House Bill 1500

By: Representative Bearden of the 68th

A BILL TO BE ENTITLED

AN ACT

To provide for a short title; to amend Chapter 11 of Title 15 of the Official Code of Georgia Annotated, relating to juvenile proceedings, so as to create different standards and penalties for designated felony acts; to change provisions relating to designated felony acts; to include certain crimes as a designated felony act under certain circumstances; to provide for court ordered competency evaluations under certain circumstances; to provide for certain information to be given to children who waive the right to counsel; to reorganize the elements of Chapter 11 applicable to designated felony acts and related matters; to change provisions relating to the contents of a petition alleging delinquency or unruliness; to change provisions relating to commission of a designated felony act of burglary by a child 15 years of age or older; to change certain provisions relating to modification or vacation of orders; to provide a procedure for extending and shortening periods of confinement under certain circumstances; to change certain provisions relating to duration and termination of orders of disposition for delinquent and unruly children; to change certain provisions relating to exclusion of the public from hearings and exceptions; to change ceratin provisions relating to sealing of records; to change certain provisions relating to when a child is fingerprinted and photographed; to change the definition of mentally competent; to correct a cross-reference; to amend Title 49 of the Official Code of Georgia Annotated, relating to social services, to correct a cross-reference; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

This Act shall be known and may be cited as "Amy´s Law."

SECTION 2.

Chapter 11 of Title 15 of the Official Code of Georgia Annotated, relating to juvenile proceedings, is amended by striking Code Section 15-11-63, relating to designated felony acts, and inserting in lieu thereof the following:

"15-11-63.

(a) As used in this Code section, the term:

(1) ~~'A carefully arranged and monitored home visit' means a home visit during which a child is monitored by appropriate personnel of the Department of Juvenile Justice designated pursuant to regulations of the commissioner of juvenile justice.~~

~~(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, 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;~~

(i) Murder if done by a child under the age of 13;

(ii) Voluntary manslaughter if done by a child under the age of 13;

(iii) Rape if done by a child under the age of 13;

(iv) Aggravated sodomy if done by a child under the age of 13;

(v) Aggravated child molestation if done by a child under the age of 13;

(vi) Aggravated sexual battery if done by a child under the age of 13;

(vii) Armed robbery if committed with a firearm if done by a child under the age of 13;

(viii) Kidnapping;

(ix) Arson in the first or second degree;

(x) Attempted murder;

(xi) Attempted kidnapping;

(xii) Aggravated assault;

(xiii) Aggravated battery;

(xiv) Armed robbery not involving a firearm;

(xv) Robbery;

(xvi) Battery in violation of Code Section 16-5-23.1 if the victim is a teacher or other school personnel;

(xvii) Hijacking a motor vehicle;

(xviii) Manufacturing, transporting, distributing, possessing with the intent to distribute, and offering to distribute an explosive device in violation of Code Section 16-7-82;

(xix) Distribution of certain materials to persons under 21 years of age in violation of Code Section 16-7-84;

(xx) Conspiracy to violate Article 4 of Chapter 7 of Title 16, relating to bombs, explosives, and chemical and biological weapons in violation of Code Section 16-7-86;

(xxi) Escape, if the child involved in the commission of such act has been previously adjudicated to have committed a designated felony;

(xxii) The carrying or possession of a weapon in violation of subsection (b) of Code Section 16-11-127.1, relating to carrying a weapon within certain school zones;

(xxiii) Trafficking in cocaine, illegal drugs, marijuana, or methamphetamine;

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

(xv) 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;

(B) Constitutes a second or subsequent adjudication of delinquency based upon subsection (b) of Code Section 16-11-132, relating to possession of a pistol or revolver by a person under the age of 18;

(C) Constitutes a second or subsequent adjudication of delinquency based upon a violation of Code Section 16-7-85 ~~or 16-7-87~~, relating to hoax devices;

(D) Constitutes a second or subsequent adjudication of delinquency based upon a violation of Code Section 16-7-87, relating to interference with officers;

~~(C.1)~~(E) Constitutes any adjudication of delinquency based upon a violation of Code Section 16-15-4, relating to criminal street gangs;

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

~~(D)~~(G) 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 the juvenile court for adjudication pursuant to subparagraph (b)(2)(C) of Code Section 15-11-28~~; or~~.

