Trial Notebook
for
Child Welfare Attorneys
in Georgia's Juvenile Court
Deprivation Cases

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and
The Georgia Association of Counsel for Children.

This book was prepared for Child Welfare Attorneys handling deprivation cases in Georgia's Juvenile Courts.

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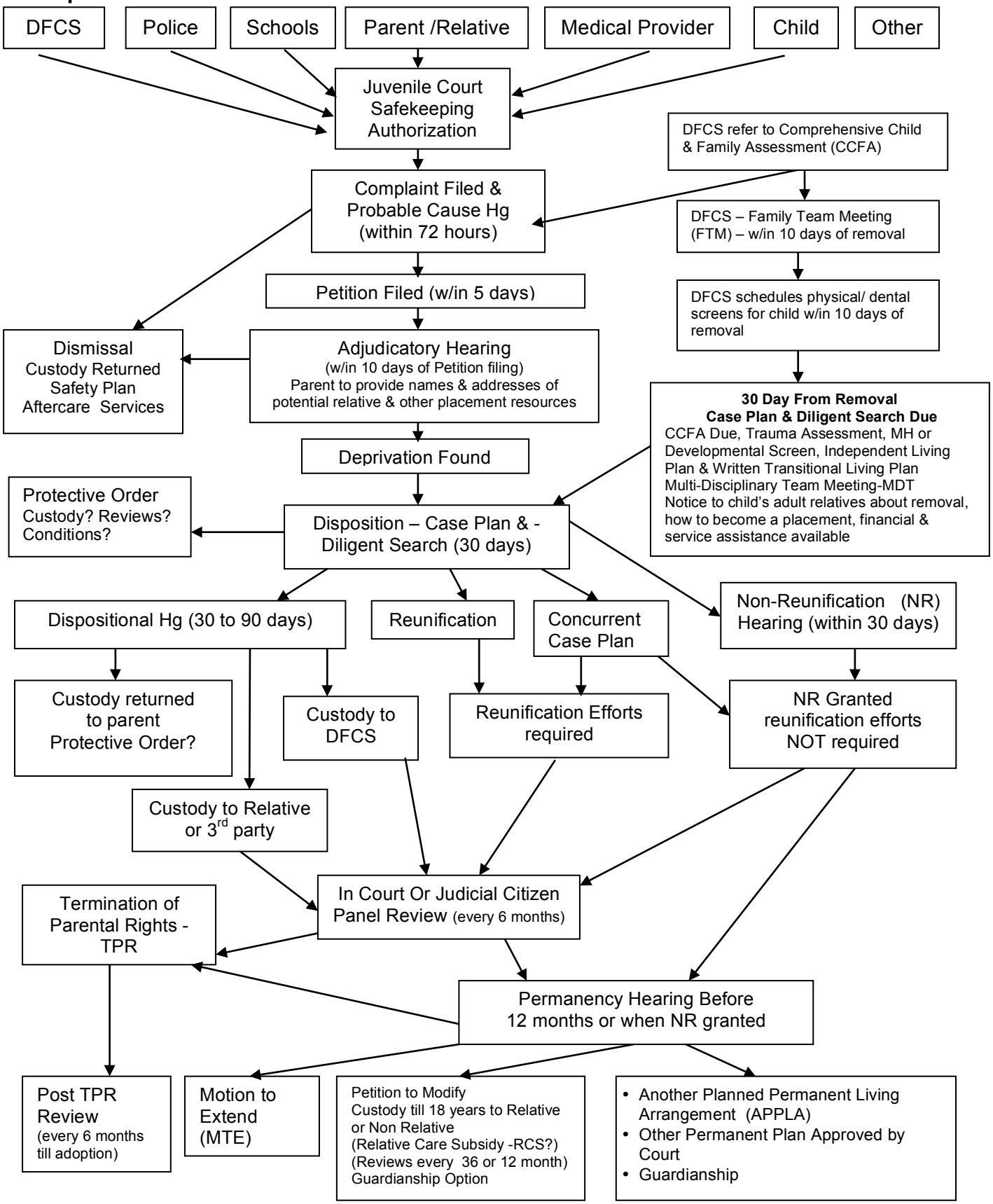
Deprivation Case Flowchart



Timelines for a Deprivation Case		
Event	**Timing**	**Time Waiveable?**
Safekeeping / Date Entered Foster Care	immediate @ removal	NO (IV-E required)
Detention Hg w/ Ch removal	**72** Hours of removal	NO
Detention Hg w/OUT Ch removal	**30** days of complaint	NO
Reasonable Efforts	At every Hearing	NO
Contrary to the Welfare	At Det. Hrg minimum & every other setting	NO
Continued DT	Every **72** Hours from removal - after 30 days dead	YES, if all parties pres & waive
CCFA - Comprehensive Child & Family Assessment	Within **24 hours** of a Det Hg – **DFCS** refers to CCFA provider	NO
Petition Filing W Ch Removal	Within **5 days** of DT Hg	NO
Petition Filing W/OUT Ch Removal	Within **30 days** of DT Hg	NO
Adjudication Hg W/ Ch Removal	Within **10 days** of Petition Filing	YES, if all parties pres & waive
Adjudication Hg W/OUT Ch Removal	Within **60 days** of Petition Filing	YES, if all parties pres & waive
FTM - Family Team Meeting	Within **3-9 days** after a child enters FC	NO
Physical Health Screen	Within **10 days** of a child's entry into FC	NO
Dental Health Screen	Within **10 days** of a child's entry into FC	NO
**Parent Duty to provide names & addresses of potential relative or other placement options	Within 10 Days of child's entry into FC & an ongoing duty for parent at every review of case	NO §15-11-55(a)(2)(D)
Multidisciplinary Meeting (MDT)	Within **25 days** of a child's entry into FC	NO
Case Plan	Within **30 days** of a child's entry into FC	NO
ILP & ILP Services	at Case Plan if child over 14 years	NO
WTLP - Written Transitional Living Plan	at Case Plan if child over 14 years	NO
CCFA DUE, needed for MDT & CSPL	Within **30 days** of a child's entry into FC	
Trauma Assessment M H Screen (Child: 4 yrs. & older)	Within **30 days** of a child's entry into FC.	NO
Developmental Assessment (Child: 4 yrs. & under)	**Within 30 days** of a child's entry into FC. BCW referral immediately.	NO
**Diligent Search	**within 30 Days** from Removal - Might be part of Case Plan then due w/ Case Plan	NO §15-11-55(a)(2)(B)& (C)
Disposition	**within 90 Days** from Removal - Must have Diligent Search included	NO
Notice by DFCS to child's adult relatives about the child's removal, how to become a placement resource, financial & service assistance available if a placement resource	**within 30 Days** from Removal – Must be documented in writing & filed with the Court by the 1st Review (no later than 6 months from removal)	NO §15-11-55(a)(2)(B)& (C)
Notice to Foster Parents	written notice in advance of 15-11-58 hearings (dispo, permanency, NR, custody mod.,)	NO
Non-Reunification Hearing	within 30 days of NR announced as Case Plan	NO
Extension	prior to expiration of previous order	NO, except all parties waive
TPR 15 out of 22 months child in FC or if abandoned infant or NR CSPL or 12 months non-compliance w/ CSPL	By statute, TPR hearing must be held within 90 days of TPR Petition filing & TPR Order must be signed within 30 days of close of evidence, "Just Cause Exception". Case law says TPR order must be signed within 1 year of filing petition.	YES, If Court makes findings on record of "just cause exception"

