



Summary of Senate Bill 292¹ The Child Protection and Public Safety Act

Overview

Senate Bill 292 (“SB 292”) was introduced by Senator Bill Hamrick at the end of the 2009 session of the Georgia General Assembly. This bill, which is also known as the Child Protection and Public Safety Act, would completely revise the Georgia Code’s juvenile court provisions,² which govern how our state responds to children and their families in cases of abuse, neglect, violations of criminal law by children, and other circumstances requiring court intervention. The bill aims to reorganize the code for ease of understanding and application, to modernize substantive provisions to reflect advances in research and practice, and to bring Georgia into full compliance with federal laws applicable to juvenile court proceedings.

Under the current Georgia Code, provisions relating to abuse and neglect (“deprivation”) are intermingled with provisions relating to children who have violated the criminal law (“delinquency”) and those relating to children who require court intervention for some other reason. This often creates confusion. A critical component of SB 292 is the establishment of a new organizational structure that clearly separates provisions by the type of case they govern. It accomplishes this by creating twelve articles within the juvenile courts chapter of the Georgia Code, with each article serving its own unique purpose. This summary provides a brief description of key elements of each of these articles, highlighting changes from current law.

Article 1 – General Provisions

Article 1 delineates general definitions and principles that would apply in all juvenile court code provisions. Specifically, Article 1:

- Provides clear definitions of key terms, including:
 - **Abuse.** The current juvenile court provisions do not include a definition of abuse. SB 292 would add this important definition, and define it to include emotional abuse and prenatal abuse, in addition to physical abuse and sexual abuse and exploitation.
 - **Child in Need of Services.** This definition would create a new designation to take the place of what is currently called an “unruly” child. Detailed provisions related to this new designation are found in Article 6.
 - **Imminent Danger.** This definition helps to clarify the level of threat that justifies removal of a child from his or her home.
 - **Party.** This definition clarifies that children are parties to juvenile court proceedings involving their interests.
- Requires that, whenever possible, the same judge should preside over all proceedings involving a particular child or family.
- Clarifies how time should be calculated for purposes of time-limited provisions.

¹ Created July 30, 2009 by the Barton Child Law and Policy Clinic, Emory University School of Law.

² The juvenile court provisions reside in Article 15, Chapter 11 of the Official Code of Georgia Annotated (“O.C.G.A.”).



- Grants juvenile courts concurrent jurisdiction over adoptions for cases that begin as deprivation cases in juvenile court, meaning that those adoptions could occur in either juvenile court or superior court. Currently, adoption proceedings must occur in superior court.³
- Allows the court to consolidate proceedings if the same child is alleged to be both deprived and delinquent or in need of services.
- Clarifies that a child, as a party, has a right to be present during juvenile court proceedings involving him or her, but allows the court to exclude the child from any part of the proceeding that the court finds is not in the child's best interest to attend.
- Allows the court to refer cases for mediation if appropriate.
- Outlines factors the court should consider when evaluating the best interests of a child.
- Protects children from having statements they make in court-related physical or mental health screenings, evaluations or treatment from being used against them at the adjudicatory phase of any proceeding, but allows courts to consider those statements in determining the child's placement or other dispositional matters.
- Prohibits children under the juvenile courts' jurisdiction from being confined in adult criminal detention facilities before they reach the age of majority.

Article 2 – Juvenile Court Administration

Article 2 governs the creation and administration of juvenile courts and the appointment of judges. Article 2 would reorganize existing provisions and make minor stylistic revisions. It contains very few substantive changes from current law. These changes are that it:

- Adds the Department of Juvenile Justice to agencies whose records the Council of Juvenile Court Judges is authorized to inspect for the purposes of compiling statistical data on children.
- Requires juvenile court judges to complete at least 12 hours per year of continuing education established or approved by the Council of Juvenile Court Judges.
- Requires anyone appointed as a pro tempore judge to have the same qualifications as other juvenile court judges.
- Clarifies that the Department of Juvenile Justice retains authority over the duties and responsibilities of their employees who serve as probation and intake officers.

