

The House Committee on Judiciary offers the following substitute to HB 1490:

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 that the juvenile court has original concurrent  
3 jurisdiction over certain acts committed by children under 17 years of age; to change  
4 provisions relating to transfer of criminal or quasi-criminal proceedings in juvenile court; to  
5 change provisions relating to the procedure on taking a child into custody and detention; to  
6 change provisions relating to place of detention; to change provisions relating to designated  
7 felony acts; to amend Chapter 10 of Title 17 of the Official Code of Georgia Annotated,  
8 relating to sentence and punishment, so as to change certain provisions relating to the  
9 committal of a person under 17 years of age convicted of a felony; to provide for related  
10 matters; 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 Chapter 11 of Title 15 of the Official Code of Georgia Annotated, relating to juvenile  
14 proceedings, is amended by striking subsection (b) of Code Section 15-11-28, relating to  
15 jurisdiction of the juvenile court, and inserting in lieu thereof a new subsection (b) to read  
16 as follows:

17 "*(b) Criminal jurisdiction.*

18 (1) ~~Except as provided in paragraph (2) of this subsection, the~~ The court shall have  
19 concurrent jurisdiction with the superior court over a child who is alleged to have  
20 committed a delinquent act which would be considered a crime if tried in a superior court  
21 ~~and for which the child may be punished by loss of life, imprisonment for life without~~  
22 ~~possibility of parole, or confinement for life in a penal institution.~~ for any of the  
23 following offenses:

24 (A) Aggravated sodomy;

25 (B) Aggravated child molestation; or

26 (C) Aggravated sexual battery.

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

3 (i) Murder;

4 (ii) Voluntary manslaughter;

5 (iii) Rape; or

6 ~~(iv) Aggravated sodomy;~~

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

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

9 ~~(vii)~~(iv) Armed robbery if committed with a firearm. As used in this division, the

10 term 'firearm' means any rifle, shotgun, pistol, or similar device which propels a

11 projectile or projectiles other than water.

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

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

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

1 (D) The superior court may transfer any case involving a child 13 to 17 years of age  
 2 alleged to have committed any offense enumerated in subparagraph (A) of this  
 3 paragraph and convicted of a lesser included offense not included in subparagraph (A)  
 4 of this paragraph to the juvenile court of the county of the child's residence for  
 5 disposition. Upon such a transfer by the superior court, jurisdiction shall vest in the  
 6 juvenile court and jurisdiction of the superior court shall terminate.

7 (E) Within 30 days of any proceeding in which a child 13 to 17 years of age is  
 8 convicted of certain offenses over which the superior court has exclusive jurisdiction  
 9 as provided in subparagraph (A) of this paragraph or adjudicated delinquent on the  
 10 basis of conduct which if committed by an adult would constitute such offenses, the  
 11 superior court shall provide written notice to the school superintendent or his or her  
 12 designee of the school in which such child is enrolled or, if the information is known,  
 13 of the school in which such child plans to be enrolled at a future date. Such notice shall  
 14 include the specific criminal offense that such child committed. A local school system  
 15 to which the child is assigned may request further information from the court's file."

## 16 SECTION 2.

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

20 "15-11-30.4.

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

## 32 SECTION 3.

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



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

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

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

1 (e) *Allegation of unruliness.* A child unruly or alleged to be unruly who has not been  
2 released from custody as provided in subsection (e) of Code Section 15-11-47 may be  
3 detained or placed in shelter care only in the facilities stated in paragraphs (1) and (2) of  
4 subsection (a) of this Code section or in a secure juvenile detention facility for a period not  
5 to exceed 72 hours; provided, however, upon written order of the judge having jurisdiction  
6 of the case and upon good cause shown, a child alleged to be unruly may be detained for  
7 one additional period not to exceed 48 hours; provided, further, that no child alleged to be  
8 or found to be unruly who has not previously been adjudicated unruly may be detained in  
9 a secure juvenile detention facility unless such child is alleged to be under the court's  
10 jurisdiction as provided in subparagraph (D) of paragraph (12) of Code Section 15-11-2  
11 and then shall be detained in that facility only so long as is required to effect the child's  
12 return home or to ensure the child's presence at a scheduled court appearance when the  
13 child has previously failed to appear for a scheduled court appearance. In the event a child  
14 alleged to be unruly comes within the purview of the Interstate Compact on Juveniles and  
15 the proper authorities of a demanding state have made an official return request to the  
16 proper authorities of this state, the Interstate Compact on Juveniles shall apply to the child.

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

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

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

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

**SECTION 5.**

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

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

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

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

(i) Kidnapping or arson in the first degree, if done by a child 13 or more years of age;

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

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

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

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

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

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

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

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

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

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

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

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

1 the juvenile court for adjudication pursuant to subparagraph (b)(2)(C) of Code Section  
2 15-11-28; or  
3 (E) Constitutes a second or subsequent violation of Code Sections 16-8-2 through  
4 16-8-9, relating to theft, if the property which was the subject of the theft was a motor  
5 vehicle."

#### 6 **SECTION 6.**

7 Chapter 10 of Title 17 of the Official Code of Georgia Annotated, relating to sentence and  
8 punishment, is amended by striking subsection (c) of Code Section 17-10-14, relating to  
9 committal of a person under 17 years of age convicted of a felony, and inserting in lieu  
10 thereof the following:

11 "(c) In any case where a child 13 to 17 years of age is convicted of a felony provided under  
12 subparagraph (b)(2)(A) of Code Section 15-11-28 or convicted of an offense transferred  
13 to superior court pursuant to Code Section 15-11-30.2 or 15-11-30.3, such child shall be  
14 committed to the custody of the Department of Corrections and shall be housed in a  
15 designated youth confinement unit until such person is 17 years of age, at which time such  
16 person may be housed in any other unit designated by the Department of Corrections."

#### 17 **SECTION 7.**

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