior court of a child 13 to 17 years~~
22 ~~of age alleged to have committed an offense specified in subparagraph (A) of this~~
23 ~~paragraph. Upon declining such prosecution in the superior court, the district attorney~~
24 ~~shall immediately cause a petition to be filed in the appropriate juvenile court for~~
25 ~~adjudication. Any case transferred by the district attorney to the juvenile court pursuant~~
26 ~~to this subparagraph shall be subject to the designated felony provisions of Code~~
27 ~~Section 15-11-63 and the transfer of the case from superior court to juvenile court shall~~
28 ~~constitute notice to the child that such case is subject to the designated felony~~
29 ~~provisions of Code Section 15-11-63.~~

30 ~~(D) The superior court may transfer any case involving a child 13 to 17 years of age~~
31 ~~alleged to have committed any offense enumerated in subparagraph (A) of this~~
32 ~~paragraph and convicted of a lesser included offense not included in subparagraph (A)~~
33 ~~of this paragraph to the juvenile court of the county of the child's residence for~~
34 ~~disposition. Upon such a transfer by the superior court, jurisdiction shall vest in the~~
35 ~~juvenile court and jurisdiction of the superior court shall terminate.~~

36 ~~(E) Within 30 days of any proceeding in which a child 13 to 17 years of age is~~
37 ~~convicted of certain offenses over which the superior court has exclusive jurisdiction~~

1 as provided in subparagraph (A) of this paragraph or adjudicated delinquent on the
 2 basis of conduct which if committed by an adult would constitute such offenses, the
 3 superior court shall provide written notice to the school superintendent or his or her
 4 designee of the school in which such child is enrolled or, if the information is known,
 5 of the school in which such child plans to be enrolled at a future date. Such notice shall
 6 include the specific criminal offense that such child committed. A local school system
 7 to which the child is assigned may request further information from the court's file."

8 SECTION 3.

9 Said chapter is further amended by striking Code Section 15-11-30.2, relating to transfers to
 10 other courts for prosecution, and inserting in lieu thereof a new Code Section 15-11-30.2 to
 11 read as follows:

12 "15-11-30.2.

13 (a) After a petition has been filed alleging delinquency based on conduct which is
 14 ~~designated a crime or public offense under the laws, including local ordinances~~ would
 15 constitute a serious violent felony as defined in Code Section 17-10-6.1 if tried in a
 16 superior court, the court before hearing the petition on its merits may transfer the offense
 17 for prosecution to the appropriate court having jurisdiction of the offense if:

18 (1) A hearing on whether the transfer should be made is held in conformity with Code
 19 Sections 15-11-6, 15-11-7, and 15-11-41;

20 (2) Notice in writing of the time, place, and purpose of the hearing is given to the child
 21 and his or her parents, guardian, or other custodian at least three days before the hearing;

22 (3) The court in its discretion determines there are reasonable grounds to believe that:

23 (A) The child committed the delinquent act alleged;

24 (B) The child is not committable to an institution for the mentally retarded or mentally
 25 ill; and

26 (C) The interests of the child and the community require that the child be placed under
 27 legal restraint and the transfer be made; and

28 (4) The child:

29 (A) Was at least 15 years of age at the time of the alleged delinquent conduct; or

30 (B) Was 13 or 14 years of age and either committed an act for which the punishment
 31 is loss of life or confinement for life in a penal institution ~~or committed aggravated~~
 32 ~~battery resulting in serious bodily injury to a victim~~ without possibility of parole.

33 ~~(b) After a petition has been filed alleging delinquency based on conduct which is~~
 34 ~~designated a crime or public offense under the laws, including local ordinances, the court~~
 35 ~~before hearing the petition on its merits shall transfer the offense for prosecution to the~~
 36 ~~appropriate court having jurisdiction of the offense if:~~

1 ~~(1) A hearing on whether the transfer should be made is held in conformity with Code~~
 2 ~~Sections 15-11-6, 15-11-7, and 15-11-41;~~

3 ~~(2) Notice in writing of the time, place, and purpose of the hearing is given to the child~~
 4 ~~and the child's parents, guardian, or other custodian at least three days before the hearing;~~

5 ~~(3) The court in its discretion determines there are reasonable grounds to believe that the~~
 6 ~~child while confined to a youth development center committed the offense of murder,~~
 7 ~~voluntary manslaughter, aggravated assault, or aggravated battery as defined in Chapter~~
 8 ~~5 of Title 16; and~~

9 ~~(4) The child was at least 14 years of age at the time of the alleged conduct described in~~
 10 ~~paragraph (3) of this subsection.~~

11 ~~(e)(b)~~ The transfer terminates the jurisdiction of the juvenile court over the child with
 12 respect to an adjudication of delinquency as to the delinquent acts alleged in the petition.