Article 3 – Deprivation

Article 3 relates to cases involving children who have been abused or neglected by the adults responsible for their well-being. In Georgia, these are known as “deprivation” cases, because the children are considered to have been deprived of proper care. Article 3 reorganizes the deprivation provisions of current law, and makes the following changes:

- Clarifies the purpose of deprivation proceedings, stressing timeliness, permanency and protection.
- Allows child abuse and neglect investigators to request court-ordered physical or psychological evaluations of children or their parents. Courts are to review these requests using a probable cause standard.
- Changes the name of 72-hour hearing in deprivation cases to the “preliminary protective hearing.”

³ The requirement that adoptions proceed in superior court is the general rule, however, Fulton County is an exception to the general rule, under a pilot program established by O.C.G.A. § 15-11A-5 (2009).



- Consolidates provisions related to the timeframes in which different steps in a deprivation case must occur into one code section for ease of reference.
- Shortens the timeline for holding a permanency planning hearing for children under the age of seven. Currently, all children are on the same timeline, which requires a permanency hearing within twelve months after their entry into foster care.⁴ SB 292 would leave this timeline in place for children aged seven and older, but shorten it to within nine months for younger children and the siblings of younger children.
- Clarifies that children in all deprivation cases are entitled to attorneys acting according to the rules of a traditional attorney-client relationship. A child may also be appointed a Court Appointed Special Advocate (“CASA”) or other guardian ad litem, but such appointment cannot be in place of the attorney. The child’s right to an attorney cannot be waived.
- Provides specific guidance for attorneys and courts regarding when deviations from case timelines may be requested and granted. These deviations, known as “continuances,” must be for good cause and may not be granted simply because the parties agree or because a later time would be more convenient. The court must always consider the child’s interests, giving particular weight to the child’s need for prompt resolution and stability.
- Creates a presumption that visitation between a child and his or her parents or other relatives should be unsupervised, unless the court finds that unsupervised visitation is not in the child’s best interests.
- Allows the court to issue an oral or electronic order for the removal of a child from his or her home under exceptional circumstances. When this occurs, an affidavit containing supporting evidence must be submitted to court the next business day and the court must issue a written order.
- Emphasizes that siblings who are taken into the state’s care should be kept together whenever possible.
- Reduces the number of people authorized to file a deprivation petition. Under current law, any person can bring a petition that a child is deprived if the filing of the petition is in the best interests of the child.⁵ Under SB 292, only the Division of Family and Children’s Services (“DFCS”) and law enforcement officers would be permitted to bring a petition.
- Clarifies the rules governing the gathering of information related to a case, known as “discovery.” Discovery is to follow the Georgia Civil Practice Act in most circumstances, but SB 292 provides for shorter time frames to accommodate the quicker pace of proceedings in juvenile court, and it also allows the child’s attorney and guardian ad litem to access related information about the child from their school and service providers. Finally, it requires a court order before a child’s deposition can be taken.
- Describes content that should be included in social study reports, stressing the need for information about children’s relationships with their siblings and extended family and consideration of how these relationships can best be maintained.
- Outlines the requirements for case plans.
- Clarifies that DFCS must show they have made reasonable efforts to preserve or reunite the family or to find another permanent home for the child at every hearing, and provides factors for the court to consider in determining whether reasonable efforts have been made.
- Changes one of the exceptions to the requirement to make reasonable efforts to preserve or reunify a family. Currently, reasonable efforts do not need to be made if the parental rights of the

⁴ See O.C.G.A. § 15-11-58(o) (2009).

⁵ See O.C.G.A. §§ 15-11-37 and 15-11-38 (2009).



parent to a sibling of the child have been terminated.⁶ Under SB 292, to apply this exception to the reasonable efforts requirement the court must also determine whether the parent has resolved the issues that led to the termination of his or her parental rights to the sibling.