~~(3)~~(2) 'Intensive supervision' means the monitoring of a child´s activities on a more frequent basis than regular aftercare supervision, pursuant to regulations of the commissioner of juvenile justice.

(3) 'Serious physical injury' means, but is not limited to, fractured bones, disfigurement, or wounds inflicted by a deadly weapon.

(b) Before the court accepts a waiver of counsel in accordance with subsection (c) of this Code section from a child who is less than 13 years of age and is charged with a designated felony act, the court shall order the child to undergo an evaluation for the purpose of determining whether the child is mentally competent to stand trial as provided in Article 4 of this chapter.

(c)(1) A child who is alleged to have committed a designated felony act may be represented by an attorney as provided by Code Section 15-11-6. The court shall not accept a waiver of such right by the child unless the court conducts a hearing on the issue of waiver of an attorney. During the hearing, the court shall ascertain that all the matters contained in this subsection have been explained to the child and that the child has had the opportunity to ask questions about such matters and to have those questions answered. The court shall determine whether the child is making a knowing, voluntary, and intelligent waiver of the rights and matters described in this subsection. At such hearing, in the presence of the court, the court shall also require the child to sign a waiver form which is substantially similar to the Pre-Trial Juvenile Rights Form. A written record shall be made of such hearing.

(2) At the hearing, the court shall determine whether the child has been advised and understands:

(A) That the child does not have to admit to the charges;

(B) The right to remain silent and the fact that the child´s silence cannot be used against the child;

(C) The right to be served with a written copy of the charges which the child is alleged to have committed;

(D) The right to an attorney and that if the child or his or her parents cannot afford to hire an attorney, an attorney will be provided to represent the child;

(E) That an attorney is trained in:

(i) Court procedures and proceedings;

(ii) Knowing how to conduct trials, introduce evidence, exclude improper evidence, and how the law may apply to the circumstances of the child´s case;

(iii) Knowing how the child´s rights and liberties may be affected by the court proceedings and how to protect such rights and liberties; and

(iv) Knowing how to present the child´s case and matters favorable to the child to the court;

(F) That a child may not have knowledge of or training in the procedures and matters set forth in subparagraph (E) of this paragraph and the danger of proceeding without the assistance of an attorney;

(G) The possible dispositions which the court may order if the child admits to or is found to have committed a designated felony act or delinquent act, and those dispositions may include, but are not limited to, dismissal, informal adjustment, probation, commitment to the Department of Human Resources, commitment to the Department of Juvenile Justice for up to five years or until the age of 21 depending on the nature of the offense, placement in an institution, placement in the custody of the Division of Family and Children Services, community service, suspension of driving privileges, requiring school attendance, and restitution;

(H) The right to discuss the matters contained in this subsection with his or her parent or guardian;

(I) The right to have a trial before the judge in which case the child has the right to question witnesses who testify against the child and to have witnesses required to come to court and testify for the child;

(J) The right to appeal from the decision of the court if the child disagrees with the decision of the court; and

(K) The right to have the proceedings recorded and transcribed and to receive a copy of the record and transcript in the event of an appeal.

~~(b)~~(d) Where a child is found to have committed a designated felony act, the order of disposition shall be made within 20 days of the conclusion of the dispositional hearing and shall include a finding based on a preponderance of the evidence as to whether, for the purposes of this Code section, the child does or does not require restrictive ~~custody~~ confinement under this Code section, in connection with which the court shall make specific written findings of fact as to each of the elements set forth in paragraphs (1) through ~~(5)~~ (6) of subsection ~~(c)~~ (e) of this Code section as related to the particular child. If the court finds that restrictive ~~custody~~ confinement under this Code section is not allowed or required, the order of disposition shall be as ~~otherwise~~ provided in ~~this article~~ Code Section 15-11-66 or 15-11-69. If the court finds that restrictive ~~custody~~ confinement is required, it shall continue the proceeding and enter an order of disposition for restrictive ~~custody~~ confinement. Every order under this Code section shall be a dispositional order, shall be made after a dispositional hearing, and shall state the grounds for the order.

