

VIII. DESIGNATED FELONY

A. Code Section: O.C.G.A. §15-11-63

B. Uniform Juvenile Court Rule 15.2

C. Procedure

1. An adjudicatory hearing involving an allegation of a designated felony shall be open to the general public. O.C.G.A. §15-11-78 (b). In the Court's discretion, the dispositional hearing may be open to the public.

Any Complaint, Petition, or Order from a designated felony case is available for inspection by the public.

2. Within 30 days of adjudication, the Court shall notify in writing the superintendent of the school district or his or her designee of the school in which the child is enrolled or, if the information is known, of the school in which such child plans to be enrolled at a future date. Such notice shall include the specific designated felony act that such child committed.

O.C.G.A. §15-11-80.

Within 15 days of adjudication, the Court shall transmit a copy of such adjudication or finding to the principals of the school which the juvenile last attended and the school which the juvenile intends to attend. O.C.G.A. §15-11-63(h).

3. Definition. O.C.G.A. §15-11-63(a)(2). A Designated Felony Act is an act which:

a. Constitutes a second or subsequent offense under subsection (b) of Code Section 16-11-132 if committed by a person 13 to 17 years of age. (Note: O.C.G.A. §16-11-132 makes it unlawful for a person under 18 years of age to have under his or her control a pistol or revolver.)

b. If done by an adult would be one or more of the following crimes:

(i) Kidnapping or first degree arson if done by a juvenile 13 or more years of age;

(ii) Aggravated assault, second degree arson, aggravated battery, robbery, or armed robbery not involving a firearm, or battery in violation of Code Section 16-5-23.1 if the victim is a teacher or other school personnel, if done by a juvenile 13 or more years of age;

(iii) Attempted murder or attempted kidnapping if done by a juvenile 13 or more years of age;

(iv) The carrying or possession of a weapon in violation of O.C.G.A. §16-11-127.1(b) (while at a school building or school function, or school property or bus);

(v) Hijacking a motor vehicle, if done by a juvenile 13 or more years of age;

(vi) Any violation of Code Sections 16-7-82, 16-7-84, or 16-7-86 if done by a juvenile 13 or more years of age; (Note: Code Sections relate to offenses involving destructive devices.)

(vii) Any other act which if done by an adult would be a felony, if the juvenile committing the act has three times previously been adjudicated delinquent for acts which if done by an adult would have been felonies;

(viii) Any violation of Code Section 16-13-31, relating to trafficking in cocaine, illegal drugs, marijuana, or methamphetamine;

(ix) Any criminal violation of Code Section 16-14-4, relating to racketeering; or

(x) Any violation of Code Section 16-10-52, relating to escape, if the juvenile involved in the commission of such act has been previously adjudicated to have committed a designated felony.

c. Constitutes a second or subsequent adjudication of delinquency based upon a violation of Code Sections 16-7-85 or 16-7-87; (Note: O.C.G.A. §16-7-85 relates to the manufacture, possession, transport, distribution, or use of a hoax device. O.C.G.A. §16-7-87 relates to the obstruction of certain officials in the detection, disarming, or destruction of a destructive device.)

d. Constitutes an offense within the exclusive jurisdiction of the superior court pursuant to subparagraph (b)(2)(A) of Code Section 15-11-28 which is transferred by the Superior Court to the Juvenile Court for adjudication pursuant to subparagraph (b)(2)(B) of Code Section 15-11-28 or which is transferred by the district attorney to the juvenile court for adjudication pursuant to subparagraph (b)(2)(C) of Code Section 15-11-28; or

e. Constitutes a second or subsequent violation of Code Sections 16-8-2 through 16-8-9, relating to theft, if the property which was the subject of the theft was a motor vehicle.

4. Case Law Notes

Single act of aggravated assault sufficient to constitute designated felony. C.P. v. State, 167 Ga.App. 374, 306 S.E.2d 688 (1983).

Conditions on revoking probation and instituting designated felony disposition: There must be a petition filed alleging violation of probation. In Re: B.C., 169 Ga.App. 200, 311 S.E.2d 857 (1983).

No age requirement for previous burglaries under former subparagraph (a)(2)(D). In Re: K.A.B., 188 Ga.App. 515, 373 S.E.2d 395 (1988).

Statutory rape and the combined offenses of statutory rape and criminal trespass may not be considered designated felony acts under former paragraph (a)(2) of this section. 1983 Op. Att'y Gen. No. 83-17.

Unless a juvenile has been adjudicated a delinquent in prior court appearances for acts of burglary, a multiple count petition is not sufficient to fall within former subparagraph (a)(2)(D) of this section which provided that burglary could be considered a designated felony act if committed by a juvenile that had been previously adjudicated on an act of burglary. 1983 Op. Att'y Gen. No. U83-10.

Although the violation of probation may constitute a "delinquent act" in and of itself, a violation of probation which occurs after the juvenile's 17th birthday will not authorize the initiation of a new delinquency petition against the juvenile. The juvenile court's jurisdiction would extend only to revoking the juvenile's probation for his previous adjudication of delinquency. In Re: B.S.L., 200 Ga.App. 170, 407 S.E.2d 123 (1991).