- Improves compliance with federal law regarding permanency alternatives by eliminating the option for a court to place a child in someone's long-term custody without creating a legal guardianship.
- Requires the court to make detailed findings to support placement and case plan decisions, known as "dispositions." In making these findings, the court is to consider the child's attachments to significant people and his or her school, home, and community.
- Removes the time limitation on extensions of temporary custody. Under current law, a court which granted temporary custody to DFCS can extend its custody order by no more than twelve months.⁷ Under SB 292, custody could only be extended by a maximum of twelve months at a time, but there is no limit on the number of times custody could be extended. The court must hold a hearing before custody can be extended, and must find that there is a compelling reason for the extension and that it is in the child's best interests.
- Requires an initial review hearing within 75 days of a child's removal from his or her home, and a subsequent review hearing within four months after that. Currently, the initial review must happen within 90 days, and subsequent reviews occur at six month intervals.⁸
- Identifies specific findings that must be made by the court at review hearings, requiring that the court evaluate whether the child continues to be deprived and whether the placement, case plan, and services offered to the child and the parents continue to be appropriate.
- Eliminates the option for courts to delegate permanency hearings to citizen review panels. These hearings would be required to be conducted by judges.
- Details the requirements for permanency planning reports. DFCS must document the steps that will be taken to move the child to a permanent home, and if the plan is not reunification, adoption, or permanent guardianship, DFCS must document a compelling reason for a different plan. For children aged 14 and older, the report must also describe services that will be provided to help the child prepare for independent living in adulthood.
- Identifies specific findings that must be made by the court at permanency hearings.
- Continues the presumption of termination of parental rights if a child cannot be reunified with his or her parent, but expands the list of exceptions to this presumption when termination may not be in the best interests of the child.

Article 4 – Termination of Parental Rights

Article 4 governs cases involving a petition to involuntarily terminate the rights of a parent to the custody and control of his or her child because the parent is unable to safely and adequately care for the child. These petitions generally follow deprivation proceedings, and therefore several provisions cross-reference or incorporate changes made by Article 3. Additionally, Article 4 of SB 292:

- Clarifies the purpose of termination of parental rights ("TPR") proceedings, stressing timeliness, and protection of parties' constitutional rights.

⁶ See O.C.G.A. § 15-11-58(a)(4)(c) (2009).

⁷ See O.C.G.A. § 15-11-58(n) (2009).

⁸ See O.C.G.A. § 15-11-58(k) (2009).



- Allows a child to retain the right to inherit from his or her natural parents and to receive any government or other benefits associated with the parent after TPR until the child is adopted by another family.
- Preserves a child's relationships with siblings and other extended family after TPR until the child is adopted by another family.
- Prevents a parent from voluntarily surrendering his or her parental rights to anyone except for DFCS once a petition for TPR has been filed with the court. Currently, a parent can surrender their rights so that the child may be adopted by a family member or other person of the parent's choosing at any time.⁹
- Provides language that must be included in a notice to a parent when a petition for TPR is filed. This language explains in clear terms the effect of a court order terminating parental rights and advises the parent that they are entitled to be represented by an attorney.
- Requires that transcripts of TPR hearing be produced within 30 days of the filing of an appeal of a TPR order, unless there is just cause for delay.
- Shortens the length of time a parent's failure (1) to develop and maintain a bond with the child; (2) to provide support; or (3) to comply with court-ordered reunification services should be scrutinized by the court in determining whether the parent has provided proper care or control. Under current law, if a child is not in his or her parents' custody, the court looks at the bond, support and participation in services over a year or more.¹⁰ Under SB 292, this time frame is reduced to six months.
- Clarifies that a parent's reliance on prayer or spiritual healing instead of medical care does not, by itself, constitute grounds for termination of parental rights.
- Requires the court to inform the parents whose rights have been terminated of their rights to use the services of the Adoption Reunion Registry.
- Eliminates the option to place a child with an organization outside of the adoption and foster care system for long-term care of the child without adoption or guardianship after TPR.
- Allows a child who has not been adopted and is unlikely to be adopted to ask the court to reinstate his or her parents' parental rights under certain circumstances. In making the determination of whether to grant the request, the court must hold a hearing and consider whether the parent has remedied the situation that resulted in the TPR and whether reinstatement of parental rights is in the child's best interests. The court retains supervision over the case for six months after the request is granted, and can return the child immediately or order a gradual transition with appropriate DFCS services.