~~(c)~~(e) In determining whether restrictive ~~custody~~ confinement is required, the court shall consider:

(1) The needs and best ~~interests~~ interest of the child;

(2) The record and background of the child;

(3) The nature and circumstances of the offense, including whether any injury involved was inflicted by the child or another participant;

(4) The need for protection of the community; ~~and~~

(5) The age and physical condition of the victim~~.~~; and

(6) The age of the child; provided, however, that the court shall not order restrictive confinement unless:

(A) The child is at least ten years of age on the date that the offense was committed and the child has been adjudicated delinquent for the designated felony act of murder, voluntary manslaughter, rape, aggravated child molestation, aggravated sodomy, aggravated sexual battery, armed robbery with a firearm, aggravated battery, aggravated assault with serious physical injury, or carrying a weapon within certain school zones; or

(B) The child is at least 13 years of age on the date that the offense was committed and the child has been adjudicated delinquent for a designated felony act not enumerated in subparagraph (A) of this paragraph.

~~(d)~~(f) Except when restrictive confinement is prohibited because of the age of the child as set forth in paragraph (6) of subsection (e) ~~Notwithstanding subsection (c)~~ of this Code section, the court shall order restrictive ~~custody~~ confinement in any case where the child is found to have committed a designated felony act in which the child inflicted serious physical injury upon another person who is 62 years of age or more.

~~(e)~~(g) Except as otherwise provided in Code Section 15-11-40, when ~~When~~ the order is for restrictive ~~custody~~ confinement in the case of a child found to have committed a designated felony act~~:~~,

~~(1) The~~ the order shall provide that:

~~(A)~~(1) The child shall be placed in the custody of the Department of Juvenile Justice for ~~an initial~~ a period of ~~five years~~ not more than 60 months;

~~(B)~~(2)(A) The child shall initially be confined in a youth development center for a ~~period~~ specific length of time set by the order, to be not ~~less than 12 nor~~ more than 60 months; provided, however, that time spent in secure detention subsequent to the date of the order and prior to placement in a youth development center shall be counted toward the period set by the order; ~~and, provided, further, that, where the order of the court is made in compliance with subsection (f) of this Code section, the child shall initially be confined in a youth development center for 18 months;~~

(B) While in a youth development center, the child may be permitted to participate in all youth development center services and programs and shall be eligible to receive special medical and treatment services, regardless of the time of restrictive confinement in the youth development center. After 12 months or the first two-thirds of the period of restrictive confinement, whichever is less, in a youth development center, a child may be eligible to participate in youth development center sponsored programs, including community work programs and sheltered workshops under the general supervision of a youth development center staff outside of the youth development center; and, in cooperation and coordination with the Department of Human Resources, the child may be allowed to participate in state sponsored programs for evaluation and services under the Division of Rehabilitation Services of the Department of Labor and the Division of Mental Health, Developmental Disabilities, and Addictive Diseases of the Department of Human Resources; and

(C) No home visits shall be permitted during the first 12 months or two-thirds of the period of restrictive confinement, whichever is less, unless authorized by the court except for emergency visits for medical treatment or severe illness or death in the family. All home visits shall be carefully arranged and monitored while a child is confined in a youth development center, whether such confinement is pursuant to a court order or otherwise. As used in this subparagraph, the term 'carefully arranged and monitored' means that during a home visit a child is monitored by appropriate personnel of the Department of Juvenile Justice designated pursuant to regulations of the commissioner of juvenile justice;

~~(C)~~(3) After the restrictive confinement period set under subparagraph ~~(B)~~ (A) of this paragraph, the child shall be placed under intensive supervision for a period of 12

months, provided that the total length of the order shall not exceed 60 months. The child shall not be released from intensive supervision without the written approval of the commissioner of juvenile justice or such commissioner´s designated deputy; and