Timelines for a Deprivation Case (continued)		
Event	**Timing**	**Time Waiveable?**
TPR Reviews	at least every 6 months	NO
Petition to Modify to Third Party	anytime, check RCS time limits for $ subsidy	
Protective Order	anytime	
Expedited ICPC - Regulation 7	receiving State has 30 days after all documents submitted	
Citizen Panel Review	every 6 months - minimum	NO
Guardianship	Anytime, check subsidy requirements	
Legitimation	anytime, if TPR w/in 30 of service of TPR	
Immigration Issues	ongoing, must complete before 18th birthday, in ILP & WTLP, youth must achieve SIJS before 18 years old to receive continued ILP services	
IEP - Individualized Educational Plan	ongoing	
Expiration Date	If to DFCS - 12 months if to relative or non relative 24 months	NO
Permanency Hearing Date	every 12 months child in FC	NO
Visitation – Parent	Within 1st week & bi monthly	
Visitation - Sibling or other family	as soon as possible	
Third party Custody Reviews	If relative - every 36 months if non relative every 12 months	NO
"Abandoned Infant" Judicial Finding & TPR	3 months abandoned – DFCS shall TPR w/in 60 days of Court making "abandoned" finding	NO
Placement with Siblings	Reasonable Efforts to Place Siblings Together	§ 15-11-58(c)(7)
Educational Stability	Provisions to Promote Educational Stability Issues for foster Youth	§ 15-11-58(c)(8)
Transition Plan 90 days before Foster Youth's 18th Birthday		§ 15-11-58(c)(9) § 15-11-58(o)(7)

Internet Resources:

www.childwelfare.net

www.gaccchildlaw.org

http://w2.georgiacourts.org/cj4c/
(check for webcasts of Georgia Child Welfare Legal Academy & Appellate Case Summaries)

Chapter 1 Purpose of Juvenile Court & Definitions

O.C.G.A. § 15-11-1 Liberal construction of chapter.

This chapter shall be liberally construed to the end:

(1) That children whose well-being is threatened shall be assisted and protected and restored, if possible, as secure law-abiding members of society;

(2) That each child coming within the jurisdiction of the court shall receive, preferably in his or her own home, the care, guidance, and control that will be conducive to the child's welfare and the best interests of the state; and

(3) That when a child is removed from the control of his or her parents the court shall secure for the child care as nearly as possible equivalent to that which his or her parents should have given the child.

O.C.G.A. § 15-11-2 Juvenile proceedings definitions.

(8) "Deprived child" means a child who:

(A) Is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, or emotional health or morals;

(B) Has been placed for care or adoption in violation of law;

(C) Has been abandoned by his or her parents or other legal custodian; or

(D) Is without a parent, guardian, or custodian.

No child who in good faith is being treated solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall, for that reason alone, be considered to be a "deprived child."

the definition of deprived child within OCGA § 15-11-2 (8) (A) focuses upon the needs of the child regardless of parental fault. The deprivation petition is brought on behalf of the child and it is the child's welfare and not who is responsible for the conditions which amount to deprivation that is the issue. Therefore, deprivation is established by proof of parental unfitness arising from either intentional or unintentional misconduct resulting in the abuse or neglect of the child or by what is tantamount to physical or mental incapability to care for the child. In the Interest of J. P., 253 Ga. App. 732, 734 (560 SE2d 318) (2002)

(10.2) "Legal mother" means the female who is the biological or adoptive mother of the child and who has not surrendered or had terminated her rights to the child.

(10.3) "Parent" means either the legal father or the legal mother of the child.

(10.1) "Legal father" means a male who:

(A) Has legally adopted a child;

(B) Was married to the biological mother of that child at the time the child was conceived or was born, unless such paternity was disproved by a final order pursuant to Article 3 of Chapter 7 of Title 19;

(C) Married the legal mother of the child after the child was born and recognized the child as his own, unless such paternity was disproved by a final order pursuant to Article 3 of Chapter 7 of Title 19;

(D) Has legitimated the child by a final order pursuant to Code Section 19-7-22; or

(E) Has legitimated the child pursuant to Code Section 19-7-21.1 and who has not surrendered or had terminated his rights to the child.

(10.5) "Shelter care" means:

(A) A licensed foster home or home approved by the court which may be a public or private home or the home of the noncustodial parent or a relative; or

(B) A facility operated by a licensed child welfare agency.

Putative Father – (not defined in O.C.G.A.)

Alleged or biological father, Not legal father, Questionable legal standing in deprivation actions, No legal standing in termination of parental rights actions, Obligated to pay child support.

Chapter 2 Probable Cause (PCH) / Detention (DT) / 72 Hour Hearing

Authority	**O.C.G.A. § 15-11-49 & 49.1, 15-11-58(a)&(c)** **Uniform Rules for the Juvenile Courts of Georgia, Rules 4 & 8** Should be held within 72 hours of removal; authorization for safekeeping If not held within 72 hours then remedy is to start over with new safekeeping; dismissal without prejudice IV-E eligibility issue for child during foster care episode
Purpose	o Are there reasonable grounds to believe the allegations in the complaint are true and the child is "deprived" ? o Should a petition alleging deprivation issue? o Should child be removed from the home (detained) pending adjudication? o Court makes 1st ruling on Reasonable Efforts & Contrary to the Welfare
Pleading	o Complaint o Police report may be attached o Authorization for safekeeping, date & time of removal, may be in complaint or in a separate document o DFCS Policy 2102.3 & 2102.4 - Safety Assessment, DFCS Form 455 A, "The burden in a reasonable efforts determination is on the department. Attach a copy of Safety Assessment (Form 455 A), which includes the Reasonable Efforts list, to a deprivation complaint filed at Juvenile Court"
Parties	o DFCS, mother, father (legal or putative), Special Assistant Attorney General (SAAG), Child Attorney, legal guardian, Attorney for parent, CASA, o Age appropriate children, child may be excluded **O.C.G.A. § 15-11-78 (a)**
Notice to Parties	o "Reasonable notice" to parent or guardian, o Time & place of hearing, o Reason for removal o May be by phone, note on door, oral notice
Notice to Non Parties	**O.C.G.A. § 15-11-55.1** Notice of hearing to foster parents of the child, pre-adoptive parents or relatives caring for the child. Notice to be consistent with form & timing of notice to parents. These persons do not become parties to the action but do have the right to be heard during the proceeding.
Right to Attorney	**O.C.G.A. §15-11-6 Party / Parent** o Parents/legal guardian should be advised of right to counsel on the record o If indigent, right to appointed counsel or a clear waiver on the record o If non-indigent, then did parent exercise reasonable diligence to obtain an attorney, court findings should be on the record (In the Interest of P.D.W. et al. children. 296 Ga. App. 189, 674 S.E.2d 338 (2009)) o Inquiry about incarcerated parents, transport to hearings? o Father, legal or putative, right to counsel? **O.C.G.A. §15-11-6(b) Child's Right to Counsel** Counsel must be provided for a child not represented by the child's parent, guardian, or custodian. o Courts & Judges vary on the interpretation of the child's right to representation in deprivation cases; this issue is being addressed on a statewide basis, contact Georgia Association of Counsel for Children found at www.gaccchildlaw.org for further information