13 ~~(d)(c)~~ No child, either before or after reaching 17 years of age, shall be prosecuted for an
 14 offense previously committed unless the case has been transferred as provided in this Code
 15 section.

16 ~~(e)(d)~~ Statements made by the child at any hearing under this article are not admissible
 17 against the child over objection in the criminal proceedings following the transfer.

18 ~~(f) This Code section shall not apply to any proceeding within the exclusive jurisdiction~~
 19 ~~of the superior court pursuant to subparagraph (b)(2)(A) of Code Section 15-11-28."~~

20 SECTION 4.

21 Said chapter is further amended by striking Code Section 15-11-30.3, relating to transfer of
 22 designated felony offenses for prosecution, and inserting in lieu thereof a new Code Section
 23 15-11-30.3 to read as follows:

24 "15-11-30.3.

25 ~~(a) After a petition has been filed alleging that a child 15 years of age or older has~~
 26 ~~committed a designated felony act, the court shall follow the procedure specified in this~~
 27 ~~Code section if the designated felony act alleged to have been committed would have~~
 28 ~~constituted the crime of burglary if done by an adult and the child has been found at~~
 29 ~~separate court appearances to have committed acts which would have constituted the crime~~
 30 ~~of burglary if done by an adult on three or more previous occasions.~~

31 ~~(b) If this Code section applies, the court shall hold a hearing in conformity with Code~~
 32 ~~Sections 15-11-6, 15-11-7, and 15-11-41. Notice shall be given in writing of the time,~~
 33 ~~place, and purpose of the hearing to the child and the child's parents, guardian, or other~~
 34 ~~custodian at least three days before the hearing.~~

35 ~~(c) If at the hearing the court determines that there are reasonable grounds to believe that~~
 36 ~~the child committed the designated felony act alleged, the court shall transfer the offense~~

1 ~~to superior court for prosecution. The transfer terminates the jurisdiction of the juvenile~~
 2 ~~court over the child with respect to the designated felony act alleged. The transfer order~~
 3 ~~shall constitute a determination by a court of inquiry that there is probable cause to commit~~
 4 ~~the child as a defendant to the criminal court competent to try the child. After such a~~
 5 ~~transfer, until and unless a judgment of guilt is entered and sentence pronounced, the child~~
 6 ~~shall be detained only as provided in subsection (a) of Code Section 15-11-48.~~

7 ~~(d) Upon the transfer of any matter to superior court under this Code section, the district~~
 8 ~~attorney shall after investigation report to the judge whether the matter should be~~
 9 ~~retransferred to juvenile court; and the superior court may upon such a report or on its own~~
 10 ~~motion order the matter retransferred to juvenile court. After such a retransfer, the~~
 11 ~~provisions of subsection (d) of Code Section 15-11-63 shall apply as in other cases~~
 12 Reserved."

13 SECTION 5.

14 Said chapter is further amended by striking Code Section 15-11-30.4, relating to transfer of
 15 criminal and quasi-criminal proceedings to juvenile court, and inserting in lieu thereof a new
 16 Code Section 15-11-30.4 to read as follows:

17 "15-11-30.4.