~~(D) The child may not be released from a youth development center or transferred to a nonsecure facility during the period provided in subparagraph (B) of this paragraph nor may the child be released from intensive supervision during the period provided in subparagraph (C) of this paragraph, unless by court order. No home visits shall be permitted during the first six-month period of confinement in a youth development center unless authorized by the court except for emergency visits for medical treatment or severe illness or death in the family. All home visits must be carefully arranged and monitored while a child is confined in a youth development center, whether such confinement is pursuant to a court order or otherwise;~~

~~(2) During the placement or any extension thereof:~~

~~(A) After the expiration of the period provided in subparagraph (C) of paragraph (1) of this subsection, the child shall not be released from intensive supervision without the written approval of the commissioner of juvenile justice or such commissioner´s designated deputy;~~

~~(B) While in a youth development center, the child may be permitted to participate in all youth development center services and programs and shall be eligible to receive special medical and treatment services, regardless of the time of confinement in the youth development center. After the first six months of confinement in a youth development center, a child may be eligible to participate in youth development center sponsored programs including community work programs and sheltered workshops under the general supervision of a youth development center staff outside of the youth development center; and, in cooperation and coordination with the Department of Human Resources, the child may be allowed to participate in state sponsored programs for evaluation and services under the Division of Rehabilitation Services of the Department of Labor and the Division of Mental Health, Developmental Disabilities, and Addictive Diseases of the Department of Human Resources;~~

~~(C) The child shall not be discharged from the custody of the Department of Juvenile Justice unless a motion therefor is granted by the court, which motion shall not be made prior to the expiration of one year of custody; and~~

~~(D)~~(4) Unless otherwise specified in the order, the Department of Juvenile Justice shall report in writing to the court not less than once every six months during the placement on the status, adjustment, and progress of the child~~; and~~.

~~(3) Upon the expiration of the initial period of placement in a youth development center, or any extension thereof, the placement may be extended on motion by the Department~~

~~of Juvenile Justice, after a dispositional hearing, for an additional period of 12 months, provided that no initial placement or extension of custody under this Code section may continue beyond the individual´s twenty-first birthday.~~

~~(f) When the order is for restrictive custody in the case of a child found to have committed any designated felony act and such child has been found by a court to have committed a designated felony act on a prior occasion, regardless of the age of the child at the time of commission of such prior act, the order of the court shall be made pursuant to subparagraph (e)(1)(B) of this Code section.~~

~~(g) The Department of Juvenile Justice shall retain the power to continue the confinement of the child in a youth development center or other program beyond the periods specified by the court within the term of the order.~~

(h) Any court making a finding or adjudication that a child has committed a designated felony act shall identify the school last attended by such child and the school which such child intends to attend and shall transmit a copy of such adjudication or finding to the principals of the school which the child last attended and the school which the child intends to attend within 15 days of the adjudication or finding. Such information shall be subject to notification, distribution, and requirements as provided in Code Section 20-2-671.″

SECTION 3.

Said chapter is further amended by striking Code Section 15-11-30.3, relating to commission of a designated felony act of burglary by a child 15 years of age or older, and inserting in lieu thereof the following:

″15-11-30.3.

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

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

(c) If at the hearing the court determines that there are reasonable grounds to believe that the child committed the designated felony act alleged, the court shall transfer the offense to superior court for prosecution. The transfer terminates the jurisdiction of the juvenile

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

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

SECTION 4.

Said chapter is further amended by striking Code Section 15-11-38.1, relating to the contents of a petition, and inserting in lieu thereof the following:

″15-11-38.1.

The petition shall be verified and may be on information and belief. It shall set forth plainly:

(1) The facts which bring the child within the jurisdiction of the court, with a statement that it is in the best interest of the child and the public that the proceeding be brought and, if delinquency or unruly conduct is alleged, that the child is in need of supervision, treatment, or rehabilitation, as the case may be;

(2) The name, age, and residence address, if any, of the child on whose behalf the petition is brought;

(3) The names and residence addresses, if known to petitioner, of the parents, guardian, or custodian of the child and of the child´s spouse, if any; or, if neither the child´s parents, nor the child´s guardian, nor the child´s custodian resides or can be found within the state or if their respective places of residence address are unknown, the name of any known adult relative residing within the county or, if there is none, the known adult relative residing nearest to the location of the court; ~~and~~

(4) If the child is in custody and, if so, the place of his or her detention and the time the child was taken into custody; and

(5) An allegation of a designated felony act, if it is known that the child is being charged with a designated felony act.″

SECTION 5.

