



House Bill 246 Summary and Analysis¹

Origins of House Bill 246

House Bill 246 was introduced by Representative Wendell Willard of the 49th district on February 2nd in the Georgia 2009 General Assembly Legislative Session. HB 246 is a legislative initiative of the Department of Juvenile Justice (“DJJ”).

Legislative Purpose

The purpose of HB 246 is to amend Article 1 of Chapter 11 of Title 15 of the Official Code of Georgia Annotated (“O.C.G.A.”) related to the arrest and detention of children. The bill would clarify the circumstances in which the pre-adjudication detention of children is acceptable by requiring the completion of a risk assessment during the intake process.

Summary and Explanation of the Proposed Changes

HB 246 would require that a risk assessment be completed during the intake process for all children being considered for detention to determine whether or not detention is warranted. Specifically, HB 246 would amend Chapter 11 of Title 15 of the O.C.G.A. as follows:

- 1) **Mandating completion of a risk assessment.**
 - a. Currently O.C.G.A § 15-11-46.1 does not require the completion of a risk assessment to determine whether or not a child should be detained.
 - b. HB 246 would require that all children being considered for detention be given an assessment to determine whether or not detention is warranted.
 - c. Courts may reject the outcome of the assessment if there are “aggravating or mitigating circumstances.” However if the assessment is rejected, the court must justify its actions in writing.

- 2) **Providing factors that should be considered in the assessment.**
 - a. HB 246 outlines factors that the courts should consider when determining whether or not a child should be detained. Factors include but are not limited to:
 - i. Nature and seriousness of allegation;
 - ii. The child’s current circumstances;
 - iii. Age of the child;
 - iv. The child’s prior history with court systems;
 - v. Any other offenses committed pending adjudication;
 - vi. The child’s probationary status;
 - vii. Ensuring the child attends court hearing;
 - viii. Reducing the likelihood the child may harm someone else; and

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ix. Protecting the child from harm at his or her request.

3) Requiring use of least restrictive environment.

- a. HB 246 would require that children are placed in the least restrictive environment. Detention could only be used when it is found that all other placements would not be appropriate for the child. Only after thorough assessment may a child be placed in secure detention if:
- i. The child is a risk of failing to appear;
 - ii. The child is a danger to himself or others; or
 - iii. The child is a risk of committing another offense or bodily harm based prior history.

Benefits of HB 246

Respects due process

- i. Children do not have the right to bail after being arrested. The factors and risk assessments used to determine whether or not a child is detained vary from state to state, county to county, and city to city. Having a standard risk assessment instrument would help insure that the factors determining detainment do not vary from one area in the state to another area in the state.²

Protects children and communities

- i. Evidence suggests that detention can have adverse affects on children. Standardized risk assessments help ensure that children who do pose a risk to themselves or their communities are detained and that children who do not pose a significant risk are not unnecessarily detained.³
- ii. Risk assessments are objective and can act as equalizers. They help eliminate subjective information such as ethnicity and geographic location as factors for consideration in the determination of detention.

Conclusion

Pre-adjudication risk assessments benefit children and communities by helping to ensure that children who pose significant risk to themselves or their communities are detained and that children who do not pose a significant risk are not unnecessarily detained. Additionally, risk assessments help to eliminate subjective information such as ethnicity as a factor for the determination of detainment. Therefore, the Barton Child Law and Policy Clinic supports passage of HB 246.

² Juvenile Detention Alternatives Initiative of the Annie E. Casey Foundation, Juvenile Detention Risk Assessment: A Practical Guide to Juvenile Detention Reform 11 (2006), available at <http://www.aecf.org/upload/PublicationFiles/JJ3622H5038.pdf>.

³ *Id.*