Article 5 – Independent Living Services

Article 5 creates a completely new set of provisions intended to ensure that deprived children in foster care are given the opportunity and assistance they need to plan for their futures, learn necessary skills for independence, and get off to a good start in their adult lives. Specifically, Article 5:

- Requires DFCS to administer a system of services to enable adolescents in foster care and young adults who had been in care until they turned 18 to enjoy a quality of life appropriate to their age and to make the transition to self-sufficient adulthood.

⁹ See O.C.G.A. §§ 19-8-5, 19-8-6, and 19-8-7 (2009).

¹⁰ See O.C.G.A. § 15-11-94(b)(4)(C) (2009).



- Requires DFCS to develop procedures to ensure that children in foster care can participate in age-appropriate opportunities such as sports and extra-curricular school activities.
- Encourages opportunities for youth in foster care to interact with mentors.
- Provides children in foster care with support to plan for their futures. They will receive help from their caregivers and case workers on setting education and career goals, receive guidance about the steps necessary to achieve those goals, and, when possible, be offered internships and other work-related opportunities.
- Mandates individual assessment of the services each child should receive, so that these services reflect the individual child's needs and goals.
- Requires DFCS to review a child's access to these services at least once a year while the child is between the ages of 14 and 16 and at least every six months while the child is between the ages of 16 and 18, and to evaluate the child's progress in developing needed independent living skills.
- States that information about the child's assessment, services, and reviews should be included in the written report DFCS provides to the court at periodic review hearings.
- Allows certain children between the ages of 17 and 21 to live in subsidized independent housing as part of a plan leading to the child's total independence.
- Provides for aftercare services for young adults aged 18 to 23, including mentoring, tutoring, mental health services, substance abuse counseling, life skills classes, parenting classes, job skills training, and temporary financial assistance. Additional transitional services would also be available to meet critical needs of young adults who were in foster care or subsidized transitional living arrangements when they turned 18, and who were in foster care for at least six months before their 18th birthdays.
- Provides judicial oversight of independent living services. For children between the ages of 14 and 18, judicial review will occur as part of the usual deprivation review and permanency hearings, with one additional hearing to be held within 90 days after the child turns 17. Judges will also review independent living services for young adults between ages 18 and 23 at least once a year.
- Outlines items children should be provided with as they transition to adulthood, including a Medicaid card, a copy of their birth certificate, and information regarding government benefits and public assistance.
- Encourages children to attend all judicial reviews after their 17th birthdays.
- Allows the court to hold DFCS in contempt if services that should have been provided to child have not been provided and DFCS fails to correct the problem within 30 days.
- Requires DFCS to follow the requirements of the Georgia Administrative Procedures Act in implementing this article. All procedures, systems, and services under this article are to be in place by January 1, 2013.

Article 6 – Children in Need of Services

Article 6 creates a new approach for intervening with children who are currently considered “unruly.” Children in Need of Services (“CHINS”) include children who have committed an act that would not be against the law but for the fact that they are children, such as skipping school, running away from home, and violating curfew. CHINS also include children who are “habitually disobedient” to their parents and place themselves or others in unsafe circumstances through their behavior. Currently, court intervention with these children is similar to intervention in delinquency cases. Under Article 6, the bill creates a more holistic, service-oriented approach to these cases. Specifically, it:



- Acknowledges that these behaviors happen within the context of the family and school environment the child is in, and that the involvement of the family and other important people in the child's life is important to protect the child and help him or her become a responsible member of society.
- Allows a complaint that a child is in need of services to be filed by a parent, DFCS, school, law enforcement, guardian ad litem, or prosecuting attorney.
- Provides that after a complaint is filed, the court intake officer is to convene a multidisciplinary conference, involving the child, his or her parents, DFCS, and any other agency that has the authority to provide services to the family. The court can order the participation of individuals necessary for a successful intervention, and can require the person under order to disclose relevant information for the purposes of developing a plan for the child.
- Empowers participants in the multidisciplinary conference to create an informal family services plan agreement, which identifies services and actions that will mitigate the child's inappropriate conduct and related problems within the family. A DFCS case worker will be assigned to ensure that the plan is implemented. The initial plan should extend for six months or less, but the court may extend it for an additional period of up to six months.
- Permits the court intake officer to waive the multidisciplinary conference step when he or she believes it would be inappropriate or futile, such as in emergency circumstances or when the family has previously failed to comply with an informal family services plan.
- Proceeds to court oversight if the informal family services plan fails or is waived because it would be inappropriate or futile.
- Provides that a child is entitled to representation by an attorney at all stages of child in need of services proceedings. The child's right to an attorney cannot be waived. The court can also appoint a guardian ad litem, when appropriate.
- Collects all time-frames for child in need of services proceedings into one code section for ease of reference.
- Allows a child in need of services to be taken into temporary custody if the child has run away from home, the child is in immediate danger from his or her surroundings, or the court makes an order specifying that the child's welfare is endangered by remaining at home and reasonable services cannot solve the problem.
- Clarifies that in children in need of services cases should receive services in the least restrictive environment possible, preferably at home with their parents, but if that is not appropriate then in DFCS care.
- Ensures compliance with the federal Juvenile Justice and Delinquency Prevention Act by clarifying under what circumstances and for how long a child in need of services can be held in a secure detention facility. Specifically, SB 292 prohibits a child in need of services from being held in a jail or other detention facility intended for adults, requires a child in need of services held in a juvenile detention facility to be separated from children in that facility who have committed acts that would be criminal if they were adults, and limits the total time a child in need of services can be held in secure detention to no more than 24 hours before a court hearing and 24 hours after, unless certain exceptions apply.
- Allows extended secure detention of a child who has violated a valid court order, provided that a hearing is held within 72 hours of the child being detained and other alternatives have been evaluated and determined to be inappropriate.
- Requires a case plan for a child who is placed in out-of-home care, and details what this plan should include.



- Incorporates requirements of the federal Adoptions and Safe Families Act to children in need of services cases in order to allow Georgia to better access federal IV-E funding for some unruly children. These requirements include specific findings the court needs to make when a child is placed in out-of-home care, use of case plans, and periodic reviews of the case and the placement by the court.
- Requires that a petition to have a court formally adjudicate that a child is in need of services must be filed by a prosecuting attorney. The petition must state whether or not the family has been offered appropriate services.
- Provides that a petition that stems from a complaint filed by a school official must be dismissed unless the school has already attempted to resolve the problem through educational approaches, including evaluating a child for special education services if appropriate.
- Allows the court to order child-serving agencies to attend court hearings or multidisciplinary conferences and to sanction the agencies if they fail to attend.
- Establishes that in order for a court to adjudicate that a child is in need of services, the allegations in the petition must be proved beyond a reasonable doubt.
- Retains most of the disposition options currently available for unruly children, including placing the child on probation and requiring restitution or community service, but also clarifies that the court can order services for the child and/or his or her family, and that the child should not be placed in a correctional facility unless the child has violated a valid court order.
- Limits the duration of a disposition order to no more than two years, but allows the court to extend for an additional two years after a hearing, if necessary. The court can also terminate the order early if the purposes of the order have been accomplished.
- Clarifies that if a child violates probation the court may modify the terms of the child's probation or make any other disposition that was originally available to the court when the child was adjudicated to be in need of services.
- Requires the court to review the child's disposition after three months, and then at least every six months after that until the order of disposition expires. If the child is placed in a foster home, the court must follow the review hearing and permanency planning requirements of Article 3.
- Includes children who have been found to be incurably incompetent to stand trial, meaning that because of a permanent disability or limitation they will never be able to understand the charges, the legal proceedings, and assist an attorney in their defense, for an act that would have been a crime if they were adults. These provisions are included in the child in need of services framework to ensure a collaborative response to these children. Children whose competence can be restored are the subject of Article 8.

Article 7 – Delinquency

Article 7 relates to cases involving children who have committed acts that would be crimes if the children were adults. These acts are known as “delinquent acts” and the cases are known as “delinquency” cases. Article 7 reorganizes and clarifies the delinquency provisions of current law, and makes the following changes:

- Clarifies that the purposes of delinquency proceedings include protecting the public interest, holding children accountable for their actions, rehabilitating children so that they can become productive members of society, and strengthening families.
- Consolidates all timelines related to delinquency proceedings into one code section for ease of reference.