Said chapter is further amended by striking Code Section 15-11-40, relating to modification or vacation of orders, and inserting in lieu thereof the following:

"15-11-40.

(a) An order of the court shall be set aside if:

(1) It appears that it was obtained by fraud or mistake sufficient therefor in a civil action;

(2) The court lacked jurisdiction over a necessary party or of the subject matter; or

(3) Newly discovered evidence so requires.

(b) An order made pursuant to subsection (i) of Code Section 15-11-58, relating to deprivation, or an order made pursuant to Code Section 15-11-88, relating to disposition of a resident child received from another state, may be modified on the ground that changed circumstances so require in the best interest of the child.

(c) An order of ~~the court~~ dismissal may ~~also~~ not be ~~changed,~~ modified~~,~~ or vacated on the ground that changed circumstances so require in the best interest of the child~~, except an order committing a delinquent child to the Department of Juvenile Justice, after the child has been transferred to the physical custody of the Department of Juvenile Justice, or an order of dismissal~~.

(d) An order granting probation to a child found to be delinquent or unruly may be revoked on the ground that the conditions of probation have not been observed.

(e) A two-year order of disposition as described in subsection (a) of Code Section 15-11-70, committing an unruly or delinquent child to the Department of Juvenile Justice, may not be modified or vacated on the ground that there are changed circumstances if the child has been transferred to the physical custody of the Department of Juvenile.

(f) A two-year order of disposition as described in subsection (a) of Code Section 15-11-70, committing an unruly or delinquent child to the Department of Juvenile Justice, may be extended in duration for one additional two-year period if the hearing, notice, and finding procedures set forth in subsection (j) of this Code section are followed.

(g) If the hearing, notice, and finding procedures as set forth in subsection (j) of this Code section are followed, an order of disposition committing a child to the Department of Juvenile Justice under a designated felony act pursuant to subsection (g) of Code Section 15-11-63 may:

(1) Provide for the child to be discharged from the custody of the Department of Juvenile Justice if the motion for discharge is filed after the child has spent at least 12 months in custody;

(2) Be modified or shortened if restrictive confinement is ordered and the motion for earned release from restrictive confinement demonstrates that the confined child has exhibited exemplary behavior while in restrictive confinement and the motion is filed after the child has been confined for at least 12 months;

(3) Have the period of restrictive confinement or custody extended for one additional 12-month period for any order on a designated felony act except as provided in paragraph (4) of this subsection; or

(4) Have the period of restrictive confinement or custody extended until the individual´s twenty-first birthday for any order on a designated felony act involving murder, voluntary manslaughter, rape, aggravated child molestation, aggravated sodomy, aggravated sexual battery, armed robbery with a firearm, aggravated battery, or aggravated assault with serious physical injury.

(h) Any other order of disposition as described in subsection (b) of Code Section 15-11-70, involving a child adjudicated as delinquent or unruly, may be terminated or extended for one additional two-year period from the expiration of the prior order if the hearing, notice, and finding procedures set forth in subsection (j) of this Code section are followed.

~~(c)~~(i) Any party to the proceeding, the probation officer, the child, the child´s parent or guardian, the attorney representing the child, the prosecuting attorney, the court´s own motion, or any other person having supervision or legal custody of or an interest in the child may ~~petition~~ file a motion with the court for the relief provided in this Code section. The ~~petition~~ motion shall set forth in clear and concise language the grounds upon which the relief is requested.

~~(d)~~(j)(1) After the ~~petition~~ motion is filed, the court shall fix a time for hearing and shall cause notice to be served, as a summons is served under Code Section 15-11-39.1, on the parties to the proceeding ~~or~~ and those affected by the relief sought, including the victim, such notice to be served by mailing a copy of the motion by registered or certified mail or statutory overnight delivery at least five days before the hearing.