	○ Attorneys appointed to represent the child in a deprivation case should obtain an Order of Appointment from the Judge which outlines and clarifies the role and duties the Judge is appointing the attorney to fulfill ○ See also the child's right to effective attorney representation in the February 7, 2005 order entered by Federal District Judge Marvin Shoob in the *Kenny A. v. Perdue* case, *Kenny A. v. Perdue et. al*., 356 F.Supp.2d 1353 (N.D. Ga. 2005)
Standard of Proof	○ Reasonable grounds exist to believe that the allegations in the complaint are true Juvenile Court Rules # 8 ○ Hearsay evidence allowed
Reasonable Efforts (RE) & Contrary to the Welfare	**O.C.G.A. § 15-11-58(a)** ○ To prevent removal, preserve family ○ Court must **also** make a separate ruling on whether the child's continuation in the home would be contrary to the welfare of the child; must be explicitly stated in the court order supported by case specific facts are essential to child being eligible for Federal IV-E funding (Chapter 12)
Reasonable Efforts for Sibling Joint Placement	**§ 15-11-58(c)(7)** DFCS must use RE to place siblings together in the same placement unless DFCS documents that joint placement of siblings would be contrary to the safety or well-being of any of the siblings and when siblings are not jointly placed that there is ongoing frequent visitation or other interaction, DFCS such sibling contact would be contrary to the safety or well-being of any of the siblings
Educational Stability Assurance	**§ 15-11-58(c)(8)** DFCS must make an assurances: that the child's placement considers the appropriateness of the current educational setting and the proximity to the school in which the child is enrolled at the time of placement; that DFCS has coordinated with appropriate local educational agencies to ensure that the child remains in the school in which the child is enrolled at the time of placement; or when remaining in the same school is not in the child's best interests the DFCS and the local educational agencies have cooperated to assure the immediate and appropriate enrollment in a new school, with all of the educational records of the child provided to the new school
Waiver	○ parents / legal guardian may waive PCH, stipulate to RE & contrary to the welfare ruling in the Court Order ○ Order must contain case specific findings of reasonable efforts & contrary to the welfare ○ Waiver may be conditioned on the parties agreement to certain events occurring, services or other agreements between the parties ○ Court must approve waiver & may require presentation of a prima facie case ○ When presenting a "conditional" stipulation to the Court, attorneys should reserve, on the record, the right to withdraw the stipulation in the event the Court does not approve the negotiated terms of the stipulation including dispositional or Case Plan terms; the Court is not bound by the parties agreement (In re R.J.M., 295 Ga.App. 886, 673 S.E.2d 527 (2009))
Jurisdiction	**O.C.G.A. § 15-11-28(a)(1)** ○ Child under 18 years alleged to be deprived in state
Venue	**O.C.G.A. § 15-11-29** ○ Child present in the county when action commenced, found in the county OR in the county in which the child resides

Decision Points	○ Placement of child pending any continuances or adjudication Petition Issue? Custody pending next hearing ○ Reasons for removal – identify specific issues (drugs, mental health, neglect, physical abuse, sexual abuse, abandonment) – specifically articulated reasons for removal required as these findings will direct the goals & services in the Case Plan and defines what issues must be remedied to achieve reunification ○ Contrary to the welfare – case specific findings required ○ Visitation b/n child & parent, child & other family (sibling) relatives ○ Resources to be explored, home evaluations, service needs of family ○ Immediate service needs of child or family, medical/educational, psychological ○ Would DFCS services expedite reunification? ○ Forensic evaluation / psych evaluation / medical exam ○ Absent parents, name & whereabouts, legal status ○ **CASA**; should CASA be appointed, **O.C.G.A. § 15-11-9.1** ○ Is father putative or legal? – is **Legitimation** needed? DNA Testing?? ○ **Child Support O.C.G.A. § 15-11-28 (c)(2)(A) & (B)** ○ Poverty / Homelessness issues – is that deprivation or maltreatment? ○ Could child be returned to parents with DFCS services? If yes, then • What services are to be provided to the child or family, by whom & for how long? Is further in court review needed to confirm these services? ○ Are the reasons for removal sufficiently articulated to direct Case Plan goals ○ Are there barriers to reunification which were NOT part of the reasons for removal? ○ Identify extended family, begin process of "diligent search" for relatives or individuals who have demonstrated and ongoing commitment to the child
Documents/ Information Needed **Issues to Investigate**	○ Placement of child ○ Release of information for child to Child Attorney ○ Release of information for parent or guardian ○ Police reports / bond conditions for parent or perpetrator ○ What witnesses need to subpoenaed ○ Prior history w/ DFCS or Court ○ Photos, medical reports, school records ○ Parent make statements? To whom? ○ Who is perpetrator – further access to child ○ Psych evaluations / records ○ If forensic interview has been done, then need report & copy of video ○ When is the Family Team meeting (FTM) ○ Who is the CCFA provider (Comprehensive Child & Family Assessment) ○ Have physical / Dental Screen been scheduled ○ Will child have to change schools ○ Safety Plan, DFCS Form 455 B, DFCS Policy 2104.16 & 2104.18 ○ Safety Assessment, DFCS Form 455 A, DFCS Policy 2102.3 & 2102.4 "The burden in a reasonable efforts determination is on the department. Attach a copy of Safety Assessment (Form 455 A), which includes the Reasonable Efforts list, to a deprivation complaint filed at Juvenile Court."

Dismissal	o If DFCS asks for a dismissal, then testimony or written statement as to how child is no longer at risk o Is there a **Safety Plan** signed by offending parent? if yes, it should be submitted as an exhibit to support dismissal o Will a Child Protective Services (CPS) case be opened? What are the expectations for services to family & parent compliance, CPS may be referred to as Family Preservation Services (FPS) o Does the Court order wraparound services for a specific period of time? How will these services be monitored? Child's position on going home, verify child is not afraid to go home
Continuance	o No more than 72 hour increments unless parties waive time limits on record o Need to state specific reasons for continuance on the record & in continuance order, case should be active even during the continuance period, • Further investigation, • Necessary witness, • Begin services to allow child to return home, • Home evaluation of relative
Order	o Should state explicit reasons for removal, reasonable efforts findings & contrary to the welfare o Scheduling Order is a useful tool & may be separate order
Next Court Date & Family Team Meeting (FTM)	o If probable cause granted, then all parties should receive notice of the next court date & date of Family Team Meeting o Visitation between parent & child, date & time o Referrals & services to be received pending next hearing o Between PCH & next hearing the Court, attorneys & parties (including the child) should have clear directions as what is going to happen next, who is responsible
Diligent Search & Notice to Relatives or Others w/ Ongoing Relationship **§15-11-55(a)**	**§15-11-55(a)(2)(B)** within 30 days of the child's removal DFCS shall exercise due diligence to identify a parent or relative or other persons who have demonstrated an ongoing commitment to the child who shall be provided a notice that: (i) child has been or is being removed from parental custody; (ii) explains options the relative has to participate in the care / placement of the child and any options that may be lost by failing to respond to the notice; (iii) describes the process for becoming a foster family home and the additional services and supports available for children placed in approved foster homes; & (iv) describes any financial assistance the relative may be eligible. The results of the Diligent Search & Notice shall be documented in writing and filed with the court by the time of the first review.
Parent to Provide Relative Information – § 15-11-55(a)	**§15-11-55(a)(2)(D)** court shall order in preliminary disposition that the parent or other legal guardian shall provide <u>within ten days</u> the names and addresses of all relatives and other persons who might be considered as possible placements for the child, this is an <u>ongoing parental responsibility and duty</u> to supplement relative information at each judicial review or citizen panel review.

Practice Points

- Is mediation available?
- identify what actions should be taken by each party pending adjudication
- should child be present at next hearing?
- **Court of Inquiry issues? O.C.G.A. § 15-11-4**
- drug screen for parents?
- Parents may waive PCH in an effort to work w/ DFCS & Court to obtain services or correct problem in anticipation the case may move more quickly toward reunification or to avoid Court of Inquiry issue
- Parent may want to avoid being called for purposes of cross examination & making incriminating statements
- Will parents submit to drug screen / psych / parenting assessments?
- **O.C.G.A. § 15-11-41** requires all hearings to be recorded by stenographic notes, electronic or mechanical recording unless waived by the child and the child's parent, guardian or attorney
- CPS Alert, both statewide and nationwide, If the whereabouts of the child and the family become unknown during the course of a case and DFCS seeks a dismissal, make sure both a statewide & a nationwide CPS Alert is initiated, FCS Policy 2104.40 & 2104.41, and form CPS 31

Waiver vs Stipulation

A stipulation operates as an admission in judicio and "is conclusive and binding upon the party [making the stipulation]." **In re M.O., 233 Ga. App. 125, 128 (1998)**

"Parties to stipulations and agreements entered into in the course of judicial proceedings are estopped from taking positions inconsistent therewith, and no litigant will be heard to complain unless it be made plainly to appear that the consent of the complaining party was obtaining by fraud or mistake."
McDaniel v. Oliver, 172 Ga. App. 109, 110 (1984), Wright v. Stuart, 229 Ga. App. 50, 51 (1997)

