

Senate Bill 365

By: Senators Stone of the 23rd, Bethel of the 54th, Jackson of the 24th, Miller of the 49th, Crosby of the 13th and others

AS PASSED SENATE

**A BILL TO BE ENTITLED
AN ACT**

1 To amend Part 2 of Article 15 of Chapter 1 of Title 10, Article 6 of Chapter 11 of Title 15,
2 Article 3A of Chapter 5 of Title 40, Chapter 2 of Title 42, and Chapter 1 of Title 51 of the
3 Official Code of Georgia Annotated, relating to the Fair Business Practices Act, delinquency
4 proceedings in juvenile court, suspension of driver's license for certain drug offenses, the
5 Board and Department of Corrections, and general tort provisions, respectively, so as to enact
6 offender reentry reforms as recommended by the Georgia Council on Criminal Justice
7 Reform; to require consumer reporting agencies to update information relating to criminal
8 records; to change provisions relating to findings in a disposition hearing; to change
9 provisions relating to calculating time when a child is delinquent and dependent; to change
10 provisions relating to periodic review hearings for children in foster care; to provide for
11 permanency planning for children by the Department of Juvenile Justice; to provide for court
12 hearings regarding the Department of Juvenile Justice's permanency planning for children;
13 to provide for restoration or suspension of a defendant's driver's license or issuance of a
14 limited driving permit under certain circumstances; to provide for a Program and Treatment
15 Completion Certificate that may be issued by the Board of Corrections under certain
16 circumstances; to change provisions relating to educational programs for adult offenders; to
17 provide a rebuttable presumption of due care under certain circumstances when a Program
18 and Treatment Completion Certificate has been issued by the Department of Corrections; to
19 retain sovereign immunity of the state; to provide for related matters; to repeal conflicting
20 laws; and for other purposes.

21 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

22 **SECTION 1.**

23 Part 2 of Article 15 of Chapter 1 of Title 10 of the Official Code of Georgia Annotated,
24 relating to the Fair Business Practices Act, is amended by adding a new Code section to read
25 as follows:

26 "10-1-393.14.

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

28 (1) 'Consumer reporting agency' means any person or entity that engages in the practice
 29 of assembling or evaluating the criminal history record information of individuals for the
 30 purpose of furnishing consumer reports to third parties.

31 (2) 'Criminal history record information' has the same meaning as in Code Section
 32 35-3-30.

33 (3) 'Restricted' has the same meaning as in Code Section 35-3-37.

34 (b) On or before the last day of each month, a consumer reporting agency conducting
 35 business in this state shall update any criminal history record information that it has
 36 obtained to delete permanently:

37 (1) Any such records that have been restricted; and

38 (2) Any records showing that an individual has been exonerated and discharged pursuant
 39 to Article 3 of Chapter 8 of Title 42, unless disclosure of such record is permitted
 40 pursuant to Code Section 35-3-34.1.

41 (c) A consumer reporting agency shall be considered to be conducting business in this state
 42 if it provides information to any individual, partnership, corporation, association, or any
 43 other group however organized that is domiciled within this state or whose principal place
 44 of business is within this state."

45 **SECTION 2.**

46 Article 6 of Chapter 11 of Title 15 of the Official Code of Georgia Annotated, relating to
 47 delinquency proceedings in juvenile court, is amended by revising subsection (a) of Code
 48 Section 15-11-600, relating to findings in a disposition hearing, as follows:

49 "(a)(1) After a finding that a child has committed a delinquent act, the court shall hear
 50 evidence ~~on whether such~~ and determine whether:

51 (A) Such child is in need of treatment, rehabilitation, or supervision ~~and;~~

52 (B) Such child's continuation in his or her home is contrary to such child's welfare; and

53 (C) Reasonable efforts have been made to prevent or eliminate the need to remove such
 54 child from his or her home.

55 (2) After hearing the evidence described in paragraph (1) of this subsection, the court
 56 shall make and file its findings based upon such determinations."

57 **SECTION 3.**

58 Said article is further amended by revising Code Section 15-11-620, relating to calculating
 59 time when a child is delinquent and dependent, as follows:

60 "15-11-620.

61 (a) When a child is alleged to have committed a delinquent act and be a dependent child,
 62 the date such child is considered to have entered foster care shall be the date of the first
 63 judicial finding that such child has been subjected to child abuse or neglect or the date that
 64 is 60 days after the date on which such child is removed from his or her home, whichever
 65 is earlier.

66 (b) When a child is alleged to have committed a delinquent act and is placed directly in a
 67 nonsecure residential facility, the date such child is considered to have entered foster care
 68 shall be 60 days after the date on which such child is removed from his or her home.

69 ~~(b)~~(c) If a child alleged or adjudicated to have committed a delinquent act is detained in
 70 a facility operated primarily for the detention of delinquent children but is later placed in
 71 foster care within 60 days of such child's removal from the home, then the date of entry
 72 into foster care shall be 60 days after the date of removal.