(2) A hearing shall be held prior to the expiration of the order, and reasonable notice of the factual basis of the motion and an opportunity to be heard shall be given to the parties affected by the motion.

(3) After the hearing, ~~which may be informal,~~ the court shall deny or grant relief as the evidence warrants. Any extension of an order shall be based on the necessity for treatment or rehabilitation of the child and in accordance with subsection (e) of Code Section 15-11-63 if the adjudication is pursuant to a designated felony act. Any modification, termination, or discharge of an order shall include a finding that the purposes of the order have been accomplished or changed circumstances so require.

(4) If a motion for earned release is denied, another such motion shall not be heard more often than once every 12 months following the date of the order except as the court in its discretion may allow.

(k) If relief is granted pursuant to a motion filed in accordance with paragraph (2) of subsection (g) of this Code section, and a child violates the terms and conditions of

placement, the Department of Juvenile Justice may proceed with an administrative revocation in conformity with its rules and policies adopted pursuant to Chapter 4A of Title 49.

(l) Except by court order, any child who is adjudicated in accordance with subsection (g) of Code Section 15-11-63 may not be released from a youth development center or transferred to a nonsecure facility during the restrictive confinement period specified in a court order nor may the child be released from intensive supervision.″

SECTION 6.

Said chapter is further amended by striking Code Section 15-11-70, relating to duration and termination of orders of disposition for delinquent and unruly children and extensions, and inserting in lieu thereof the following:

″15-11-70.

(a) Except as ~~otherwise~~ provided by ~~law~~ Code Section 15-11-40, an order of disposition committing ~~a delinquent or unruly child~~ an unruly child or a delinquent child who has not been adjudicated for a designated felony act to the Department of Juvenile Justice continues in force for two years or until the child is sooner discharged by the Department of Juvenile Justice. ~~The court which made the order may extend its duration for an additional two years subject to like discharge, if:~~

~~(1) A hearing is held upon motion of the Department of Juvenile Justice prior to the expiration of the order;~~

~~(2) Reasonable notice of the factual basis of the motion and of the hearing and an opportunity to be heard are given to the child and the parent, guardian, or other custodian; and~~

~~(3) The court finds that the extension is necessary for the treatment or rehabilitation of the child.~~

(b) Except as ~~otherwise~~ provided by ~~law~~ Code Section 15-11-40, any other order of disposition in a proceeding involving delinquency or unruliness, except an order involving the appointment of a guardian of the person or property of a child, continues in force for not more than two years. ~~The court may sooner terminate its order or extend its duration for further periods. An order of extension may be made if:~~

~~(1) A hearing is held prior to the expiration of the order upon motion of a party or on the court´s own motion;~~

~~(2) Reasonable notice of the factual basis of the motion and of the hearing and opportunity to be heard are given to the parties affected;~~

~~(3) The court finds that the extension is necessary to accomplish the purposes of the order extended; and~~

~~(4) The extension does not exceed two years from the expiration of the prior order.~~

~~(c) The court may terminate an order of disposition of a child adjudicated as delinquent or unruly or an extension of such a disposition order prior to its expiration, on or without an application of a party, if it appears to the court that the purposes of the order have been accomplished.~~

~~(d)~~(c) Except for an order for restitution as provided for in Article 1 of Chapter 14 of Title 17 ~~Unless otherwise provided by law~~, when a child who has been adjudicated as unruly or delinquent ~~or unruly~~, including a delinquency based upon a designated felony act, reaches 21 years of age all orders affecting him or her then in force terminate and he or she is discharged from further obligation or control."

SECTION 7.

Said chapter is further amended by striking Code Section 15-11-78, relating to exclusion of public from hearings and exceptions, and inserting in lieu thereof the following:

"15-11-78.