18 If it appears to any court in a criminal proceeding or a quasi-criminal proceeding that the
 19 defendant is a child, ~~except in cases where the superior court has exclusive or concurrent~~
 20 ~~jurisdiction as provided in subsection (b) of Code Section 15-11-28~~, the case shall
 21 forthwith be transferred to the juvenile court together with a copy of the accusatory
 22 pleading and all other papers, documents, and transcripts of testimony relating to the case.
 23 The transferring court shall order that the child be taken forthwith to the juvenile court or
 24 to a place of detention designated by the court or shall release him or her to the custody of
 25 his or her parent, guardian, custodian, or other person legally responsible for him or her,
 26 to be brought before the juvenile court at a time designated by that court. The accusatory
 27 pleading may not serve in lieu of a petition in the juvenile court ~~unless that court directs~~
 28 ~~the filing of a petition."~~

29 SECTION 6.

30 Said chapter is further amended by striking subsection (a) of Code Section 15-11-47, relating
 31 to the procedure of taking a child into custody and detention, and inserting in lieu thereof a
 32 new subsection (a) to read as follows:

33 "(a) *Release to parents; delivery to medical facility, intake officer, or court.* A person
 34 taking a child into custody, with all reasonable speed and without first taking the child
 35 elsewhere, shall:

1 (1) Forthwith release without bond the child to the child's parents, guardian, or other
 2 custodian upon their promise to bring the child before the court when requested by the
 3 court;

4 (2) Forthwith deliver the child to a medical facility if the child is believed to suffer from
 5 a serious physical condition or illness which requires prompt treatment and, upon
 6 delivery, shall promptly contact a juvenile court intake officer. Immediately upon being
 7 notified by the person taking a child into custody, the intake officer shall determine if
 8 such child should be released, detained, or brought before the court. Prior to an informal
 9 detention hearing or committal hearing authorized under Code Sections 17-6-15 and
 10 17-6-16 and Articles 1, 2, and 8 of Chapter 7 of Title 17, the child shall be placed in
 11 detention, if necessary, only in such places as are authorized by Code Section 15-11-48;
 12 or

13 (3) Bring the child immediately before the juvenile court or promptly contact a juvenile
 14 court intake officer. The intake officer shall determine if the child should be released or
 15 detained. Prior to an informal detention hearing, the child shall be placed in detention, if
 16 necessary, only in such places as are authorized by Code Section 15-11-48; ~~or~~

17 ~~(4) Bring the child who is suspected of committing a delinquent act before the superior~~
 18 ~~court of the county where the delinquent act occurred if the act is an act over which the~~
 19 ~~superior court has exclusive or concurrent jurisdiction as provided in subsection (b) of~~
 20 ~~Code Section 15-11-28; however, pending a commitment hearing authorized under Code~~
 21 ~~Sections 17-6-15 and 17-6-16 and Articles 1, 2, and 8 of Chapter 7 of Title 17 or an~~
 22 ~~indictment, the child shall be returned and placed in detention, if necessary, only in such~~
 23 ~~places as are authorized by Code Section 15-11-48."~~

24 SECTION 7.

25 Said chapter is further amended by striking Code Section 15-11-48, relating to place of
 26 detention, and inserting in lieu thereof a new Code Section 15-11-48 to read as follows:

27 "15-11-48.

28 (a) *Allegation of delinquency.* A child alleged to be delinquent may be detained only in:

29 (1) A licensed foster home or a home approved by the court which may be a public or
 30 private home or the home of the noncustodial parent or of a relative;

31 (2) A facility operated by a licensed child welfare agency; or

32 (3) A detention home or center for delinquent children which is under the direction or
 33 supervision of the court or other public authority or of a private agency approved by the
 34 court.

35 (b) *Allegation of capital or violent offense.* A child alleged to have committed an offense
 36 over which the superior court has ~~exclusive or concurrent~~ jurisdiction under subsection (b)

1 of Code Section 15-11-28 shall be detained pending a commitment hearing under Code
2 Sections 17-6-15 and 17-6-16 and Articles 1, 2, and 8 of Chapter 7 of Title 17 or an
3 indictment only in a facility described in paragraphs (1) through (3) of subsection (a) of this
4 Code section unless it appears to the satisfaction of the court in which the case is pending
5 that public safety and protection reasonably require detention in the jail and the court so
6 orders, but only where the detention is in a room separate and removed from those for
7 adults and constructed in such a way that there can be no physical contact between a child
8 and an adult offender.