- Clarifies that the child and the state are the parties in a delinquency proceedings. Parents are entitled to notice, the right to be present for hearings, and the right to be heard in those hearings, but are not parties.
- Provides that child's right to be represented by an attorney cannot be waived by the child's parent, and can only be waived by the child after the child has had an opportunity to talk with an attorney about the implications of this decision.
- Gives the child's attorney the right to access documents related to the case from schools, service providers and government agencies with a court order and therefore without having to obtain the consent of the child or his or her parent.
- Requires the court to appoint a separate guardian ad litem for the child when his or her parent fails to come to court or is unwilling or unable to protect the child's best interests.
- Provides that continuances may only be granted if there is good cause, and that they should be as short as possible.
- Excludes statements made by a child during intake, screening, treatment, or evaluation from evidence, meaning that these statements cannot be considered by the court.
- Clarifies when the double jeopardy protection of the U.S. Constitution applies. Once the court accepts a child's admission or the first witness is sworn in for an adjudication hearing, the child can no longer be retried for the same offense if the current case is dismissed or ends in a finding that the child did not commit the act.
- Incorporates requirements of the federal Adoptions and Safe Families Act for delinquency cases in order to allow Georgia to better access federal IV-E funding for some delinquent children. These requirements include specific findings the court needs to make when a child is placed in certain out-of-home care, use of case plans, and periodic reviews of the case and the placement by the court.
- Requires that intake officers use a detention assessment instrument, which is a standardized tool to evaluate the risks a child poses to the community and to him or herself, to determine whether a child who has been taken into custody should be held in detention pending a court hearing or should be released to his or her parents.
- Clarifies that children held for delinquent acts are entitled to request bail and must be told of their right to do so. The court can release a child on bail if the child is likely to appear in court when required, does not pose a significant threat to the community or his or herself, and does not pose a significant risk of committing a felony, intimidating witnesses, or obstructing justice upon release. Bail must be posted by an adult blood relative, legal custodian, or stepparent – it cannot be posted by another child.
- Clarifies that a child accused of a delinquent act, who would otherwise be released, cannot be held in secure detention because the child has no parent or other person who can provide appropriate supervision. These children should be treated as deprived children under Article 3.
- Ensures compliance with the federal Juvenile Justice and Delinquency Prevention Act by strictly limiting the circumstances and amount of time for which a child can be held in an adult detention facility, and by requiring that children who are in these facilities be kept completely separated from the adult residents there.
- Provides procedural guidance for intake and arraignment, requiring that a child be informed of the contents of the complaint, the nature of the proceedings, the possible consequences, and their rights with respect to their detention and the proceedings. It also clarifies that while a child may make an initial statement about whether he or she committed the act in question, the court may not accept a formal admission at arraignment.