73 (d) When a child alleged or adjudicated to have committed a delinquent act is detained in
 74 a facility operated primarily for the detention of delinquent children but is later placed in
 75 a nonsecure residential facility within 60 days of such child's removal from the home, the
 76 date such child is considered to have entered foster care shall be 60 days from the date on
 77 which such child is removed from his or her home.

78 ~~(c)~~(e) If a child is detained in a facility operated primarily for the detention of delinquent
 79 children pending placement in foster care and remains detained for more than 60 days, then
 80 the date of entry into foster care shall be the date such child is placed in foster care.

81 (f) When a child alleged or adjudicated to have committed a delinquent act is detained in
 82 a facility operated primarily for the detention of delinquent children and remains detained
 83 for more than 60 days and such child is subsequently placed in a nonsecure residential
 84 facility, the date such child is considered to have entered foster care shall be the date such
 85 child was placed in a nonsecure residential facility."

86 **SECTION 4.**

87 Said article is further amended by revising Code Section 15-11-621, relating to periodic
 88 review hearings for children in foster care, as follows:

89 "15-11-621.

90 (a) The periodic review hearing requirements under Code Sections 15-11-216, 15-11-217,
 91 and 15-11-218 shall apply to proceedings involving a child alleged or adjudicated to have
 92 committed a delinquent act and placed in foster care.

93 (b) When a child is committed to DJJ and for whom a determination has been made that
 94 the child's continuation in his or her home is contrary to the child's welfare and he or she
 95 is placed in a nonsecure residential facility, such child shall receive a periodic review
 96 before an administrative review panel within DJJ within six months following the date the

97 child entered the nonsecure residential facility and every six months thereafter while the
 98 child remains in such facility. The administrative review panel within DJJ shall transmit
 99 its report, including its findings and recommendations, to the court within five days after
 100 conducting its review."

101 **SECTION 5.**

102 Said article is further amended by adding a new Code section to read as follows:

103 "15-11-623.

104 (a) As used in this Code section, the term 'permanency plan' means a specific written plan
 105 prepared by DJJ designed to ensure that a child is reunified with his or her family or ensure
 106 that such child quickly attains a substitute long-term home when return to such child's
 107 family is not possible or is not in such child's best interests.

108 (b)(1) The court shall hold a hearing to review the permanency plan for each child
 109 committed to DJJ when a determination has been made that the child's continuation in his
 110 or her home is contrary to the child's welfare, and the child is placed in a nonsecure
 111 residential facility.

112 (2) Such hearing shall be held no later than 12 months from the date a child is considered
 113 to have entered foster care and every 12 months thereafter to make determinations
 114 including whether the permanency plan for such child is appropriate and whether
 115 reasonable efforts to finalize the permanency plan have been made by DJJ.

116 (3) A child's parent, guardian, legal custodian, attorney, any relatives providing care for
 117 such child, and other interested parties shall be given written notice of such hearing at
 118 least five days in advance of such hearing and shall be advised that the permanency plan
 119 will be submitted to the court for consideration as the order of the court.

120 (4) At least five days prior to such hearing, DJJ shall submit for the court's consideration
 121 a report recommending a permanency plan for a child committed to a nonsecure
 122 residential facility. Such report shall include documentation of the steps taken by DJJ to
 123 finalize the permanent placement for such child.

124 (5) Subsequent to such hearing, the court shall make written findings of fact that shall
 125 include whether DJJ has made reasonable efforts to finalize the permanency plan in effect
 126 at the time of the hearing."

127 **SECTION 6.**

128 Article 3A of Chapter 5 of Title 40 of the Official Code of Georgia Annotated, relating to
 129 suspension of driver's license for certain drug offenses, is amended by revising Code Section
 130 40-5-76, relating to restoration or suspension of a defendant's driver's license or issuance of
 131 a limited driving permit, as follows:

132 "40-5-76.

133 (a) A judge presiding in a drug court division or mental health court division may order
 134 the department to restore a defendant's driver's license that has been or should be suspended
 135 pursuant to Code Section 40-5-75, suspend such license, or issue a defendant a limited
 136 driving permit in accordance with the provisions set forth in subsections (c) and (d) of
 137 Code Section 40-5-64 or with whatever conditions the court determines to be appropriate
 138 under the circumstances as a reward or sanction to the defendant's behavior in such court
 139 division. The court shall determine what fees, if any, shall be paid to the department for
 140 such reward or sanction, provided that such fee shall not be greater than the fee normally
 141 imposed for such services.

142 (b) A judge presiding in any court, other than the court divisions specified in subsection
 143 (a) of this Code section, may order the department to restore a defendant's driver's license
 144 that has been or should be suspended pursuant to Code Section 40-5-75 or issue a
 145 defendant a limited driving permit in accordance with the provisions set forth in
 146 subsections (c) and (d) of Code Section 40-5-64 if the offense for which the defendant was
 147 convicted did not directly relate to the operation of a motor vehicle. The court shall
 148 determine what fees, if any, shall be paid to the department for the restoration of such
 149 driver's license or issuance of such limited driving permit, provided that such fee shall not
 150 be greater than the fee normally imposed for such services. Such judge may also order the
 151 department to suspend a defendant's driver's license that could have been suspended
 152 pursuant to Code Section 40-5-75 as a consequence of the defendant's violation of the
 153 terms of his or her probation."