9 ~~(c) *Transfer following indictment.* Following an indictment for an offense over which the~~
10 ~~superior court has exclusive or concurrent jurisdiction under subsection (b) of Code Section~~
11 ~~15-11-28 or following the transfer of a case to any court for criminal prosecution under~~
12 Code Section 15-11-30.2, the child shall be held only in a facility described in
13 paragraphs (1) through (3) of subsection (a) of this Code section ~~unless it appears to the~~
14 ~~satisfaction of the superior court that public safety and protection reasonably require~~
15 ~~detention in the jail and the court so orders, but only where the detention is in a room~~
16 ~~separate and removed from those for adults and constructed in such a way that there can~~
17 ~~be no physical contact between a child and an adult offender.~~

18 (d) *Notification of court by official of jail.* The official in charge of a jail or other facility
19 for the detention of adult offenders or persons charged with crime shall immediately inform
20 the juvenile court or a duly authorized officer of the juvenile court if a person who is or
21 appears to be under the age of 17 years is received at the facility and shall bring him or her
22 before the court upon request or deliver him or her to a detention or shelter care facility
23 designated by the court; ~~provided, however, the official in charge of a jail or other facility~~
24 ~~for the detention of adult offenders or persons charged with a crime shall immediately~~
25 ~~inform the court in which the case is pending or a duly authorized officer of such court if~~
26 ~~a person who is or appears to be 13 to 17 years of age and who is alleged to have~~
27 ~~committed any offense enumerated in subparagraph (b)(2)(A) of Code Section 15-11-28~~
28 ~~is received at the facility and shall bring him or her before the court upon request or deliver~~
29 ~~him or her to a detention facility designated by the court. Such~~ The child shall not be held
30 in the jail but may be held in a temporary holding area outside of the jail constructed as
31 such for not longer than six hours pending transfer to ~~the detention~~ a facility described in
32 paragraphs (1) through (3) of subsection (a) of this Code section. For purposes of this
33 Code section, the term 'jail' shall include not only the cells, but any other secured area of
34 the jail adjacent to the cells in which adult offenders are held or through which they are
35 transported.

36 (e) *Allegation of unruliness.* A child unruly or alleged to be unruly who has not been
37 released from custody as provided in subsection (e) of Code Section 15-11-47 may be

1 detained or placed in shelter care only in the facilities stated in paragraphs (1) and (2) of
2 subsection (a) of this Code section or in a secure juvenile detention facility for a period not
3 to exceed 72 hours; provided, however, upon written order of the judge having jurisdiction
4 of the case and upon good cause shown, a child alleged to be unruly may be detained for
5 one additional period not to exceed 48 hours; provided, further, that no child alleged to be
6 or found to be unruly who has not previously been adjudicated unruly may be detained in
7 a secure juvenile detention facility unless such child is alleged to be under the court's
8 jurisdiction as provided in subparagraph (D) of paragraph (12) of Code Section 15-11-2
9 and then shall be detained in that facility only so long as is required to effect the child's
10 return home or to ensure the child's presence at a scheduled court appearance when the
11 child has previously failed to appear for a scheduled court appearance. In the event a child
12 alleged to be unruly comes within the purview of the Interstate Compact on Juveniles and
13 the proper authorities of a demanding state have made an official return request to the
14 proper authorities of this state, the Interstate Compact on Juveniles shall apply to the child.

15 (f) *Allegation of deprivation.* A child alleged to be deprived may be placed in shelter care
16 only in the facilities stated in paragraphs (1) and (2) of subsection (a) of this Code section
17 or in a shelter care facility operated by the court. The actual physical placement of a child
18 pursuant to this subsection shall require the approval of the judge of the juvenile court or
19 his or her designee.

20 (g) *Data to be maintained.* All facilities that detain children for pretrial detention shall
21 maintain the following data on each child detained:

- 22 (1) Name;
- 23 (2) Date of birth;
- 24 (3) Sex;
- 25 (4) Race;
- 26 (5) Offense or offenses for which being detained;
- 27 (6) Date of and authority for confinement;
- 28 (7) Date of and authority for release or transfer; and
- 29 (8) Where transferred or to whom released.

30 Such data shall be recorded and retained by the facility for three years and shall be made
31 available for inspection during normal business hours by any court exercising juvenile
32 court jurisdiction, by the Department of Juvenile Justice, by the Department of Corrections,
33 and by the Georgia Council of Juvenile Court Judges."