Parent does not claim that her consent was obtained by fraud or mistake or assert any other valid reason the juvenile court should have allowed her to withdraw her stipulation; the parent claims that her consent to deprivation was conditional on the juvenile court's acceptance of the parties proposed disposition, but the record does not support this assertion; The signed stipulation nowhere indicates a condition—nor did any of the parties at the hearing indicate a condition. Parent was bound by the stipulation. And The Juvenile Court was in no way bound to accept the parties' agreement. "The juvenile court was not only authorized to keep temporary custody with DFCS pending a final disposition but was required to do so if it deemed this provisional disposition to be necessary to protect R.J.M.'s welfare."
In re R.J.M., 2009 WL 311306 (2009)

Relevant DFCS Policy
found at http://www.odis.dhr.state.ga.us/3000_fam/3030_cps/child_protect.htm

- DFCS Policy 2104.16 & 2104.18 - Safety Plan, DFCS Form 455 B,
- DFCS Policy 2102.3 & 2102.4 - Safety Assessment, DFCS Form 455 A, "The burden in a reasonable efforts determination is on the department. Attach a copy of Safety Assessment (Form 455 A), which includes the Reasonable Efforts list, to a deprivation complaint filed at Juvenile Court"
- DFCS Policy 2102.16 - Visitation - If possible, child should have visitation with parents during the first week in foster care; if not possible, then telephone or written contact
- DFCS Policy 2109.5 – Releasable information & procedures when child is not in DFCS custody
- DFCS Policy 1013.2 to 1013.5 - Information & procedure for accessing DFCS records when the child is in DFCS custody; J.J. v. Ledbetter

O.C.G.A. Code Sections

15-11-45 Taking child into custody.

(a) A child may be taken into custody:

(1) Pursuant to an order of the court under this article, including an order to an employee of the Department of Juvenile Justice designated in accordance with paragraph (2) of subsection (i) of Code Section 49-4A-8 or to an employee of the Department of Corrections, to apprehend a child who has escaped from an institution or facility operated either by the Department of Juvenile Justice or the Department of Corrections or a child who has been placed under supervision and who has broken the conditions thereof;

(2) Pursuant to the laws of arrest;

(3) By a law enforcement officer or duly authorized officer of the court if there are reasonable grounds to believe that the child has committed a delinquent act or if there are reasonable grounds to believe that he or she is an unruly child;

(4) By a law enforcement officer or duly authorized officer of the court if there are reasonable grounds to believe that the child is suffering from illness or injury or is in immediate danger from his or her surroundings and that his or her removal is necessary;

(5) By a law enforcement officer or duly authorized officer of the court if there are reasonable grounds to believe that the child has run away from his or her parents, guardian, or other custodian;

(6) By a law enforcement officer or duly authorized officer of the court if a parent or guardian of a child has contacted a law enforcement agency and reported that the child is absent from parental custody without consent and a facility created pursuant to paragraph (2) of subsection (e) of Code Section 15-11-47 is available; or

(7) By a law enforcement officer or duly authorized officer of the court if a child is violating a curfew and a facility created pursuant to paragraph (2) of subsection (e) of Code Section 15-11-47 is available.

(b) The taking of a child into custody is not an arrest, except for the purpose of determining its validity under the Constitution of this state or of the United States.

(c) When a child who is taken into custody pursuant to this article has committed an act which would constitute a felony under the laws of this state if committed by an adult, the Juvenile Court, within 48 hours after it learns of the taking into custody, shall notify the district attorney or duly authorized assistant district attorney of the judicial circuit in which the juvenile proceedings are to be instituted.

15-11-46 Detention of child.

A child taken into custody shall not be detained or placed in shelter care prior to the hearing on the petition unless:

(1) The child's detention or care is required to protect the person or property of others or of the child;

(2) The child may abscond or be removed from the jurisdiction of the court;

(3) The child has no parent, guardian, or custodian or other person able to provide supervision and care for him or her and return him or her to the court when required; or

(4) An order for the child's detention or shelter care has been made by the court pursuant to this article.

15-11-46.1 Interim detention of accused child.

(a) As a matter of public policy, restraints on the freedom of accused children prior to adjudication shall be imposed only when there is probable cause to believe that the accused child did the act of which he or she is accused and there is clear and convincing evidence that the child's freedom should be restrained.

(b) The imposition of interim control or detention on an accused child may be considered for the purposes of:

(1) Protecting the jurisdiction and process of the court;

(2) Reducing the likelihood that the child may inflict serious bodily harm on others during the interim period; or

(3) Protecting the accused child from imminent bodily harm upon his or her request.

(c) Interim control or detention shall not be imposed on an accused child:

(1) To punish, treat, or rehabilitate the child;
(2) To allow parents to avoid their legal responsibilities;
(3) To satisfy demands by a victim, the police, or the community;
(4) To permit more convenient administrative access to the child; or
(5) To facilitate further interrogation or investigation.

(d) Whenever an accused child cannot be unconditionally released, conditional or supervised release that results in the least necessary interference with the liberty of the child shall be favored over more intrusive alternatives.

(e) Whenever the interim curtailment of an accused child's freedom is permitted under this Code section, the exercise of authority shall reflect the following values:
(1) Respect for the privacy, dignity, and individuality of the accused child and his or her family;
(2) Protection of the psychological and physical health of the child;
(3) Tolerance of the diverse values and preferences among different groups and individuals;
(4) Assurance of equality of treatment by race, class, ethnicity, and sex;
(5) Avoidance of regimentation and depersonalization of the child;
(6) Avoidance of stigmatization of the child; and
(7) Assurance that the child has been informed of his or her right to consult with an attorney and that if the child cannot afford an attorney, one will be provided.

15-11-47 Procedure on taking child into custody.
(a) Release to parents; delivery to medical facility, intake officer, or court. A person taking a child into custody, with all reasonable speed and without first taking the child elsewhere, shall:
(1) Forthwith release without bond the child to the child's parents, guardian, or other custodian upon their promise to bring the child before the court when requested by the court;
(2) Forthwith deliver the child to a medical facility if the child is believed to suffer from a serious physical condition or illness which requires prompt treatment and, upon delivery, shall promptly contact a Juvenile Court intake officer. Immediately upon being notified by the person taking a child into custody, the intake officer shall determine if such child should be released, detained, or brought before the court. Prior to an informal detention hearing or committal hearing authorized under Code Sections 17-6-15 and 17-6-16 and Articles 1, 2, and 8 of Chapter 7 of Title 17, the child shall be placed in detention, if necessary, only in such places as are authorized by Code Section 15-11-48;
(3) Bring the child immediately before the Juvenile Court or promptly contact a Juvenile Court intake officer. The intake officer shall determine if the child should be released or detained. Prior to an informal detention hearing, the child shall be placed in detention, if necessary, only in such places as are authorized by Code Section 15-11-48; or
(4) Bring the child who is suspected of committing a delinquent act before the Superior Court of the county where the delinquent act occurred if the act is an act over which the Superior Court has exclusive or concurrent jurisdiction as provided in subsection (b) of Code Section 15-11-28; however, pending a commitment hearing authorized under Code Sections 17-6-15 and 17-6-16 and Articles 1, 2, and 8 of Chapter 7 of Title 17 or an indictment, the child shall be returned and placed in detention, if necessary, only in such places as are authorized by Code Section 15-11-48.

(b) Failure of parent to bring child before court. If a parent, guardian, or other custodian, when requested, willfully fails to bring the child before the court as provided in subsection (a) of this Code section, the court may issue its order directing that the child be taken into custody and brought before the court and, in addition, may enter any order authorized by and in accordance with the provisions of Code Section 15-11-5. If it is necessary to place the child in detention prior to his or her appearance in court, the child shall be placed in a facility as authorized by Code Section 15-11-48.

