

House Bill 373

By: Representatives Pak of the 102nd, Neal of the 1st, Willard of the 49th, Abrams of the 84th, Teasley of the 38th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 15-11-63 of the Official Code of Georgia Annotated, relating to
2 designated felony acts, so as to clarify provisions relating to modifying an order for
3 restrictive custody for designated felony acts under certain circumstances; to provide for
4 procedure; to provide for related matters; to repeal conflicting laws; and for other purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

6 SECTION 1.

7 Code Section 15-11-63 of the Official Code of Georgia Annotated, relating to designated
8 felony acts, is amended by revising paragraph (2) of subsection (e) as follows:

9 "(2) During the placement or any extension thereof:

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

14 (B) While in a youth development center, the child may be permitted to participate in
15 all youth development center services and programs and shall be eligible to receive
16 special medical and treatment services, regardless of the time of confinement in the
17 youth development center. After the first six months of confinement in a youth
18 development center, a child may be eligible to participate in youth development center
19 sponsored programs, including community work programs and sheltered workshops
20 under the general supervision of a youth development center staff outside of the youth
21 development center; and, in cooperation and coordination with the Department of
22 Human Services, the child may be allowed to participate in state sponsored programs
23 for evaluation and services under the Division of Rehabilitation Services of the
24 Department of Labor and the Department of Behavioral Health and Developmental
25 Disabilities;

26 (C)(i) A child adjudicated to have committed a designated felony act ~~The child~~ shall
27 not be discharged from the custody of the Department of Juvenile Justice or released
28 from restrictive custody prior to the period of time provided in the court's order unless
29 a motion therefor is granted by the court, which. Notwithstanding Code Section
30 15-11-40, the Department of Juvenile Justice through legal counsel or the child may
31 file a motion with the court seeking the child's release from custody, an order
32 modifying the court's order requiring restrictive custody, or termination of an order
33 of disposition for a child committed for a designated felony act; provided, however,
34 that such motion shall not be made prior to the expiration of one year of custody; and,
35 except as the court in its discretion may allow, shall not be filed more than once every
36 12 months after any such motion has been denied.

37 (ii) All motions filed under this subparagraph shall be accompanied by a written
38 recommendation for release, modification, or termination from the child's Department
39 of Juvenile Justice counselor or placement supervisor, filed in the court that
40 committed the child to the department, and served on the prosecuting attorney for
41 such jurisdiction. At least ten days prior to the date of the hearing on the motion, the
42 moving party shall serve a copy of the motion, by first-class mail, upon the victim of
43 the designated felony act, if any, at the victim's last known address, the child's
44 attorney, if any, the child's parents or guardian, and the law enforcement agency that
45 investigated the designated felony act. In addition to the parties to the motion, the
46 prosecuting attorney and the victim, if any, shall have a right to be heard and to
47 present evidence to the court relative to any motion filed pursuant to this
48 subparagraph.

49 (iii) A court hearing a motion filed under this subparagraph shall determine the
50 disposition of the child based upon a preponderance of the evidence. In determining
51 whether a motion for release from custody, modification of a restrictive custody order,
52 or termination of an order of disposition should be granted or denied due to changed
53 circumstances, the court shall be required to find that the child has been rehabilitated
54 and shall consider and make specific findings of fact as to each of the following
55 factors:

56 (I) The needs and best interests of the child;
57 (II) The record and background of the child, including the disciplinary history of
58 the child during the period of restrictive custody and subsequent offense history;
59 (III) The academic progress of the child during the period of restrictive custody;
60 (IV) The victim's impact statement submitted for purposes of a hearing conducted
61 pursuant to this subparagraph;
62 (V) The safety risk to the community if the child is released; and

63 (VI) The child's acknowledgment to the court and victim, if any, of his or her
64 conduct being the cause of harm to others; and

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

68 **SECTION 2.**

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