1 ~~(3) The responsibility to provide the child with food, clothing, shelter, and education;~~
 2 ~~(4) The right to determine the facility in which the child shall be confined; and~~
 3 ~~(5) The right and duty to provide or obtain for a child medical, hospital, psychiatric,~~
 4 ~~surgical, or dental care or services as may be considered appropriate and necessary by~~
 5 ~~competent medical authority without securing prior consent of parents or legal guardians~~
 6 Reserved."

7 **SECTION 10.**

8 Said chapter is further amended by striking paragraph (2) of subsection (a) of Code Section
 9 15-11-63, relating to designated felony acts, and inserting in lieu thereof a new paragraph (2)
 10 to read as follows:

11 "(2) 'Designated felony act' means an act which:

12 (A) Constitutes a second or subsequent offense under subsection (b) of Code Section
 13 16-11-132 if committed by a child 13 to 17 years of age;

14 (B) If done by an adult, would be one or more of the following crimes:

15 (i) ~~Kidnapping or arson in the first degree~~ Murder, felony murder, rape, voluntary
 16 manslaughter, or armed robbery involving a firearm, if done by a child 13 or more
 17 years of age;

18 (ii) Aggravated assault, aggravated sodomy, kidnapping, ~~arson in the second degree,~~
 19 ~~aggravated battery~~, robbery, armed robbery not involving a firearm, or battery in
 20 violation of Code Section 16-5-23.1 if the victim is a teacher or other school
 21 personnel, if done by a child 13 or more years of age;

22 (iii) Attempted murder or attempted kidnapping, if done by a child 13 or more years
 23 of age;

24 (iv) The carrying or possession of a weapon in violation of subsection (b) of Code
 25 Section 16-11-127.1;

26 (v) Hijacking a motor vehicle, if done by a child 13 or more years of age;

27 (vi) Any violation of Code Section 16-7-82, 16-7-84, or 16-7-86 if done by a child
 28 13 or more years of age;

29 (vii) Any other act which, if done by an adult, would be a felony, if the child
 30 committing the act has three times previously been adjudicated delinquent for acts
 31 which, if done by an adult, would have been felonies;

32 (viii) Any violation of Code Section 16-13-31, relating to trafficking in cocaine,
 33 illegal drugs, marijuana, or methamphetamine;

34 (ix) Any criminal violation of Code Section 16-14-4, relating to racketeering; or

1 (x) Any violation of Code Section 16-10-52, relating to escape, if the child involved
 2 in the commission of such act has been previously adjudicated to have committed a
 3 designated felony;

4 (C) Constitutes a second or subsequent adjudication of delinquency based upon a
 5 violation of Code Section 16-7-85 or 16-7-87;

6 ~~(C.1)~~ (D) Constitutes any violation of Code Section 16-15-4, relating to criminal street
 7 gangs; or

8 ~~(D) Constitutes an offense within the exclusive jurisdiction of the superior court~~
 9 ~~pursuant to subparagraph (b)(2)(A) of Code Section 15-11-28 which is transferred by~~
 10 ~~the superior court to the juvenile court for adjudication pursuant to subparagraph~~
 11 ~~(b)(2)(B) of Code Section 15-11-28 or which is transferred by the district attorney to~~
 12 ~~the juvenile court for adjudication pursuant to subparagraph (b)(2)(C) of Code Section~~
 13 ~~15-11-28; or~~

14 (E) Constitutes a second or subsequent violation of Code Sections 16-8-2 through
 15 16-8-9, relating to theft, if the property which was the subject of the theft was a motor
 16 vehicle."

17 SECTION 11.

18 Said chapter is further amended by striking subsection (e) of Code Section 15-11-82, relating
 19 to juvenile law enforcement records, and inserting in lieu thereof a new subsection (e) to
 20 read as follows:

21 ~~"(e) Any law enforcement records and files involving an offense over which the superior~~
 22 ~~court shall have exclusive jurisdiction as provided in paragraph (2) of subsection (b) of~~
 23 ~~Code Section 15-11-28 shall be kept and reported in the same manner as the records and~~
 24 ~~files of adults Reserved."~~

25 SECTION 12.

26 Said chapter is further amended by striking subsection (b) of Code Section 15-11-83, relating
 27 to when a child shall be fingerprinted or photographed and filing, processing, confidentiality,
 28 inspection, and destruction of a child's fingerprint files, and inserting in lieu thereof a new
 29 subsection (b) to read as follows:

30 ~~"(b) All children sentenced to the custody of the Department of Corrections shall be~~
 31 ~~fingerprinted. The fingerprinting of child inmates will be processed in accordance with the~~
 32 ~~Department of Corrections' policies for adult inmates. Reserved."~~

SECTION 13.

