

The House Committee on Judiciary offers the following substitute to HB 670:

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 11 of Title 15 of the Official Code of Georgia Annotated, relating to
2 juvenile proceedings, so as to provide for certain detention reports concerning juveniles; to
3 repeal those provisions for the commitment of children 13 to 17 years of age to the custody
4 of the Department of Corrections under certain circumstances; to amend Title 17 of the
5 Official Code of Georgia Annotated, relating to criminal procedure, so as to provide that
6 juvenile cases within the exclusive jurisdiction of the superior court must be presented to the
7 grand jury within a certain period; to provide for exceptions; to provide for the transfer of
8 such cases to the juvenile court if such cases do not have a true bill returned within a certain
9 time; to provide for extensions under certain circumstances; to provide that certain juvenile
10 cases in the superior court must be tried within a certain period of time or be transferred to
11 the juvenile court; to provide for extensions under certain circumstances; to provide for the
12 sentencing of certain children to the custody of the Department of Corrections under certain
13 circumstances; to provide for the rights and duties of the Department of Corrections with
14 regard to children sentenced to the custody of the department; to provide for the conditions
15 of custody and confinement; to amend Chapter 4A of Title 49 of the Official Code of
16 Georgia Annotated, relating to the Department of Juvenile Justice, so as to change certain
17 provisions regarding the sentencing of youthful offenders; to provide for related matters; to
18 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 Chapter 11 of Title 15 of the Official Code of Georgia Annotated, relating to juvenile
22 proceedings, is amended by adding a new subsection (h) to Code Section 15-11-48, relating
23 to place of detention, to read as follows:

24 "(h) *Report of detention.* The official in charge of any facility that detains children for
25 pretrial detention, including, but not limited to, sheriffs, regional jail authorities, and the
26 Department of Juvenile Justice, shall furnish to the chief judge, or such judge's designee,

- 1 and the prosecuting attorney for such court, at least once a week, a list of all such children.
 2 Such lists shall include as to each child:
- 3 (1) The child's name;
 - 4 (2) The date of arrest;
 - 5 (3) The offense charged or other reason for being held;
 - 6 (4) The amount of bond, if known; and
 - 7 (5) Whether the child is represented by counsel and, if so, the name of such counsel."

8 **SECTION 2.**

9 Said chapter is further amended by striking and reserving Code Section 15-11-62, relating
 10 to the commitment of a child 13 to 17 years of age to the custody of the Department of
 11 Corrections.

12 **SECTION 3.**

13 Said chapter is further amended by striking subsection (e) of Code Section 15-11-149,
 14 relating to disposition of a mentally ill or mentally retarded child, which reads as follows:
 15 "(e) *Applicability of Code Section 15-11-62.* The provisions of Code Section 15-11-62
 16 shall not apply to any child 13 to 15 years of age who is found to be suffering from mental
 17 illness or mental retardation. Any such child shall not be committed to the Department of
 18 Corrections but shall be committed to the Division of Mental Health, Developmental
 19 Disabilities, and Addictive Diseases of the Department of Human Resources as provided
 20 in this Code section."

21 **SECTION 4.**

22 Said chapter is further amended by striking Code Section 15-11-150, relating to the purpose
 23 and application of the mental health article, and inserting in lieu thereof a new Code Section
 24 15-11-150 to read as follows:

25 "15-11-150.

26 (a) The purpose of this article is to:

- 27 (1) Set forth procedures for a determination of mental incompetency and a declaration
 28 of dependency for any child while the child is determined to be not mentally competent;
 29 and
- 30 (2) Provide a mechanism for the development and implementation of a mental
 31 competency plan for treatment, habilitation, support, or supervision, within current
 32 resources, for any child who is determined to be not mentally competent to participate in
 33 an adjudication or disposition hearing and is adjudicated dependent upon the court.

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

3 **SECTION 5.**

4 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is
5 amended by adding a new Code Section 17-7-50.1 to read as follows:

6 "17-7-50.1.

7 (a) Any child who is charged with a crime that is within the exclusive jurisdiction of the
8 superior court, as provided in Code Section 15-11-28, who is detained without bail, shall
9 within 90 days after the date of detention be entitled to have the charge against him or her
10 presented to the grand jury. The superior court may, upon motion of the district attorney
11 for an extension and after a hearing and good cause shown, grant one extension to the 90
12 day period not to exceed 90 additional days.

13 (b) If the grand jury does not return a true bill against such child within the time limits
14 established by this Code section, the case shall be transferred to the juvenile court and the
15 case shall proceed thereafter as provided in Chapter 11 of Title 15.

16 (c) The provisions of this Code section shall not apply to any case in which the district
17 attorney files notice with the court that the child is a codefendant to a case in which an
18 adult is charged with committing the same offense and the state has filed notice of its
19 intention to seek the death penalty."

20 **SECTION 6.**

21 Said title is further amended by adding a new Code Section 17-7-173 to read as follows:

22 "17-7-173.