- Adds factors that should be considered in determining whether filing a petition or proceeding by informal adjustment is in the public and the child's best interests. "Informal adjustment" means a minimal level of short-term supervision, the successful completion of which leads to the dismissal of the complaint.
- Requires that a prosecuting attorney file a delinquency petition. Under current law, any person can make a delinquency petition, which then must be endorsed by the juvenile court as being in the best interest of the public or child.¹¹
- Requires the petition to specify if the child is being charged with a designated felony. "Designated felonies" are violations of certain criminal code sections that are considered particularly serious and carry more severe penalties.
- Outlines when amendments to a delinquency petition can be made. Amendments that make minor corrections can be made by the prosecuting attorney at any time. Amendments that add new charges may only be made before a child formally admits charges before the court or the first witness is sworn in at the adjudication.
- Clarifies the process for service of summons, which is the legal notice that a hearing is to be held and that the person being served is required to attend. The court may issue a bench warrant, which is an order to bring the person before the court, if a parent or a child above a certain age fails to attend a hearing for which he or she has been summoned.
- Retains provision requiring transfer of a case to superior court for adult criminal proceedings if a child over 13 years of age is alleged to have committed certain specifically listed offenses, such as murder and rape.
- Allows the optional transfer to superior court of cases involving children aged 15 and older.
- Adds criteria that should be considered by the court in determining whether to make an optional transfer to superior court. Only evidence which relates to these criteria may be introduced and considered at a transfer hearing. Statements made by the child during a transfer hearing may not be used against him or her in the criminal trial if the hearing does result in transfer.
- Allows a child to immediately appeal the decision to transfer his or her case to superior court, and provides that the criminal proceedings must be halted until that appeal is decided.
- States that a child whose case is transferred to adult court should remain in juvenile, rather than adult, detention facilities until the child turns 17.
- Requires that if multiple charges arose from the same actions by the child, or a "single criminal transaction," all the related charges must stay together and either be all kept in juvenile court, or all transferred to superior court.
- Provides procedural guidance for the court's acceptance of a child's admission or denial of the charges, and for adjudication hearings.
- Outlines the information that should be included in a probation officer's report to the court providing information and recommendations for disposition. Specifically, the report should include information on the child's background, relationships, home environment, prior contact with law enforcement and the courts, educational status, and medical and psychological evaluation results. It should also examine the circumstances of the crime, including its seriousness, and any aggravating or mitigating factors.
- Retains the current disposition options for a delinquent child, but clarifies that the court should select the least restrictive option that is appropriate under the circumstances of the individual case.

¹¹ See O.C.G.A. §§ 15-11-37 and 15-11-38 (2009).



- Provides more flexibility to judges in ordering restrictive custody for children who have committed designated felonies. If a court determines that restrictive custody is required, current law requires a mandatory five year commitment to the Department of Juvenile Justice (DJJ) with one year minimum confinement.¹² SB 292 would still require a mandatory 5 year commitment to DJJ but with six months minimum confinement.
- Requires that a child receive credit for time spent in secure confinement in connection with the proceedings and that this time be deducted from detention time imposed at disposition.
- Requires each judicial circuit to establish a graduated sanctions program for children on probation, and to establish an advisory committee to evaluate and report to the chief or presiding judge on the program's effectiveness and new interventions that should be included. A graduated sanctions program is a series of increasingly intensive interventions in response to a child's repeated violations of his or her probation.

Article 8 – Competency in Delinquency Cases

Article 8 governs the way courts determine whether a child is competent to participate in delinquency proceedings, and how the court responds to a child who is not competent. Competency is important because due process requires that people not be subjected to the possible loss of their liberty in criminal or delinquency cases unless they understand the charges, the legal proceedings, and have the capacity to effectively assist their attorney in their defense.¹³ Article 8 of SB 292 revises current law regarding competency in juvenile proceedings. Specifically, it:

- Replaces the term “mental health evaluation” with “competency evaluation” for purposes of this article.
- Requires that if a child under the age of 14 is accused of committing a serious violent felony,¹⁴ the court must order a competency evaluation before delinquency proceedings can move forward.
- The court retains the ability it has under current law to order an evaluation on its own motion or the motion of any party.
- Shifts the burden of proof to prove that a child is competent to the state. Under current law, the child has the burden of proving incompetence.¹⁵
- Provides different responses depending on whether it is likely that an incompetent child is likely to ever become competent. Current law uses the same framework for all incompetent children.¹⁶
- Requires that when a court finds that a child is unlikely to ever be competent to stand trial, it must dismiss the delinquency petition, find that the child is a child in need of services, appoint a plan manager, and order that a mental health plan be instituted for the child. The court may also order the initiation of civil commitment proceedings, if appropriate. If a child has been found incompetent due to their age or immaturity, and will become competent eventually but not in the near future, the same approach applies.
- Requires that if a child is currently incompetent but may become competent in the near future, then the court must order services to help the child attain competency.

¹² See O.C.G.A. § 15-11-63(e)(2009).

¹³ See *Drope v. Missouri*, 420 U.S. 162 (1975), and *In the Interest of S.H.*, 469 S.E.2d 810 (Ga. App. 1996).

¹⁴ “Serious violent felony” is defined in O.C.G.A. § 17-10-6.1 (2009).

¹⁵ See O.C.G.A. § 15-11-153(b) (2009).

