

House Bill 361

By: Representatives Welch of the 110<sup>th</sup>, Coomer of the 14<sup>th</sup>, Weldon of the 3<sup>rd</sup>, Rogers of the 10<sup>th</sup>, Dickey of the 140<sup>th</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 11 of Title 15 of the Official Code of Georgia Annotated, relating to the  
2 Juvenile Code, so as to enact reforms as recommended by the Georgia Council on Criminal  
3 Justice Reform with respect to juveniles; to revise defined terms; to clarify and harmonize  
4 statutory language; to clarify transfer criteria; to amend Code Section 17-10-14 of the  
5 Official Code of Georgia Annotated, relating to committal of person under 17 convicted of  
6 felony, so as to correct a cross-reference; to amend Title 15 of the Official Code of Georgia  
7 Annotated, relating to courts, so as to provide for prosecuting attorneys to be involved in and  
8 prosecute cases wherein a child is alleged to be in need of services; to provide for related  
9 matters; to provide for an effective date and contingent effective date; to repeal conflicting  
10 laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 PART I  
13 SECTION 1-1.

14 Chapter 11 of Title 15 of the Official Code of Georgia Annotated, relating to the Juvenile  
15 Code, is amended by revising paragraphs (45) and (49) of Code Section 15-11-2, relating to  
16 definitions, as follows:

17 "(45) 'Mediation' means the ~~procedure~~ proceeding in which a mediator facilitates  
18 communication between the parties concerning the matters in dispute and explores  
19 possible solutions to promote ~~reconciliation~~ collaboration, understanding, and settlement."

20 "(49) 'Nonsecure residential facility' means community residential ~~locations operated by~~  
21 ~~or on behalf of DJJ and may include group homes, emergency shelters, wilderness or~~  
22 ~~outdoor therapeutic programs, or other~~ facilities that provide 24 hour care in a residential  
23 setting that are not hardware secured."

24 **SECTION 1-2.**

25 Said chapter is further amended by revising subsection (b) of Code Section 15-11-12, relating  
26 to dual designation of children and time limitations, as follows:

27 "(b) If a child alleged or adjudicated to be a delinquent child or a child in need of services  
28 is also alleged or adjudicated to be a dependent child, dependency proceedings may be  
29 consolidated with delinquency or child in need of services proceedings to the extent  
30 consistent with due process of law as provided in Articles 3, 6 5, and 7 6 of this chapter."

31 **SECTION 1-3.**

32 Said chapter is further amended by revising paragraph (3) of subsection (a) of Code Section  
33 15-11-16, relating to commencement of pleadings, as follows:

34 "(3) By the filing of a petition for legitimation under Code Section 15-11-11, or in other  
35 cases by the filing of a complaint or a petition as provided in Articles 3, 4, 5, 6, 7, 8, and  
36 10 of this chapter."

37 **SECTION 1-4.**

38 Said chapter is further amended by revising subsection (a) of Code Section 15-11-24, relating  
39 to termination of mediation, as follows:

40 "(a) Any ~~Either~~ party in a mediation may withdraw from or terminate further participation  
41 in mediation at any time."

42 **SECTION 1-5.**

43 Said chapter is further amended by revising paragraph (1) of subsection (b) of Code Section  
44 15-11-146, relating to preliminary protective hearings and findings, as follows:

45 "(1) On finding that the complainant has ~~not proved either~~ proven neither of the required  
46 elements prescribed in subsection (a) of this Code section, shall dismiss the case and shall  
47 return the child before the court to his or her parent, guardian, or legal custodian;"

48 **SECTION 1-6.**

49 Said chapter is further amended by revising subparagraph (D) of paragraph (8) of Code  
50 Section 15-11-231, relating to the permanency planning report, as follows:

51 "(D) In the case in which DFCS has documented a compelling reason that none of the  
52 ~~foregoing~~ options identified in subparagraphs (A) through (C) of this paragraph would  
53 be in the best interests of the child, whether, and if applicable, when such child shall be  
54 placed in another planned permanent living arrangement;"