(a) Except as otherwise provided by subsection (b) of this Code section, the general public shall be excluded from hearings involving delinquency, deprivation, or unruliness. Only the parties, their counsel, witnesses, persons accompanying a party for his or her assistance, and any other persons as the court finds have a proper interest in the proceeding or in the work of the court may be admitted by the court. The court may temporarily exclude the child from the hearing except while allegations of his or her delinquency or unruly conduct are being heard.

(b) The general public shall be admitted to:

(1) An adjudicatory hearing involving an allegation of a designated felony act pursuant to Code Section 15-11-63 if the court is authorized to enter an order of disposition for restrictive confinement;

(2) An adjudicatory hearing involving an allegation of delinquency brought in the interest of any child who has previously been adjudicated delinquent; provided, however, the court shall close any delinquency hearing on an allegation of sexual ~~assault~~ misconduct or any delinquency hearing at which any party expects to introduce substantial evidence related to matters of deprivation;

(3) Any child support hearing;

(4) Any hearing in a legitimation action filed pursuant to Code Section 19-7-22; or

(5) At the court´s discretion, any dispositional hearing involving any proceeding under this article."

SECTION 8.

Said chapter is further amended by striking Code Section 15-11-79.2, relating to sealing of records, and inserting in lieu thereof the following:

"15-11-79.2.

(a) Upon dismissal of a petition or complaint alleging delinquency or unruliness, or, in a case handled through informal adjustment, following completion of the informal adjustment, the court shall order the sealing of the files and records in the case, including those specified in Code Sections 15-11-82 and 15-11-83.

(b) On application of a person who has been adjudicated delinquent or unruly or on the court´s own motion, and after a hearing, the court shall order the sealing of the files and records in the proceeding, including those specified in Code Sections 15-11-82 and 15-11-83, if the court finds that:

(1) Two years have elapsed since the final discharge of the person;

(2) Since the final discharge of the person he or she has not been convicted of a felony or of a misdemeanor involving moral turpitude or adjudicated a delinquent or unruly child and no proceeding is pending against the person seeking conviction or adjudication; and

(3) The person has been rehabilitated.

(c) Reasonable notice of the hearing required by subsection (b) of this Code section shall be given to:

(1) The ~~district~~ prosecuting attorney;

(2) The authority granting the discharge if the final discharge was from an institution or from parole; and

(3) The law enforcement officers or department having custody of the files and records if the files and records specified in Code Sections 15-11-82 and 15-11-83 are included in the application or motion.

(d) Upon the entry of the order the proceeding shall be treated as if it had never occurred. All index references shall be deleted and the person, the court, the law enforcement officers, and the departments shall properly reply that no record exists with respect to the person upon inquiry in any matter. Copies of the order shall be sent to each agency or official therein named and shall also be sent to the deputy director of the Georgia Crime Information Center. Inspection of the sealed files and records thereafter may be permitted by an order of the court upon petition by the person who is the subject of the records and only by those persons named in the order or to criminal justice officials upon petition to the court for official judicial enforcement or criminal justice purposes.

(e) ~~Except as otherwise provided by the court, no order sealing files and records under this Code section may be issued regarding any proceeding in which the general public may not~~

~~be excluded from the hearing under subsection (a) or (b) of Code Section 15-11-78.~~ Files and records of proceedings from which the general public is not excluded pursuant to Code Section 15-11-78 shall not be sealed unless the person adjudicated delinquent was less than 13 years of age on the date the offense was committed or as otherwise provided by the court.″

SECTION 9.

Said chapter is further amended by striking Code Section 15-11-83, relating to fingerprinting and photographing a child, and inserting in lieu thereof the following:

″15-11-83.

(a)(1) Every child charged with an act which would be a felony if committed by an adult, other than those status offender crimes as defined in Code Section 15-11-2, shall be fingerprinted and photographed upon being taken into custody. Fingerprints and photographs of children shall be taken and filed separately from those of adults by law enforcement officials to be used in investigating the commission of crimes and to be made available as provided in this article and as may be directed by the court.

(2) Law enforcement agencies may photograph a child who for any reason has been placed in the custody and control of the Department of Juvenile Justice and who has absconded and subsequently returned to such custody. Photographs shall be maintained in accordance with paragraph (1) of this subsection.