Said chapter is further amended by striking subsection (e) of Code Section 15-11-149, relating to disposition of a mentally ill or mentally retarded child, which reads as follows:

"(e) *Applicability of Code Section 15-11-62.* The provisions of Code Section 15-11-62 shall not apply to any child 13 to 15 years of age who is found to be suffering from mental illness or mental retardation. Any such child shall not be committed to the Department of Corrections but shall be committed to the Division of Mental Health, Developmental Disabilities, and Addictive Diseases of the Department of Human Resources as provided in this Code section."

SECTION 14.

Said chapter is further amended by striking Code Section 15-11-150, relating to the purpose and application of the mental health article, and inserting in lieu thereof a new Code Section 15-11-150 to read as follows:

"15-11-150.

(a) The purpose of this article is to:

(1) Set forth procedures for a determination of mental incompetency and a declaration of dependency for any child while the child is determined to be not mentally competent; and

(2) Provide a mechanism for the development and implementation of a mental competency plan for treatment, habilitation, support, or supervision, within current resources, for any child who is determined to be not mentally competent to participate in an adjudication or disposition hearing and is adjudicated dependent upon the court.

~~(b) The provisions of this article shall not apply to any case in which the superior court has jurisdiction pursuant to Code Section 15-11-62."~~

SECTION 15.

Chapter 10 of Title 17 of the Official Code of Georgia Annotated, relating to sentence and punishment, is amended by striking subsection (b) of Code Section 17-10-6.1, relating to punishment for serious violent offenders, and inserting in lieu thereof a new subsection (b) to read as follows:

"(b) Notwithstanding any other provisions of law to the contrary, except as provided in Code Section 42-9-23, any person convicted of a serious violent felony as defined in paragraphs (2) through (7) of subsection (a) of this Code section shall be sentenced to a mandatory minimum term of imprisonment of ten years and no portion of the mandatory minimum sentence imposed shall be suspended, stayed, probated, deferred, or withheld by the sentencing court and shall not be reduced by any form of pardon, parole, or

1 commutation of sentence by the State Board of Pardons and Paroles. No person convicted
 2 of a serious violent felony as defined in subsection (a) of this Code section shall be
 3 sentenced as a first offender pursuant to Article 3 of Chapter 8 of Title 42, relating to
 4 probation for first offenders, or any other provision of Georgia law relating to the
 5 sentencing of first offenders. The State of Georgia shall have the right to appeal any
 6 sentence which is imposed by the superior court which does not conform to the provisions
 7 of this subsection in the same manner as is provided for other appeals by the state in
 8 accordance with Chapter 7 of Title 5, relating to appeals or certiorari by the state."

9 SECTION 16.

10 Said chapter is further amended by striking Code Section 17-10-14, relating to committal of
 11 a person under 17 years of age convicted of a felony, and inserting in lieu thereof a new Code
 12 Section 17-10-14 to read as follows:

13 "17-10-14.

14 (a) Notwithstanding any other provisions of this article ~~and except as otherwise provided~~
 15 ~~in subsections (b) and (c) of this Code section~~, in any case where a person under the age
 16 of 17 years is convicted of a felony and sentenced as an adult to life imprisonment or to a
 17 certain term of imprisonment, such person shall be committed to the Department of
 18 Juvenile Justice to serve such sentence in a detention center of such department until such
 19 person is ~~17~~ 21 years of age at which time such person ~~shall~~ may be transferred to the
 20 Department of Corrections to serve the remainder of the sentence. Prior to the transfer the
 21 person shall have a hearing as provided in subsection (c) of Code Section 49-4A-9. This
 22 Code section shall apply to any person convicted on or after July 1, 1987, and to any person
 23 convicted prior to such date who has not been committed to an institution operated by the
 24 Department of Corrections.