55 **SECTION 1-7.**

56 Said chapter is further amended by revising paragraph (4) of subsection (b) of Code Section  
57 15-11-232, relating to permanency planning hearing and findings, as follows:

58 "(4) In the case in which DFCS has documented a compelling reason that none of the  
59 options identified in paragraphs (1) through (3) of this subsection would be in the best  
60 interests of the child, whether, and if applicable, when such child shall be placed in  
61 another planned permanent living arrangement. ~~Whether there is a safe and appropriate~~  
62 placement with a fit and willing relative of a child adjudicated as a dependent child or  
63 other persons who have demonstrated an ongoing commitment to a child or a statement  
64 as to why placement with such relative or other person is not safe or appropriate."

65 **SECTION 1-8.**

66 Said chapter is further amended by revising subsection (a) of Code Section 15-11-243,  
67 relating to notice and permanent guardianship hearing, as follows:

68 "(a) Notice of a guardianship petition pursuant to this part shall be given to a parent of the  
69 child who was adjudicated as a dependent child and shall also be given in accordance with  
70 subsection (c) of Code Section 29-2-17 except that, if the parents have consented to the  
71 guardianship, notice of the petition shall not be required to be given to:

- 72 (1) The adult siblings of the child who was adjudicated as a dependent child;  
73 (2) The grandparents of the child who was adjudicated as a dependent child; or  
74 (3) The nearest adult relatives of the child who was adjudicated as a dependent child as  
75 determined in accordance with Code Section 53-2-1."

76 **SECTION 1-9.**

77 Said chapter is further amended by revising subsection (b) of Code Section 15-11-441,  
78 relating to an adjudication hearing, as follows:

79 "(b) An adjudication hearing for a child alleged to be a child in need of services shall be  
80 conducted in accordance with Title 24.

81 (c) At the conclusion of the adjudication hearing, the court shall determine whether such  
82 child is a child in need of services."

83 **SECTION 1-10.**

84 Said chapter is further amended by revising subsections (b) and (c) of Code Section  
85 15-11-506, relating to a detention hearing, as follows:

86 "(b) If an alleged delinquent child is detained and is not released from preadjudication  
87 custody, a detention hearing shall be held promptly and not later than:

- 88 (1) Two ~~business~~ days after such child is placed in preadjudication custody if such child  
 89 is taken into custody without an arrest warrant; or
- 90 (2) Five ~~business~~ days after such child is placed in preadjudication custody if such child  
 91 is taken into custody pursuant to an arrest warrant.
- 92 (c) Notwithstanding Code Section 15-11-5, if ~~If~~ the detention hearing cannot be held  
 93 within two ~~business~~ days in accordance with paragraph (1) of subsection (b) of this Code  
 94 section because the date for the hearing falls on a weekend or legal holiday, the court shall  
 95 review the decision to detain such child and make a finding based on probable cause within  
 96 48 hours of such child being placed in preadjudication custody."

97 **SECTION 1-11.**

98 Said chapter is further amended by revising subsection (e) of Code Section 15-11-560,  
 99 relating to concurrent and original jurisdiction of superior court, as follows:

100 "(e)(1) After indictment, the superior court may after investigation ~~and for extraordinary~~  
 101 ~~cause~~ transfer to the juvenile court any case involving a child 13 to 17 years of age  
 102 alleged to have committed voluntary manslaughter, aggravated sodomy, aggravated child  
 103 molestation, or aggravated sexual battery. In considering the transfer of such case, the  
 104 court shall consider the criteria set forth in Code Section 15-11-562. Any such transfer  
 105 shall be appealable by the State of Georgia pursuant to Code Section 5-7-1. Upon such  
 106 a transfer by the superior court, jurisdiction shall vest in the juvenile court and  
 107 jurisdiction of the superior court shall terminate.