(b) All children sentenced to the custody of the Department of Corrections shall be fingerprinted. The fingerprinting of child inmates will be processed in accordance with the Department of Corrections´ policies for adult inmates.

(c) Fingerprint files and photographs of children may be inspected by law enforcement officers when necessary for criminal justice purposes and for the discharge of their official duties. The names and addresses of children who have been fingerprinted or photographed and the offense or offenses charged shall be made available in the discretion of the court to the appropriate department of family and children services and school superintendent. This information may be disseminated by the appropriate school superintendent to the child´s teachers and counselors in the superintendent´s discretion. Other inspections may be authorized by the court in individual cases upon a showing that it is necessary in the public interest.

(d) If a child has been charged with an offense that if committed by an adult would be a felony, or if the case is transferred to another court for prosecution, the child´s fingerprints, personal identification data, and other pertinent information shall be forwarded to the Georgia Crime Information Center of the Georgia Bureau of Investigation. The Georgia Crime Information Center shall create a juvenile fingerprint file and enter the data into the

computerized criminal history files. The Georgia Bureau of Investigation shall act as the official state repository for juvenile history data and is authorized to disseminate such data for the purposes specified in Code Section 15-11-82.

(e) Upon application of the child, fingerprints and photographs of a child shall be removed from the file and destroyed if a petition alleging delinquency is not filed or the proceedings are dismissed after either a petition is filed or the case is transferred to the juvenile court as provided in Code Section 15-11-30.4 or the child is adjudicated not to be a delinquent child. The court shall notify the deputy director of the Georgia Crime Information Center when fingerprints and photographs are destroyed pursuant to this subsection, and the Georgia Bureau of Investigation shall treat such records in the same manner as expunged records pursuant to subsection (c) of Code Section 35-3-37.

(f) Except as provided in this Code section, without the consent of the judge, a child shall not be photographed after he or she is taken into custody unless the case is transferred to another court for prosecution.

(g)(1) The name or picture of any child under the jurisdiction of the juvenile court for the first time shall not be made public by any news media~~, upon penalty of contempt under Code Section 15-11-5,~~ except as otherwise provided in paragraph (2) of this subsection or as authorized by an order of the court.

(2) It shall be mandatory upon the judge of the juvenile court or his or her designee to release the name of any child with regard to whom a petition has been filed alleging the child committed a designated felony act <u>if the court is authorized to enter an order of disposition for restrictive custody</u> or alleging the child committed a delinquent act if the child has previously been adjudicated delinquent or if the child has previously been before the court on a delinquency charge and adjudication was withheld. No person, firm, or corporation shall be guilty of any offense by making public the name or picture of any such child.″

SECTION 10.

Said chapter is further amended by striking paragraph (5) of Code Section 15-11-151, relating to definitions regarding a child´s mental competency in juvenile proceedings, and inserting in lieu thereof the following:

″(5) 'Mentally competent' means having sufficient present ability to understand the nature and objectives of the proceedings~~,~~ against himself or herself~~,~~<u>;</u> to comprehend his or her own situation in relation to the proceedings~~,~~<u>;</u> and to render assistance to the defense attorney in the preparation and presentation of his or her case in all adjudication, disposition, or transfer hearings held pursuant to this chapter. <u>The child´s age or immaturity may be used as the basis for determining his or her mental competency.</u>″

SECTION 11.

Title 49 of the Official Code of Georgia Annotated, relating to social services, is amended by striking Code Section 49-5-131, relating to definitions for programs and protection of children, and inserting in lieu thereof the following:

"49-5-131.

As used in this article, the term:

(1) 'Council' means the Children and Youth Coordinating Council created pursuant to Code Section 49-5-132.

(2) 'Delinquent act' means an act defined in paragraph (6) of Code Section 15-11-2; provided, however, that such term shall not include a 'designated felony act' as such term is defined in paragraph ~~(2)~~ (1) of subsection (a) of Code Section 15-11-63.

(3) 'Director' means the executive director of the Children and Youth Coordinating Council."

SECTION 12.

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