(c) Notice; temporary detention or questioning. The person taking a child into custody shall promptly give notice thereof, together with a statement of the reason for taking the child into custody, to a parent, guardian, or other custodian and to the court. Any temporary detention or questioning of the child necessary to comply with this Code section shall conform to the procedures and conditions prescribed by this article and rules of court.

(d) Bail. All children subject to the jurisdiction of the Juvenile Court and alleged to be delinquent or unruly shall have the same right to bail as adults; and the judge shall admit to bail all children under the court's jurisdiction in the same manner and under the same circumstances and procedures as are applicable to adults accused of the commission of crimes. Any person having legal custody or an adult blood relative or stepparent shall be entitled to post bail but shall be required immediately to return the child to the individual or entity having legal custody of the child.

(e) Treatment of unruly child.

(1) With respect to a child suspected of being unruly as defined in paragraph (12) of Code Section 15-11-2 or a child who is in violation of a curfew, a person taking such a child into custody shall not exercise custody over the child except for a period of 12 hours. A child taken into custody may be detained in a holding facility for unruly children as provided for in paragraph (2) of this subsection. If a parent or guardian has not assumed custody of the child at the end of such period or if the child has not been brought before the Juvenile Court or if an intake officer has not made a detention decision, the child shall be released from custody. In no case shall such a child in custody be detained in a jail.

(2) Counties and municipalities are authorized to establish facilities where a child who is suspected of being unruly or who is in violation of a curfew may be informally detained until the parent or guardian assumes custody of the child. Immediately after a child is brought into such a facility, every effort shall be made to contact the parent or guardian of the child. A child shall not be restrained in a cell or other such place apart from other children unless such child engages in disruptive or unruly behavior while at the holding facility.

15-11-48 Place of child's detention - alleged capital offenders.

(a) Allegation of delinquency. A child alleged to be delinquent may be detained only in:

(1) A licensed foster home or a home approved by the court which may be a public or private home or the home of the noncustodial parent or of a relative;

(2) A facility operated by a licensed child welfare agency; or

(3) A detention home or center for delinquent children which is under the direction or supervision of the court or other public authority or of a private agency approved by the court.

(b) Allegation of capital or violent offense. A child alleged to have committed an offense over which the Superior Court has exclusive or concurrent jurisdiction under subsection (b) of Code Section 15-11-28 shall be detained pending a commitment hearing under Code Sections 17-6-15 and 17-6-16 and Articles 1, 2, and 8 of Chapter 7 of Title 17 or an indictment only in a facility described in paragraphs (1) through (3) of subsection (a) of this Code section unless it appears to the satisfaction of the court in which the case is pending that public safety and protection reasonably require detention in the jail and the court so orders, but only where the detention is in a room separate and removed from those for adults and constructed in such a way that there can be no physical contact between a child and an adult offender.

(c) Transfer following indictment. Following an indictment for an offense over which the Superior Court has exclusive or concurrent jurisdiction under subsection (b) of Code Section 15-11-28 or following the transfer of a case to any court for criminal prosecution under Code Section 15-11-30.2, the child shall be held only in a facility described in paragraphs (1) through (3) of subsection (a) of this Code section unless it appears to the satisfaction of the Superior Court that public safety and protection reasonably require detention in the jail and the court so orders, but only where the detention is in a room separate and removed from those for adults and constructed in such a way that there can be no physical contact between a child and an adult offender.

(d) Notification of court by official of jail. The official in charge of a jail or other facility for the detention of adult offenders or persons charged with crime shall immediately inform the Juvenile Court or a duly authorized officer of the Juvenile Court if a person who is or appears to be under the age of 17 years is received at the facility and shall bring him or her before the court upon request or deliver him or her to a detention or shelter care facility designated by the court; provided, however, the official in charge of a jail or other facility for the detention of adult offenders or persons charged with a crime shall immediately inform the court in which the case is pending or a duly authorized officer of such court if a person who is

or appears to be 13 to 17 years of age and who is alleged to have committed any offense enumerated in subparagraph (b)(2)(A) of Code Section 15-11-28 is received at the facility and shall bring him or her before the court upon request or deliver him or her to a detention facility designated by the court. Such child shall not be held in the jail but may be held in a temporary holding area outside of the jail constructed as such for not longer than six hours pending transfer to the detention facility. For purposes of this Code section, the term "jail" shall include not only the cells, but any other secured area of the jail adjacent to the cells in which adult offenders are held or through which they are transported.

(e) Allegation of unruliness. A child unruly or alleged to be unruly who has not been released from custody as provided in subsection (e) of Code Section 15-11-47 may be detained or placed in shelter care only in the facilities stated in paragraphs (1) and (2) of subsection (a) of this Code section or in a secure juvenile detention facility for a period not to exceed 72 hours; provided, however, upon written order of the judge having jurisdiction of the case and upon good cause shown, a child alleged to be unruly may be detained for one additional period not to exceed 48 hours; provided, further, that no child alleged to be or found to be unruly who has not previously been adjudicated unruly may be detained in a secure juvenile detention facility unless such child is alleged to be under the court's jurisdiction as provided in subparagraph (D) of paragraph (12) of Code Section 15-11-2 and then shall be detained in that facility only so long as is required to effect the child's return home or to ensure the child's presence at a scheduled court appearance when the child has previously failed to appear for a scheduled court appearance. In the event a child alleged to be unruly comes within the purview of the Interstate Compact on Juveniles and the proper authorities of a demanding state have made an official return request to the proper authorities of this state, the Interstate Compact on Juveniles shall apply to the child.

(f) Allegation of deprivation. A child alleged to be deprived may be placed in shelter care only in the facilities stated in paragraphs (1) and (2) of subsection (a) of this Code section or in a shelter care facility operated by the court. The actual physical placement of a child pursuant to this subsection shall require the approval of the judge of the Juvenile Court or his or her designee.

(g) Data to be maintained. All facilities that detain children for pretrial detention shall maintain the following data on each child detained:

(1) Name;
(2) Date of birth;
(3) Sex;
(4) Race;
(5) Offense or offenses for which being detained;
(6) Date of and authority for confinement;
(7) Date of and authority for release or transfer; and
(8) Where transferred or to whom released.

Such data shall be recorded and retained by the facility for three years and shall be made available for inspection during normal business hours by any court exercising Juvenile Court jurisdiction, by the Department of Juvenile Justice, by the Department of Corrections, and by the Georgia Council of Juvenile Court Judges.

15-11-49 Release of detained child - informal detention hearing.

(a) If a child is brought before the court or delivered to a detention or shelter care facility designated by the court, the intake or other authorized officer of the court shall immediately make an investigation and release the child unless it appears that the child's detention or shelter care is warranted or required under Code Section 15-11-46.

(b) If a child is so released and the case is to be prosecuted further other than by informal adjustment, a petition under Code Section 15-11-38.1 shall be made and presented to the court within 30 days.

(c)(1) If a child alleged to be delinquent is not so released, an informal detention hearing shall be held promptly and not later than 72 hours after the child is placed in detention or shelter care to determine whether detention or shelter care of the child is required under Code Section 15-11-46, provided that, if

the 72 hour time period expires on a Saturday, Sunday, or legal holiday, the hearing shall be held on the next day which is not a Saturday, Sunday, or legal holiday.

(2) If a child alleged to be unruly is not so released, the informal detention hearing shall be held promptly and not later than 72 hours after the child is placed in detention or shelter care as provided in subsection (e) of Code Section 15-11-48.

(3) If a child alleged to be deprived is not so released, the informal detention hearing shall be held promptly and not later than 72 hours after the child is placed in shelter care as provided in subsection (f) of Code Section 15-11-48, provided that, if the 72 hour time period expires on a Saturday, Sunday, or legal holiday, the hearing shall be held on the next day which is not a Saturday, Sunday, or legal holiday.