108 (2) Except as provided in paragraph (8) of subsection (b) of Code Section 15-11-602, any  
 109 case transferred by the superior court to the juvenile court pursuant to this subsection  
 110 shall be subject to the class A designated felony act provisions of Code Section  
 111 15-11-602, and the transfer of the case from superior court to juvenile court shall  
 112 constitute notice to such child that such case is subject to the class A designated felony  
 113 act provisions of Code Section 15-11-602."

114 **SECTION 1-12.**

115 Said chapter is further amended by revising subsection (c) of Code Section 15-11-561,  
 116 relating to waiver of juvenile court jurisdiction and transfer to superior court, as follows:

117 "(c) After consideration of a probation report, risk assessment, and any other evidence the  
 118 court deems relevant, including any evidence offered by a child, the court may determine  
 119 that because of the seriousness of the offense or such child's prior record, the welfare of the  
 120 community requires that criminal proceedings against such child be instituted. The court  
 121 shall also consider the criteria listed in subsection (a) of Code Section 15-11-562."

**SECTION 1-13.**

122  
123 Said chapter is further amended by revising subsection (a) of Code Section 15-11-562,  
124 relating to transfer criteria, as follows:

125 "(a) The criteria ~~which~~ that the juvenile court shall consider in determining whether to  
126 transfer an alleged delinquent child as set forth in subsection ~~(b)~~ (a) of Code Section  
127 ~~15-11-560~~ 15-11-561 to superior court and the criteria that the superior court shall consider  
128 in determining whether to transfer any case involving a child 13 to 17 years of age alleged  
129 to have committed voluntary manslaughter, aggravated sodomy, aggravated child  
130 molestation, or aggravated sexual battery to juvenile court as set forth in subsection (e) of  
131 Code Section 15-11-560 includes, but shall not be limited to:

- 132 (1) The age of such child;  
133 (2) The seriousness of the alleged offense, especially if personal injury resulted;  
134 (3) Whether the protection of the community requires transfer of jurisdiction;  
135 (4) Whether the alleged offense involved violence or was committed in an aggressive or  
136 premeditated manner;  
137 (5) The impact of the alleged offense on the alleged victim, including the permanence  
138 of any physical or emotional injury sustained, health care expenses incurred, and lost  
139 earnings suffered;  
140 ~~(5)~~(6) The culpability of such child including such child's level of planning and  
141 participation in the alleged offense;  
142 ~~(6)~~(7) Whether the alleged offense is a part of a repetitive pattern of offenses which  
143 indicates that such child may be beyond rehabilitation in the juvenile justice system;  
144 ~~(7)~~(8) The record and history of such child, including experience with the juvenile justice  
145 system, other courts, supervision, commitments to juvenile institutions, and other  
146 placements;  
147 ~~(8)~~(9) The sophistication and maturity of such child as determined by consideration of  
148 his or her home and environmental situation, emotional condition, and pattern of living;  
149 ~~(9)~~(10) The program and facilities available to the juvenile court in considering  
150 disposition; and  
151 ~~(10)~~(11) Whether or not a child can benefit from the treatment or rehabilitative programs  
152 available to the juvenile court."

**SECTION 1-14.**

153  
154 Said chapter is further amended by revising subsection (b) of Code Section 15-11-630,  
155 relating to juvenile traffic offenses, as follows:

156 "(b) The following offenses shall be acts of delinquency and shall not be handled as  
157 juvenile traffic offenses: aggressive driving, reckless driving, a ~~four-point~~ speeding offense

158 punishable by four or more points, homicide by vehicle, manslaughter resulting from the  
 159 operation of a vehicle, any felony in the commission of which a motor vehicle is used,  
 160 racing on highways and streets, using a motor vehicle in fleeing or attempting to elude an  
 161 officer, fraudulent or fictitious use of a driver's license, hit and run or leaving the scene of  
 162 an accident, driving under the influence of alcohol or drugs, and any offense committed by  
 163 an unlicensed driver under 16 years of age."