5. Dispositional Order

a. Time Requirement: Dispositional order must be made within **20 days** of the conclusion of Dispositional Hearing. O.C.G.A. §15-11-63(b).

b. Standard of Proof: Court Order shall include a finding based upon a **preponderance of the evidence** as to the need for **restrictive custody** of the juvenile. O.C.G.A. §15-11-63(b).

c. Content Requirement: Court Order shall include specific written findings of fact as to each of the elements in O.C.G.A. §15-11-63(c):

- (i) Need & Best Interest of Child
- (ii) Record & Background of Child
- (iii) Nature & Circumstances of the Offense
- (iv) Protection of the Community
- (v) Age & Physical Condition of Victim

(1) The Court Order must expressly recite all of the elements set forth in O.C.G.A. §15-11-63(c). A staff report which tracks the statutory language and contains facts to support the court's finding of fact and conclusions of law will not be sufficient. In Re: N.N.G., 196 Ga.App. 765, 397 S.E.2d 40 (1990).

(2) The extent and depth of analysis to which each of the "elements" in O.C.G.A. §15-11-63(c) must be subjected is in large measure within the sound discretion

of the court. It is required as a statutory minimum, that each of these "elements" must be specifically addressed in writing. In Re: C.T., 197 Ga.App. 300, 398 S.E.2d 286 (1990).

6. Restrictive Custody requirements under O.C.G.A. §15-11-63(e) include the following:

a. The order shall provide that the juvenile shall be placed in the custody of the Department of Juvenile Justice for an **initial period of five years**;

b. The juvenile shall initially be confined in a youth development center for a period of **between 12 and 60 months**. If the juvenile has been adjudicated on a prior designated felony act, the juvenile shall be initially confined in a youth development center for at least 18 months.

c. The juvenile may not be released from a YDC or transferred to a nonsecure facility during the initial confinement period.

d. During the first 6 months, no home visits shall be permitted except for emergency medical treatment and severe illness or death in the family, unless the Court orders otherwise. All home visits during confinement must be carefully arranged and monitored.

7. Mandatory Restrictive Custody

a. Restrictive custody is mandatory when a juvenile is found to have committed a designated felony act that resulted in serious physical injury to a person who is 62 years of age or older. O.C.G.A. §15-11-63(d).

b. In this context, "serious physical injury" means an accidental bodily injury which results in death, a fractured bone, permanent disfigurement or dismemberment, permanent loss of bodily function, permanent partial or total loss of sight, hearing; an injury resulting in reasonable incurred medical expenses exceeding \$500.00 or an injury resulting in disability for not less than 10 consecutive days. Hall v. Middleton, 154 Ga.App. 310, 268 S.E.2d 364 (1980).

8. After Care Requirements

a. After the initial period of confinement then the juvenile shall be placed under intensive supervision for a period of 12 months. O.C.G.A. §15-11-63(e)(1)(C);

b. The juvenile may not be released from intensive supervision during the initial after-care period unless by court order. O.C.G.A. §15-11-63(e)(1)(D);

c. Upon the expiration of the intensive supervision period, the juvenile shall not be released from intensive supervision without the written approval of the

commissioner of the Department of Juvenile Justice or his designated deputy. O.C.G.A. §15-11-63(e)(2)(A);

9. Custody Discharge Requirements

a. Motion by the Department of Juvenile Justice. Upon the expiration of one year of custody, the Department of Juvenile Justice may file a motion for discharge of custody with the court. O.C.G.A. §15-11-63(e)(2)(C).

b. Custody Extension. Upon the expiration of the initial period of placement in a youth development center, or any extension thereof, the Department of Juvenile Justice may file a motion for the placement to be extended for an additional 12 months. No initial placement or extension of custody may continue beyond the juvenile's 21st birthday. O.C.G.A. §15-11-63(e)(3).

10. Department of Juvenile Justice Responsibilities During Custody Period

a. While in a YDC, the juvenile may be permitted to participate in YDC services and programs; and after the first 6 months, the juvenile is eligible to participate in YDC-sponsored programs, including community works and sheltered workshops. O.C.G.A. §15-11-63(e)(2)(B).

b. The juvenile is eligible for special medical and treatment services, as well as state-sponsored programs for evaluation and services under the Division of Rehabilitation Services and Division of Mental Health, Mental Retardation and Substance Abuse. O.C.G.A. §15-11-63(e)(2)(B).

c. Unless the court order states otherwise, the Department of Juvenile Justice must make written reports to the court every 6 months during placement on the status, adjustment and progress of the juvenile. O.C.G.A. §15-11-63(e)(2)(D).

d. If a child has been adjudicated delinquent for the commission of a designated felony act, it shall be the responsibility of the department to provide notice to any person who was the victim of the child's delinquent acts that the child is being released from confinement or custody. O.C.G.A. § 49-4A-8 (e.1)(1); O.C.G.A. § 49-4A-9(b).

11. Jurisdiction of the Department of Juvenile Justice

The Department of Juvenile Justice shall retain the power to continue confinement beyond the period specified by the court within the term of the order. O.C.G.A. §15-11-63(g).