(4) Reasonable notice of the hearing specified in this subsection, either oral or written, stating the time, place, and purpose of the detention hearing, shall be given to the child and, if they can be found, to the child's parents, guardian, or other custodian. In the event the child's parents, guardian, or other custodian cannot be found, the court shall forthwith appoint a guardian ad litem. Prior to the commencement of the hearing, the court shall inform the parties of their right to counsel and to appointed counsel if they are indigent persons and of the child's right to remain silent with respect to any allegations of delinquency or unruly conduct.

(d) If the child is not so released and a parent, guardian, custodian, or guardian ad litem has not been notified of the hearing and did not appear or waive appearance at the hearing and files the affidavit of such person showing these facts, the court shall rehear the matter without unnecessary delay and shall order the child's release unless it appears from the hearing that the child's detention or shelter care is required under Code Section 15-11-46.

(e) If the child is not so released, a petition under Code Section 15-11-38.1 shall be made and presented to the court within 72 hours of the detention hearing; provided, however, that, if the child not so released is alleged to be a deprived child, a petition under Code Section 15-11-38.1 shall be made and presented to the court within five days of the detention hearing.

15-11-49.1 Order for immediate custody.

If it appears from a filed affidavit or from sworn testimony before the court that the conduct, condition, or surroundings of the child are endangering the child's health or welfare or those of others or that the child may abscond or be removed from the jurisdiction of the court or will not be brought before the court, notwithstanding the service of the summons, the court may endorse upon the summons an order that a law enforcement officer shall serve the summons and take the child into immediate custody and bring the child forthwith before the court.

15-11-55.1 Notice of deprivation proceedings.

In advance of any hearing or other proceeding to be held with respect to a child pursuant to Code Section 15-11-55 or a deprivation hearing to be held with respect to a child pursuant to paragraph (3) of subsection (c) of Code Section 15-11-49 and Code Sections 15-11-39 and 15-11-39.2, the court shall provide notice or shall direct that a party shall provide notice of such hearing or other proceeding, including their right to be heard at such hearing or other proceeding, to the foster parents of the child, and to any pre-adoptive parents or relatives providing care for the child, consistent with the form and timing of notice to parties; provided, however, that this provision shall not be construed to require a foster parent, pre-adoptive parent, or relative caring for the child to be made a party to the hearing solely on the basis of such notice and right to be heard.

§ 15-11-55. (Excerpt) Disposition of Deprived Child

(a)(2)(B) Except for dispositions pursuant to paragraph (1) of subsection (a) of Code Section 15-11-66 and Code Section 15-11-67, within 30 days after the removal of a child from the custody of the parent or parents of the child, the Department of Human Services shall exercise due diligence to identify a parent or relative of the child or other persons who have demonstrated an ongoing commitment to the child All identified adult relatives of the child, subject to exceptions due to family or domestic violence, shall be provided with notice:

(i) Specifying that the child has been or is being removed from parental custody;
(ii) Explaining the options the relative has to participate in the care and placement of the child and any options that may be lost by failing to respond to the notice;
(iii) Describing the process for becoming an approved foster family home and the additional services and supports available for children placed in approved foster homes; and
(iv) Describing any financial assistance for which the relative may be eligible.
(C) The results of such search and notification shall be documented in writing and filed with the court by the time of the first review. During such 30 day period, the court may order that the child be placed in the temporary legal custody of the Department of Human Services or any other appropriate entity or person.
(D) The court shall order in its preliminary disposition that the parent or other legal guardian of the child shall provide within ten days the names and addresses of all relatives and other persons who might be considered as possible placements for the child. The parties shall have an ongoing duty to supplement this information during the course of the case at each judicial review or citizen panel review. The court shall include in all published summons a notice that this information must be provided.

Summary of O.C.G.A. §15-11-58 Reasonable efforts to reunify family	
Reasonable Efforts (RE) (a)	The types of reasonable efforts required by DFCS o To preserve & reunify families prior to placement in DFCS custody o To prevent or eliminate the need for removal of the child from the home o To make it possible for the child to return to the home The circumstances when reasonable efforts are NOT required (i.e. Non-Reunification) o parent committed murder or voluntary manslaughter of another child o parent convicted of murder or voluntary manslaughter of the other parent o parent committed felony assault on the child causing serious bodily injury o involuntary termination of parental rights to a sibling Permanency Hearing requirements when Non-Reunification is pursued by DFCS hearing within 30 days, Concurrent Case Planning allowed & Reasonable Efforts to finalize permanency
RE for Sibling Joint Placement § 15-11-58 (c)(7)	**§ 15-11-58(c)(7)** DFCS must use RE to place siblings together in the same placement unless DFCS documents that joint placement of siblings would be contrary to the safety or well-being of any of the siblings and when siblings are not jointly placed that there is ongoing frequent visitation or other interaction, DFCS such sibling contact would be contrary to the safety or well-being of any of the siblings
Educational Stability Assurance	**§ 15-11-58(c)(8)** DFCS must make an assurances: that the child's placement considers the appropriateness of the current educational setting and the proximity to the school in which the child is enrolled at the time of placement; that DFCS has coordinated with appropriate local educational agencies to ensure that the child remains in the school in which the child is enrolled at the time of placement; or when remaining in the same school is not in the child's best interests the DFCS and the local educational agencies have cooperated to assure the immediate and appropriate enrollment in a new school, with all of the educational records of the child provided to the new school

§ 15-11-58. Reasonable Efforts to Reunify Family
(a) A court's order removing a child from the child's home shall be based upon a finding by that court that continuation in the home would be contrary to the welfare of the child. If the court places custody of the child in the Division of Family and Children Services of the Department of Human Services, the court shall also determine as a finding of fact whether reasonable efforts were made by the Division of Family and Children Services of the Department of Human Services and any other appropriate agencies to preserve and reunify families prior to the placement of a child in the custody of the Department of Human Services, to prevent or eliminate the need for removal of the child from that child's home, and to make it possible for the child to return safely to the child's home. Such findings shall also be made at every subsequent review of the court's order under this chapter.

(1) In determining reasonable efforts to be made with respect to a child, as described in this subsection, and in making such reasonable efforts, the child's health and safety shall be the paramount concern;
(2) Except as provided in paragraph (4) of this subsection, reasonable efforts shall be made to preserve and reunify families:
(A) Prior to the placement of a child in the custody of the Department of Human Services, to prevent or eliminate the need for removing the child from the child's home; and
(B) To make it possible for a child to return safely to the child's home;
(3) If continuation of reasonable efforts of the type described in paragraph (2) of this subsection is determined to be inconsistent with the permanency plan for the child, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child;
(4) Reasonable efforts of the type described in paragraph (2) of this subsection shall not be required to be made with respect to a parent of a child if a court of competent jurisdiction has determined that:
(A) The parent has subjected the child to aggravated circumstances which may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse;
(B) The parent has:
(i) Committed murder of another child of the parent;
(ii) Been convicted of the murder of the other parent of the child;
(iii) Committed voluntary manslaughter of another child of the parent;
(iv) Aided or abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of another child of the parent; or
(v) Committed a felony assault that results in serious bodily injury to the child or another child of the parent; or
(C) The parental rights of the parent to a sibling have been terminated involuntarily;
(5) If reasonable efforts of the type described in paragraph (2) of this subsection are not made with respect to a child as a result of a determination made by a court of competent jurisdiction in accordance with paragraph (4) of this subsection:
(A) A permanency hearing in accordance with subsection (o) of this Code section shall be held for the child within 30 days after such determination; and
(B) Reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child; and
(6) Reasonable efforts to place a child for adoption or with a legal guardian may be made concurrently with reasonable efforts of the type described in paragraph (2) of this subsection.