164 **SECTION 1-15.**

165 Code Section 17-10-14 of the Official Code of Georgia Annotated, relating to committal of  
 166 person under 17 convicted of felony, is amended by revising subsection (b) as follows:

167 "(b) If a child is transferred to superior court ~~according to subsection (b) of~~ pursuant to  
 168 Code Section 15-11-561 and convicted of aggravated assault as defined in Chapter 5 of  
 169 Title 16, the court may sentence such child to the Department of Corrections. Such child  
 170 shall be housed in a designated youth confinement unit until such person is 17 years of age,  
 171 at which time such person may be housed in any other unit designated by the Department  
 172 of Corrections."

173 **PART II**

174 **SECTION 2-1.**

175 Title 15 of the Official Code of Georgia Annotated, relating to courts, is amended by revising  
 176 subsection (a) of Code Section 15-11-390, relating to filing a complaint for a child in need  
 177 of services, as follows:

178 "(a) A complaint alleging a child is a child in need of services may be made by any person,  
 179 including a law enforcement officer, who has knowledge of the facts alleged or is informed  
 180 and believes that such facts are true. A prosecuting attorney may file a complaint alleging  
 181 a child is in need of services or intervene in such matter to represent the interest of the state  
 182 as parens patriae."

183 **SECTION 2-2.**

184 Said title is further amended by revising Code Section 15-11-405, relating to termination of  
 185 proceedings relating to a runaway child, as follows:

186 "15-11-405.

187 Any proceeding or other processes or actions alleging for the first time that a child is a  
 188 runaway shall be terminated or dismissed upon the request of such child's parent, guardian,  
 189 or legal custodian or a prosecuting attorney."

190 **SECTION 2-3.**

191 Said title is further amended by revising Code Section 15-11-420, relating to the authority  
192 to file a petition, as follows:

193 "15-11-420.

194 A petition alleging that a child is a child in need of services may be filed by a parent, a  
195 guardian, a legal custodian, a law enforcement officer, a guardian ad litem, or an attorney  
196 who has knowledge of the facts alleged or is informed and believes that such facts are true:  
197 Such petition, or a prosecuting attorney. Except when such petition has been filed by a  
198 prosecuting attorney, it shall not be accepted for filing unless the court or a person  
199 authorized by the court has determined and endorsed on the petition that the filing of the  
200 petition is in the best interests of the public and such child. When such petition is filed by  
201 a prosecuting attorney, the prosecuting attorney shall be authorized to conduct the  
202 proceedings on behalf of the state as parens patriae."

203 **SECTION 2-4.**

204 Said title is further amended by revising Code Section 15-11-440, relating to the standard of  
205 proof, as follows:

206 "15-11-440.

207 The petitioner, or prosecuting attorney when representing the state, has the burden of  
208 proving the allegations of a child in need of services petition by clear and convincing  
209 evidence."

210 **SECTION 2-5.**

211 Said chapter is further amended by revising paragraph (1) of subsection (a) of Code Section  
212 15-11-443, relating to the duration of disposition orders, as follows:

213 "(1) A hearing is held prior to the expiration of the order upon motion of DFCS, DJJ, the  
214 petitioner, the prosecuting attorney, or on the court's own motion;"

215 **SECTION 2-6.**

216 Said title is further amended by revising subsection (c) of Code Section 15-11-450, relating  
217 to comprehensive services plan for child found unrestorably incompetent to proceed, as  
218 follows:

219 "(c) A plan manager may request that other relevant persons attend a comprehensive  
220 services plan meeting, including but not limited to the following:

- 221 (1) A representative from the Department of Public Health;  
222 (2) A DFCS caseworker;  
223 (3) A prosecuting attorney;

224 ~~(3)~~(4) Representatives of the public and private resources to be utilized in the plan; and  
 225 ~~(4)~~(5) Other persons who have demonstrated an ongoing commitment to the child."

