

House Bill 471

By: Representatives Willard of the 49th, Lindsey of the 54th, Oliver of the 83rd, Jacobs of the 80th, Weldon of the 3rd, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Part 5 of Article 1 of Chapter 11 of Title 15 of the Official Code of Georgia
2 Annotated, relating to arrest and detention of juveniles, so as to change provisions relating
3 to when interim control of children is permitted; to provide for legislative findings; to
4 provide for an objective written risk assessment, its criteria, and procedure relative thereto;
5 to provide for related matters; to provide for an effective date; to repeal conflicting laws; and
6 for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Part 5 of Article 1 of Chapter 11 of Title 15 of the Official Code of Georgia Annotated,
10 relating to arrest and detention of juveniles, is amended by revising Code Section 15-11-46.1,
11 relating to when interim control of children is permitted, as follows:

12 "15-11-46.1.

13 (a) As a matter of public policy, restraints on the freedom of accused children prior to
14 adjudication and disposition shall be imposed only when there is probable cause to believe
15 that the accused child did the act of which he or she is accused and there is clear and
16 convincing evidence that the child's freedom should be restrained. Secure detention for
17 pre-adjudication and pre-disposition shall only be used when less restrictive interim
18 placement alternatives are not appropriate. It is the intent of the General Assembly that
19 decisions to detain be based in part on a prudent assessment of risk and that decisions to
20 detain be limited to situations where there is clear and convincing evidence that a child
21 presents a danger to himself or herself or to the community, presents a risk of failing to
22 appear, or presents a substantial risk of inflicting bodily harm on others as evidenced by
23 recent behavior or present history of committing serious offenses against persons prior to
24 adjudication, disposition, or placement.

25 (b) The imposition of interim control or detention on an accused child may be considered
26 for the purposes of when:

27 (1) ~~Protecting the jurisdiction and process of the~~ It is to ensure a child appears at
 28 subsequent court hearings;

29 (2) ~~Reducing~~ It is to reduce the likelihood that the child may inflict serious bodily harm
 30 on others during the interim period; ~~or~~

31 (3) ~~Protecting the accused child from imminent bodily harm upon his or her request~~ It
 32 is to protect the person or property of others; or

33 (4) It is to prevent a subsequent delinquent act prior to adjudication and disposition.

34 (c) An objective written risk assessment instrument shall be used to determine when to
 35 impose interim control or detention and shall be used by the court to meet the purposes
 36 outlined within this Code section. The objective written risk assessment shall be developed
 37 by the Governor's Office of Children and Families, with input from the Council of Juvenile
 38 Court Judges and the Department of Juvenile Justice. The written assessment shall be
 39 required to be completed by probation and intake employees, as such term is defined in
 40 Code Section 15-11-24.3, prior to the intake process for children being considered for
 41 admission into a regional youth detention center or alternative to detention provided by the
 42 Department of Juvenile Justice. The factors to be considered shall include, but shall not
 43 be limited to, the following:

44 (1) The nature and seriousness of the allegations against the child;

45 (2) The history of the child and present situation;

46 (3) The age of the child;

47 (4) Any prior history of the child's failure to appear;

48 (5) The child's prior delinquent offense history;

49 (6) Any offenses committed by the child pending adjudication;

50 (7) The child's prior probationary history and current status; and

51 (8) Any aggravating or mitigating circumstance in order to consider an override of the
 52 initial assessment. Any override shall meet the purpose outlined within this Code section.

53 ~~(e)~~(d) Interim control or detention shall not be imposed on an accused child:

54 (1) To punish, treat, or rehabilitate the child;

55 (2) To allow parents to avoid their legal responsibilities;

56 (3) To satisfy demands by a victim, the police, or the community;

57 (4) To permit more convenient administrative access to the child; or

58 (5) To facilitate further interrogation or investigation.

59 ~~(d)~~ Whenever an accused child cannot be unconditionally released, conditional or
 60 supervised release that results in the least necessary interference with the liberty of the
 61 child shall be favored over more intrusive alternatives.

62 (e) Whenever the interim curtailment of an accused child's freedom is permitted under this
 63 Code section, the exercise of authority shall reflect the following values:

- 64 (1) Respect for the privacy, dignity, and individuality of the accused child and his or her
65 family;
- 66 (2) Protection of the psychological and physical health of the child;
- 67 (3) Tolerance of the diverse values and preferences among different groups and
68 individuals;
- 69 (4) Assurance of equality of treatment by race, class, ethnicity, and sex;
- 70 (5) Avoidance of regimentation and depersonalization of the child;
- 71 (6) Avoidance of stigmatization of the child; and
- 72 (7) Assurance that the child has been informed of his or her right to consult with an
73 attorney and that if the child cannot afford an attorney, one will be provided."

74 **SECTION 2.**

75 This Act shall become effective on January 1, 2012.

76 **SECTION 3.**

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