(c) If the report contains a plan for reunification services, such plan if adopted by the court shall be in effect until modification by the court. The plan shall address each reason requiring removal and shall contain at least the following:
(1) The purpose for which the child was placed in foster care, including a statement of the reasons why the child cannot be adequately protected at home and the harm which may occur if the child remains in the home, and shall also include a description of the services offered and the services provided to prevent removal of the child from the home;
(2) A discussion of how the plan is designed to achieve a placement in a safe setting that is the least restrictive, most family-like, and most appropriate setting available and in close proximity to the home of the parents, consistent with the best interests and special needs of the child;
(3) A clear description of the specific actions to be taken by the parents and the specific services to be provided by the Division of Family and Children Services of the Department of Human Services or other appropriate agencies in order to bring about the identified changes that must be made in order for the child to be safely returned home; provided, however, that all services and actions required of the parents which are not directly related to the circumstances necessitating separation cannot be made conditions of the return of the child without further court review;
(4) Specific time frames in which the goals of the plan are to be accomplished to fulfill the purpose of the reunification plan;
(5) The person within the Division of Family and Children Services of the Department of Human Services or other agency who is directly responsible for ensuring that the plan is implemented;

(6) Consideration of the advisability of a reasonable visitation schedule which allows the parents to maintain meaningful contact with their children through personal visits, telephone calls, and letters;
(7) A statement that reasonable efforts have been made and a requirement that reasonable efforts shall be made for so long as the child remains in the custody of the department:
(A) To place siblings removed from their home in the same foster care, kinship, guardianship, or adoptive placement, unless the Division of Family and Children Services documents that such a joint placement would be contrary to the safety or well-being of any of the siblings; and
(B) In the case of siblings removed from their home who are not so jointly placed, for frequent visitation or other ongoing interaction between the siblings, unless the Division of Family and Children Services documents that such frequent visitation or other ongoing interaction would be contrary to the safety or well-being of any of the siblings;
(8) Provisions ensuring the educational stability of the child while in foster care, including:
(A) An assurance that the placement of the child in foster care takes into account the appropriateness of the current educational setting and the proximity to the school in which the child is enrolled at the time of placement;
(B) An assurance that the state agency has coordinated with appropriate local educational agencies to ensure that the child remains in the school in which the child is enrolled at the time of placement;

Uniform Rules for the Juvenile Courts of Georgia
Rule 4
COMMENCEMENT OF PROCEEDINGS
4.1 Receipt of Complaint and Petition.
(a) Initiation of Proceedings. In all proceedings over which the Juvenile Court has jurisdiction, such proceedings shall be initiated in the Juvenile Court upon the receipt of a written juvenile complaint form, petition, transfer from another court, a uniform traffic citation, or a Georgia Natural Resources/Game and Fish Division Notice of Summons which shall be submitted to the court and shall be referred to an intake officer of the court.

(b) Preliminary Determination as to Filing Petition. The intake officer shall not have the authority to refuse to accept a complaint. However, the intake officer shall make a preliminary determination as to whether a petition shall be filed. If the allegations appear to be legally sufficient for the filing of a petition, and it further appears that judicial action is in the best interest of the public and the child within guidelines established by the court, the intake officer may endorse a petition. The intake officer may elect to informally adjust, divert, or recommend dismissing the case, within guidelines established by the court.

(c) Filing of Complaints and Petitions. All complaints or petitions shall be filed and docketed with the clerk of Juvenile Court. The clerk shall record the date and time of filing upon each and every copy of the complaint form.

(d) Completion of Form JUV-2 Required. The complaint alleging delinquency, deprivation, or unruliness may be made by any person, including a law enforcement officer, who has knowledge of the facts alleged or is informed and believes they are true. However, in all cases in which a proceeding is initiated by other than a complaint, the form JUV-2 shall be completed by the person bringing the action and shall accompany the initiating document. In all cases where a petition references a prior court order, a copy of such prior court order shall be attached to the petition. For uniform traffic citations and Georgia Natural Resources/Game and Fish Division Notice of Summonses, the form JUV-2 shall be completed by court personnel designated by the judge.

4.2 Screening Process.
Before a petition is filed, the intake officer shall screen the complaint. This may result in a decision to recommend dismissal to the judge or associate judge, to make a referral to another agency for services, if appropriate, to informally adjust the case, to file a petition, or to take other appropriate action. Factors involved in the process of screening the complaint shall include:
1. Whether the complaint is one over which the court has jurisdiction;
2. Whether the complaint is frivolous;

3. Whether the child should be detained pending a hearing and, if so, where he or she should be detained;
4. Whether the child's case can be informally adjusted;
5. Whether the child should be diverted to an agency that meets his or her needs; and
6. If a petition should be filed with the court.

Uniform Rules for the Juvenile Courts of Georgia
Rule 8
DETENTION HEARING

8.1 Purpose.
The purposes of the detention hearing are to determine whether a child who has been taken into custody shall be released or detained pending further court proceedings, and if reasonable grounds exist to believe that the allegations in the complaint or petition are true. The detention hearing shall be informal and hearsay may be allowed.

8.2 Notice.
The person taking a child into custody shall promptly give notice thereof, together with a statement of the reason for taking the child into custody, to a parent, guardian or other custodian and to the court. Any temporary detention or questioning of the child necessary to comply with this rule shall conform to the procedures and conditions prescribed by the Juvenile Proceedings Code and guidelines of the court.

8.3 Commencement of Hearing.
Prior to the commencement of the detention hearing the court shall inform the parties of their right to counsel and their right to have counsel appointed by the court if they are indigent. The child shall also be informed of his or her right to remain silent with respect to any allegation of delinquent or unruly conduct.

8.4 Conditional Release.
If a child is released from detention without bond pending further hearings on the charges, the court may specify certain conditions of release (e.g., curfews, school attendance).

8.5 Violation of Conditions.
If a court officer finds that the child has violated his or her conditional release from detention, the officer may take the child into custody and return the child to detention. If the child is detained, the officer shall file a complaint stating what the child did to violate the conditional release and give a copy of the complaint to the intake worker at the detention center. Said child is entitled to a hearing on whether the child has violated the conditions of release.

8.6 Continuance.
On the motion of the court or that of a party, the court may continue a
detention hearing for a reasonable period to receive reports and other evidence bearing on the need to detain the child. In this event, the court shall make an appropriate order for detention of the child or release of the child from detention subject to supervision of the court during the period of continuance. In scheduling investigations and hearings, the court shall give priority to proceedings in which a child is in detention or has otherwise been removed from home before an order of disposition has been made. A request for continuation by a party or a party's counsel beyond these limits shall be considered as a waiver of the right to a hearing within the appropriate time limits.

Chapter 3 Adjudication – Formal Hearing – 10 Day Hearing

Authority	**O.C.G.A. § 15-11-39, 15-11-39.1, 15-11-39.2 & 15-11-54,** **Uniform Rules For The Juvenile Courts Of Georgia, Rules 6 & 11**
Purpose	To determine whether there is clear and convincing evidence the child is presently deprived
Pleading	o Petition, verified by petitioner & endorsed by court officer o Filed within 5 days of PCH (not waiveable) o Late filing - cure is to start over w/ new safekeeping, See *In the Interest of E.C.*, 291 Ga. App. 440, 662 S.E.2d 252 (2008) holding a dismissal without prejudice is remedy when petition is not filed within 5 days of the deprivation probable cause hearing o Contains specific statement of factual allegations
Jurisdiction	**O.C.G.A. § 15-11-28(a)(1)** o Child under 18 years alleged to be deprived in state
Venue	**O.C.G.A. § 15-11-29** o Child present in the county when action commenced o Found in the county o Custodial parents residence **Except** a pre-adjudication transfer from the county in which the child was found at the commencement of the action to the county in which the child resides. For the convenience of the parties & witnesses, the Court may transfer (at the request of a party or on its own motion) the case to the county of the child's residence. Certified copies of all legal and social documents and records pertaining to the proceeding on file with the clerk of court shall accompany the transfer. See Chapter 18
Timing	o Set & heard within ten days of Petition filing o May be waived to be set at same time as disposition hearing, if waiver on record & good cause shown **Continued Adjudication**, o Child removed – must be heard within 30 days of removal, may be waived o Child w/ parent – must be heard within 60 days of petition filing, may be waived **Provisional Hearing, O.C.G.A. § 15-11-39.2,** may be held where: o One of the legal parents (or party) is present before the Court at the Provisional Hearing and the other legal parent (or party) is being served by **publication,** o Child is personally before the Court at the Provisional hearing, and o Final Hearing is noticed in the publication & o Final Hearing is held following completion of publication
Parties	o DFCS, mother, father (legal or putative), Special Assistant Attorney General (SAAG), Child Attorney, legal guardian, Attorney for parent, CASA, o Age appropriate children, child may be excluded **O.C.G.A. § 15-11-78 (a)**
Service	**O.C.G.A. § 15-11-39.1, Civil Practice Act § 9-11-4 & § 9-11-5,** o Formal service required – summons & copy of petition o Party may waive if on record & by appearance at hearing, party must make objections to service on the record o Personal service to parent / legal custodian - whereabouts known within state, then service must be perfected at least 24 hours prior to the hearing o Certified/registered mail, overnight delivery to parent / legal guardian – if within the State but cannot be found but address is known or can with diligence be ascertained then service must be perfected at least 5 days prior to the hearing