¹⁶ See O.C.G.A. §§ 15-11-150 – 15-11-155 (2009).



- Clarifies the circumstances under which a child may be placed in a secure treatment facility, and stresses a preference for treatment in the least restrictive environment appropriate to the child's needs.
- Outlines the information that needs to be included in a court order for services to help the child attain competency. Specifically, the court order must include the name and location of the service provider, consideration of transportation for the child to services, and the length of time the services are to last.
- Requires service providers to report on the child's progress on a schedule established by the court. The report must include the provider's view on whether the child can become competent in the near future, whether additional time is needed for services, and other appropriate information.
- Clarifies the requirements for competency review hearings and for reinstating delinquency proceedings once a child's competency is restored.

Article 9 – Parental Notification

Article 9 renumbers provisions of current law requiring notification of parents when people under the age of 18 seek abortions. The language of these provisions is not modified by SB 292; the provisions are simply renumbered to fit into the new structure of O.C.G.A. Title 15, Chapter 11.

Article 10 – Access to Hearings and Records

Article 10 governs access to hearings and records in juvenile proceedings. For the most part, Article 10 maintains the level of confidentiality that existed at the time of SB 292's drafting and introduction in the spring of 2009. However, since that time, the Georgia General Assembly has passed and the Governor signed a bill that substantially revised the public's access to juvenile court hearings, effective January 1, 2010.¹⁷ As a result, SB 292 returns many provisions to the state of the law prior to January 1, 2010, and makes other changes. Specifically, it:

- Excludes the general public from juvenile court hearings, except:
 - Delinquency hearings involving a designated felony;
 - Most delinquency hearings involving a child who has been found to be delinquent before;
 - Hearings involving child support and "legitimation," which is the process by which a biological father becomes the legal parent of his child;
 - Disposition hearings, at the court's discretion; and
 - Hearings in which the court, after a request by a member of the public and a hearing on the question, decides that the public's interest in accessing the hearing overrides the state or child's interest in a closed hearing.
- Clarifies that while the court may decide to exclude a child from certain portions of proceedings under Articles 3 and 4 if it is in the child's best interests, the child's lawyer may not be excluded.
- Adds the Department of Juvenile Justice to the list of entities that should be notified when a child requests a hearing to have his or her juvenile delinquency or child in need of services records sealed.
- Eliminates language regarding children in the Department of Corrections, since under SB 292 children under the juvenile court's jurisdiction cannot be kept in adult detention facilities.

¹⁷ The changes were made by Senate Bill 207 from the 2009-2010 legislative session, available at: http://www.legis.state.ga.us/legis/2009_10/sum/sb207.htm.



- Removes language prohibiting the release of names or pictures of children to the press.
- Eliminates provisions giving school officials broad access to court and law enforcement records about a child.
- Restricts access to court records in children of need of services cases. They may only be inspected by the child, the child's attorney, probation officers, parents, and others entrusted with supervision of the child. Additional access may be granted by court order.
- Requires that the court keep records of cases handled through informal adjustment or mediation, but limits the use of these records to decisions regarding how to handle a subsequent case involving the same child. The records may not be used as evidence at trial that a child should be adjudicated delinquent or in need of services.
- Clarifies that court records regarding termination of parental rights may not be destroyed at any time, but rather must be permanently kept by the court.

Article 11 – Emancipation

Article 11 relates to “emancipation,” which is the process by which a child becomes a legal adult responsible for his or her own care and able to enter into contracts and other adult transactions. Emancipation also releases parents from their obligations to the child and their rights to the care and control of the child. A child is automatically emancipated when they turn 18, when they are married, and when they are serving in the U.S. military. Current law also provides for a child who does not meet these automatic criteria to petition the court for early emancipation. Article 8 of SB 292 reorganizes and clarifies current law regarding emancipation, but does not make any substantive changes.

Article 12 – Child Advocate for the Protection of Children

Article 12 renumbers provisions of current law establishing the Office of the Child Advocate and governing its operation. The language of these provisions is not modified in any way by SB 292; the provisions are simply renumbered to fit into the new structure of O.C.G.A. Title 15, Chapter 11.