25 ~~(b) If a child is transferred to superior court according to subsection (b) of Code Section~~
 26 ~~15-11-30.2 and convicted of aggravated assault as defined in Chapter 5 of Title 16, the~~
 27 ~~court may sentence such child to the Department of Corrections. Such child shall be housed~~
 28 ~~in a designated youth confinement unit until such person is 17 years of age, at which time~~
 29 ~~such person may be housed in any other unit designated by the Department of Corrections.~~

30 ~~(c) In any case where a child 13 to 17 years of age is convicted of a felony provided under~~
 31 ~~subparagraph (b)(2)(A) of Code Section 15-11-28, such child shall be committed to the~~
 32 ~~custody of the Department of Corrections and shall be housed in a designated youth~~
 33 ~~confinement unit until such person is 17 years of age, at which time such person may be~~
 34 ~~housed in any other unit designated by the Department of Corrections."~~

SECTION 17.

Title 42 of the Official Code of Georgia Annotated, relating to penal institutions, is amended in Chapter 7, relating to the treatment of youthful offenders, by adding a new Code section to the end of the chapter to read as follows:

"42-7-10.

(a) When this Code section becomes effective, all children who are 17 years of age or younger and who are incarcerated in a Department of Corrections facility shall be released to the custody of the Department of Juvenile Justice pending a dispositional hearing in juvenile court as provided in Code Sections 15-11-65 and 15-11-66. For purposes of this Code section, the conviction of a child in superior court shall serve as a finding that the child committed a delinquent act. No child shall be ordered to serve a longer term of detention or incarceration than was provided in his or her original sentence.

(b) When this Code section becomes effective, any person who is serving a sentence in a Department of Corrections facility due to a conviction for murder, rape, voluntary manslaughter, aggravated sodomy, aggravated child molestation, aggravated sexual battery, or armed robbery committed with a firearm, who was 13 to 17 years of age at the beginning of their incarceration and who is now 17 years of age or older, shall be eligible for parole after serving at least five years in detention."

SECTION 18.

Said title is further amended in Article 1 of Chapter 9, relating to general provisions for pardons and paroles, by adding a new Code section to the end of the article to read as follows:

"42-9-23.

(a) Notwithstanding any other provision of law including mandatory sentences, the board shall have the power to release on pardon or parole persons tried and convicted as adults pursuant to subsection (b) of Code Section 15-11-28 only if the board finds that there is reasonable probability that, if the offender is so released, he or she will live and conduct himself or herself as a respectable and law-abiding person and that his or her release will be compatible with his or her own welfare and the welfare of society.

(b) The board shall review cases which involve persons tried and convicted as adults pursuant to subsection (b) of Code Section 15-11-28 when the person has served a period of five years of incarceration. For purposes of this subsection, the computation of the five-year period shall include all time served in any secure detention facility, including a Department of Juvenile Justice facility."

1 ~~transfer youths committed to the department under this Code section to the Department of~~
 2 ~~Corrections for incarceration in an appropriate facility designated by the Department of~~
 3 ~~Corrections.~~

4 (e)(d) Any ~~child~~ person under ~~17~~ 21 years of age who is sentenced in the superior court
 5 and committed to the department may be eligible to participate in all youth development
 6 center programs and services including community work programs, sheltered workshops,
 7 special state sponsored programs for evaluation and services under the Division of
 8 Rehabilitation Services of the Department of Labor and the Division of Mental Health,
 9 Developmental Disabilities, and Addictive Diseases of the Department of Human
 10 Resources, and under the general supervision of youth development center staff at special
 11 planned activities outside of the youth development center. When such a child sentenced
 12 in the superior court is approaching his or her ~~seventeenth~~ twenty-first birthday, the
 13 department shall notify the court that a further disposition of the child is necessary. The
 14 department shall provide the court with information concerning the participation and
 15 progress of the child in programs described in this subsection. The court shall review the
 16 case and hold a hearing to determine if the child, upon becoming ~~17~~ 21 years of age, should
 17 be placed on probation, have his or her sentence reduced, be transferred to the Department
 18 of Corrections for the remainder of the original sentence, or be subject to any other
 19 determination authorized by law."

20 **SECTION 20.**

21 This Act shall become effective upon its approval by the Governor or upon its becoming law
 22 without such approval and shall apply to all cases pending or initiated after such date.

23 **SECTION 21.**

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