23 (a) Any child who is charged with a crime that is within the exclusive jurisdiction of the
24 superior court, as provided in Code Section 15-11-28, shall be tried within 120 days of the
25 indictment being returned or the case shall be transferred to the juvenile court by operation
26 of law and the case shall proceed thereafter as provided in Chapter 11 of Title 15. The
27 superior court, upon motion of either party, shall grant one extension to the 120 day period
28 which extension shall not exceed 90 additional days. The court may grant additional
29 continuances upon the consent of all parties.

30 (b) The provisions of this Code section shall not apply to any case in which the district
31 attorney files notice with the court that the child is a codefendant to a case in which an
32 adult is charged with committing the same offense and the state has filed notice of its
33 intention to seek the death penalty."

SECTION 7.

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

"17-10-14.

(a) Notwithstanding any other provisions of this article and except as otherwise provided in ~~subsections~~ subsection (b) and (c) of this Code section, in any case where a person under the age of 17 years is convicted of a felony and sentenced as an adult to life imprisonment or to a certain term of imprisonment, such person shall be committed to the Department of Juvenile Justice to serve such sentence in a detention center of such department until such person is 17 years of age at which time such person shall be transferred to the Department of Corrections to serve the remainder of the sentence. This Code section shall apply to any person convicted on or after July 1, 1987, and to any person convicted prior to such date who has not been committed to an institution operated by the Department of Corrections.

(b) If a child 13 to 17 years of age is ~~transferred to superior court according to subsection (b) of Code Section 15-11-30.2 and~~ convicted of murder, voluntary manslaughter, rape, aggravated sodomy, aggravated child molestation, aggravated sexual battery, armed robbery if committed with a firearm, aggravated battery, or aggravated assault as defined in Chapter 5 of Title 16, the court may sentence such child to the Department of Corrections if the court finds that public safety and protection require that the child be committed to the Department of Corrections. As used in this subsection, the term 'aggravated assault' means a charge of aggravated assault which has been transferred to the superior court pursuant to Code Section 15-11-30.2. Such child shall be housed in a designated youth confinement unit until such person is 17 years of age, at which time such person may be housed in any other unit designated by the Department of Corrections.

(c) ~~In any case where a child 13 to 17 years of age is convicted of a felony provided under subparagraph (b)(2)(A) of Code Section 15-11-28, such child shall be committed to the custody of the Department of Corrections and shall be housed in a designated youth confinement unit until such person is 17 years of age, at which time such person may be housed in any other unit designated by the Department of Corrections~~ Any child in the custody of the Department of Corrections shall be housed in a designated youth confinement unit until reaching the age of 17 notwithstanding that such child was tried and convicted as an adult in superior court. Any designated youth confinement unit in which a child is housed shall be designed to ensure that children are at all times housed separately from any other adult offender incarcerated in the facility in which such youth confinement unit is located and shall be designed to facilitate the rehabilitation of children, which shall mean that a youth confinement unit shall be of a nondormitory design wherever possible

1 and whenever such facilities become available and shall be staffed by personnel who have
 2 received specialized training in the field of juvenile justice. All designated youth
 3 confinement units shall provide to children 13 to 17 years of age, who have been sentenced
 4 to such units pursuant to subsection (b) of this Code section, life skills training, academic
 5 or vocational training, and substance abuse and violence prevention counseling to the
 6 extent that appropriations are available for such activities.

7 (d) When given legal custody over a child for confinement in a youth confinement unit as
 8 provided under this Code section, the Department of Corrections shall have:

9 (1) The right of physical possession of the child;

10 (2) The right and duty to protect, train, and discipline the child;

11 (3) The responsibility to provide the child with food, clothing, shelter, and education;

12 (4) The right to determine the facility in which the child shall be confined; and

13 (5) The right and duty to provide or obtain for the child medical, hospital, psychiatric,
 14 surgical, and dental care or services as may be considered appropriate and necessary by
 15 competent medical authority without securing prior consent of the parents or legal
 16 guardians."

17 **SECTION 8.**

18 Chapter 4A of Title 49 of the Official Code of Georgia Annotated, relating to the Department
 19 of Juvenile Justice, is amended by striking subsection (a) of Code Section 49-4A-9, relating
 20 to sentence of youthful offenders, and inserting in lieu thereof a new subsection (a) to read
 21 as follows:

22 "(a) Any child who has previously been adjudged to have committed an act which is a
 23 felony if tried in a superior court and who, on a second or subsequent occasion, is
 24 convicted of a felony in a superior court may, in the discretion of the court, be sentenced
 25 into the custody of the department as otherwise provided by law or be committed as a
 26 youthful offender as authorized in Chapter 7 of Title 42; ~~provided, further, that any child~~
 27 ~~convicted of a felony punishable by death or by confinement for life shall only be~~
 28 ~~sentenced into the custody of the Department of Corrections."~~

29 **SECTION 9.**

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