154 **SECTION 7.**

155 Chapter 2 of Title 42 of the Official Code of Georgia Annotated, relating to the Board and
 156 Department of Corrections, is amended by revising Code Section 42-2-5.1, relating to special
 157 school districts for school age youth and educational programs for adult offenders, and by
 158 adding a new Code section to read as follows:

159 "42-2-5.1.

160 (a) In order to provide education for any school age youths incarcerated within any facility
 161 of the ~~Department of Corrections~~ department, the department shall be considered a special
 162 school district which shall be given the same funding consideration for federal funds that
 163 school districts within the state are given. The special school district under the department
 164 shall have the powers, privileges, and authority exercised or capable of exercise by any
 165 other school district. The schools within the special school district shall be under the
 166 control of the commissioner, who shall serve as the superintendent of schools for such
 167 district. The ~~Board of Corrections~~ board shall serve as the board of education for such

168 district. The board, acting alone or in cooperation with the State Board of Education, shall
 169 establish education standards for the district. As far as is practicable, such standards shall
 170 adhere to the standards adopted by the State Board of Education for the education of school
 171 age youth, while taking into account:

172 (1) The overriding security needs of correctional institutions and other restrictions
 173 inherent to the nature of correctional facilities;

174 (2) The effect of limited funding on the capability of the ~~Department of Corrections~~
 175 department to meet certain school standards; and

176 (3) Existing juvenile education standards of the Correctional Education Association and
 177 the American Correctional Association, which shall be given primary consideration
 178 where any conflicts arise.

179 (b) The effect of subsection (a) of this Code section shall not be to provide state funds to
 180 the special school district under the department through Part 4 of Article 6 of Chapter 2 of
 181 Title 20.

182 42-2-5.2.

183 ~~(c)~~(a) The ~~Board of Corrections~~ board, acting alone or in cooperation with the State Board
 184 of the Technical College System of Georgia or other relevant education agencies, shall
 185 provide overall direction of educational programs for adult offenders in the correctional
 186 system and shall exercise program approval authority. The board may enter into written
 187 agreements with other educational organizations and agencies in order to provide adult
 188 offenders with such education and employment skills most likely to encourage gainful
 189 employment and discourage return to criminal activity upon release. The board may also
 190 enter into agreements with other educational organizations and agencies to attain program
 191 certification for its vocational and technical education programs.

192 (b) The board shall develop and implement programs to assist adult offenders with reentry
 193 into society upon release from prison. In addition to educational and vocational programs,
 194 reentry programs may include social and behavioral programs, substance abuse counseling,
 195 mentoring programs, financial planning, physical and mental health programs, and housing
 196 and federal assistance programs.

197 (c) The board shall create a Program and Treatment Completion Certificate that may be
 198 issued to offenders under the rules and regulations of the board. Such certificate shall
 199 symbolize an offender's achievements toward successful reentry into society. The board's
 200 rules and regulations relating to the issuance of such certificate shall take into account an
 201 offender's disciplinary record and any other factor the board deems relevant to an
 202 individual's qualification for such certificate. The board's rules and regulations shall
 203 specify eligibility considerations and requirements for completion of such certificate. An

204 offender who was convicted of a serious violent felony, as such term is defined in Code
 205 Section 17-10-6.1, shall not be eligible for such certificate.

206 (d) Nothing in this Code section shall be construed to constitute a waiver of the sovereign
 207 immunity of the state, and no action shall be maintained against the state or any agency or
 208 department thereof for issuance of or failure to issue any Program and Treatment
 209 Completion Certificate."

210 **SECTION 8.**

211 Chapter 1 of Title 51 of the Official Code of Georgia Annotated, relating to general tort
 212 provisions, is amended by adding a new Code section to read as follows:

213 "51-1-54.

214 (a) As used in this Code section, the term 'Program and Treatment Completion Certificate'
 215 means the certificate issued pursuant to Code Section 42-2-5.2.

216 (b) Issuance of a Program and Treatment Completion Certificate by the Department of
 217 Corrections or the granting of a pardon from the State Board of Pardons and Paroles as
 218 provided in the Constitution and Code Section 42-9-42 shall create a presumption of due
 219 care in hiring, retaining, licensing, leasing to, admitting to a school or program, or
 220 otherwise engaging in activity with the individual to whom the Program and Treatment
 221 Completion Certificate was issued or the pardon was granted. Such presumption may be
 222 rebutted by relevant evidence which extends beyond the scope of the Program and
 223 Treatment Completion Certificate or pardon and which was known or should have been
 224 known by the person against whom negligence is asserted.

225 (c) Nothing in this Code section shall be construed to constitute a waiver of the sovereign
 226 immunity of the state, and no action shall be maintained against the state or any agency or
 227 department thereof for issuance of or failure to issue any Program and Treatment
 228 Completion Certificate or issuance of or failure to grant a pardon."

229 **SECTION 9.**

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