226 **SECTION 2-7.**

227 Said title is further amended by revising subsection (e) of Code Section 15-11-451, relating  
 228 to hearing on mental health plan, as follows:

229 "(e) At any time, in the event of a change in circumstances regarding such child, the court  
 230 on its own motion or on the motion of the attorney representing such child, any guardian  
 231 ad litem for such child, the person who filed the petition alleging that a child is in need of  
 232 services or committed a delinquent act, the prosecuting attorney, or the plan manager may  
 233 set a hearing for review of the comprehensive services plan and any proposed amendments  
 234 to such plan. The court may issue an appropriate order incorporating an amended plan."

235 **SECTION 2-8.**

236 Said title is further amended by revising Code Section 15-18-6.1, relating to the  
 237 representation of the state in juvenile court cases, as follows:

238 "15-18-6.1.

239 (a) The district attorney shall be responsible for representing the state in any appeal from  
 240 the juvenile court. Except as provided in subsection (c) of this Code section, the district  
 241 attorney shall be responsible for representing the state in the prosecution of delinquency  
 242 cases in the juvenile court and may represent the state as parens patriae in cases involving  
 243 a child in need of services. The district attorney may designate assistant district attorneys,  
 244 investigators, victim and witness assistance personnel, and other employees to assist in  
 245 juvenile court.

246 (b) In counties with a solicitor-general for the state court, the solicitor-general may, with  
 247 the approval of the district attorney, represent the state in prosecution of juvenile traffic  
 248 offenses and in any delinquency case arising out of the operation of a motor vehicle or a  
 249 watercraft.

250 (c) If as a result of workload, lack of staff, or other cause the district attorney determines  
 251 that his or her office cannot provide representation for the state in a juvenile court of a  
 252 county, other than for an appeal, the district attorney shall notify in writing the chief judge  
 253 of superior court, the judge or judges of the juvenile court, and the chairperson of the  
 254 county governing authority of such county of such determination. A copy of such notice  
 255 shall be provided to the Prosecuting Attorneys' Council of the State of Georgia. If the  
 256 district attorney determines that his or her office may resume representation in juvenile  
 257 court, he or she shall notify the chief judge of the superior court, the judge or judges of the  
 258 juvenile court, and the chairperson of the county governing authority in writing.

259 (d) Upon receipt of the notice set forth in subsection (c) of this Code section, the  
 260 governing authority of such county may appoint one or more attorneys to represent the  
 261 state in prosecuting delinquency and child in need of services cases in juvenile court. Such  
 262 attorney shall be compensated in an amount to be fixed by the governing authority of such  
 263 county. The governing authority shall determine and state in writing whether an attorney  
 264 shall serve on a full-time or part-time basis. An attorney appointed to serve on a full-time  
 265 basis shall not engage in the private practice of law. An attorney appointed to serve on a  
 266 part-time basis may engage in the private practice of law, but shall not represent a child  
 267 charged with committing a delinquent act or being a child in need of services in the  
 268 juvenile court of the county in which he or she serves as part-time prosecutor nor may he  
 269 or she appear in any matter in which he or she has exercised jurisdiction.

270 (e) An attorney appointed pursuant to subsection (d) of this Code section shall have all of  
 271 the powers, duties, and authority of the district attorney with regard to delinquency and  
 272 child in need of services cases and shall be subject to all laws and rules governing the  
 273 conduct of prosecuting attorneys in this state. If such attorney is disqualified from interest  
 274 or relationship to engage in prosecution, the provisions of Code Section 15-18-5 shall  
 275 apply."

276 **PART III**

277 **SECTION 3-1.**

278 (a) Except as provided in subsection (b) of this section, this Act shall become effective upon  
 279 its approval by the Governor or upon its becoming law without such approval.

280 (b)(1) Part II of this Act shall become effective only if funds are specifically  
 281 appropriated for the purposes of Part II of this Act in an appropriations Act enacted by  
 282 the General Assembly.

283 (2) If funds are so appropriated, then Part II of this Act shall become effective on the  
 284 later of:

285 (A) The date on which such appropriations Act becomes effective; or

286 (B) The beginning date of the fiscal year for which such appropriations are made.

287 **SECTION 3-2.**

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