	○ Personal, certified/registered mail, overnight delivery to parent / legal guardian – if outside the State where address is known or can with diligence be ascertained, then service must be perfected at least 5 days prior to the hearing ○ Publication if after reasonable efforts to locate the parent, the whereabouts continue to be unknown, then service must be perfected by publication once a week for 30 days with the hearing set no sooner than 5 days after the last publication date See Chapter 17 for **O.C.G.A. § 9-11-4 & § 9-11-5**
Notice to Non Parties	**O.C.G.A. § 15-11-55.1** Notice of hearing to foster parents of the child, pre-adoptive parents or relatives caring for the child. Notice to be consistent with form & timing of notice to parents. These persons do not become parties to the action but do have the right to be heard during the proceeding.
Standard of Proof	Clear & Convincing evidence of deprivation Rules of evidence apply
Right to Attorney	**O.C.G.A. §15-11-6 Party / Parent** ○ Parents/legal guardian should be advised of right to counsel on the record ○ If indigent, right to appointed counsel or a clear waiver on the record ○ If non-indigent, then did parent exercise reasonable diligence to obtain an attorney, court findings should be on the record (In the Interest of P.D.W. et al.,children. 296 Ga. App. 189, 674 S.E.2d 338 (2009)) ○ Inquiry about incarcerated parents, transport to hearings? ○ Father, legal or putative, right to counsel? **O.C.G.A. §15-11-6(b) Child's Right to Counsel** Counsel must be provided for a child not represented by the child's parent, guardian, or custodian. ○ Courts & Judges vary on the interpretation of the child's right to representation in deprivation cases; this issue is being addressed on a statewide basis, contact Georgia Association of Counsel for Children found at www.gaccchildlaw.org for further information ○ Attorneys appointed to represent the child in a deprivation case should obtain an Order of Appointment from the Judge which outlines and clarifies the role and duties the Judge is appointing the attorney to fulfill ○ See also the child's right to effective attorney representation in the February 7, 2005 order entered by Federal District Judge Marvin Shoob in the *Kenny A. v. Perdue* case, *Kenny A. v. Perdue et. al*., 356 F.Supp.2d 1353 (N.D. Ga. 2005)
Reasonable Efforts	○ To prevent removal, preserve family ○ To reunify family where removal was necessary **UNLESS** case qualifies as **NON-REUNIFICATION** ○ **O.C.G.A. § 15-11-58(a)(4) & (5)** See Chapters 9 & 12
RE for Sibling Joint Placement	**§ 15-11-58(c)(7)** DFCS must use RE to place siblings together in the same placement unless DFCS documents that joint placement of siblings would be contrary to the safety or well-being of any of the siblings and when siblings are not jointly placed that there is ongoing frequent visitation or other interaction, DFCS such sibling contact would be contrary to the safety or well-being of any of the siblings
Educational Stability Assurance	**§ 15-11-58(c)(8)** DFCS must make an assurances: that the child's placement considers the appropriateness of the current educational setting and the proximity to the school in which the child is enrolled at the time of placement; that DFCS has coordinated with appropriate local educational agencies to ensure that the child remains in the school in which the child is enrolled at the time of placement; or when

	remaining in the same school is not in the child's best interests the DFCS and the local educational agencies have cooperated to assure the immediate and appropriate enrollment in a new school, with all of the educational records of the child provided to the new school
90 Day Transition Plan	**§ 15-11-58(c)(9)** During the 90 period prior to the foster child reaching 18, DFCS to assist & support child in developing a personalized transition plan to includes specific options on housing, health insurance, education, local opportunities for mentors and continuing support services, work force supports and employment services
Stipulation	o Parents / legal custodian may negotiate a stipulation to certain facts in the petition which would result in a finding of deprivation o A particular disposition may also be negotiated o Court must approve stipulation and will require presentation of a prima facie case on the record with competent evidence o When presenting a "conditional" stipulation to the Court, attorneys should reserve, on the record, the right to withdraw the stipulation in the event the Court does not approve the negotiated terms of the stipulation including dispositional or Case Plan terms; the Court is not bound by the parties agreement [In re R.J.M., 295 Ga.App. 886, 673 S.E.2d 527 (2009)] o Stipulated facts **MUST** address all risk factors to the child so that an adequate **Case Plan** will be developed, See Chapter 13 o Possible to stipulate to some facts and have a hearing on other facts o The Court findings of facts control the **Case Plan; the Case Plan once adopted by the Court controls** the direction of the case, when & how a the child is reunified to parent, or other permanency options o Could child be returned to the parents with DFCS services possibly under a **Protective Order O.C.G.A. § 15-11-11** provides Court supervision of parental/custodian compliance with safety plan or Case Plan, See Chapter 6 o The deprivation orders obtained through stipulation are usually not appealed by the parents. In termination of parental rights cases, the State frequently presents prior **unappealed deprivation orders** to meet the first & second elements of *parental misconduct or inability* in TPR analysis (*the child is presently deprived & lack of proper parental care or control is the cause of the deprivation).* When stipulating to a deprivation petition early in a case, always consider the effect the stipulation might have on a subsequent TPR. Parent attorneys might consider announcing to the Court that the stipulation is being offered for a limited purpose only AND is being made upon the condition that the stipulation & the resulting deprivation order will NOT be used in any subsequent TPR action between the same parties. Below in the "Practice Points" is further clarification of the limitations of the using the unappealed deprivation order.
Decision Points	o Petition sustained or stipulated or dismissed o If Petition sustained, who gets custody? Is **Disposition** now or later? o If Petition sustained but child goes home, are there conditions to the child returning home? – **Protective Order, O.C.G.A. § 15-11-11,** & is the Court going to review compliance with the Protective Order? o If Petition sustained, is custody going to someone other than DFCS? **Custody to Third Party, O.C.G.A. § 15-11-55 (a)(2)(A)** o Court Order **MUST** contain specific finding of facts supporting finding of deprivation with specific conclusions of law; orders which do not contain specific findings of fact & conclusions of law are subject to being vacated & remanded by

	the Court of Appeals, o What specific actions must parent take to have child returned; what actions are necessary to move the child to permanency o Reasons for removal – identify issues (drugs, mental health, neglect, physical abuse, sexual abuse, abandonment) – specific findings o Contrary to the welfare – specific findings o Visitation b/n child & parent, child & other family (sibling) o Relative resources to be explored, home evaluation o Immediate service needs of child or family (medical / educational) o Would DFCS services expedite return? If so, which services are needed & for how long? o Absent parents, name & whereabouts, legal status o Does Father need to **Legitimate?** DNA Testing o Should a **CASA** be appointed? **O.C.G.A. § 15-11-9.1** o Is Poverty / Homelessness an issue? Is this maltreatment or neglect? o If perpetrator is unknown, identity of perpetrator may be condition precedent to return of child to home o If deprivation result of parental drug / alcohol abuse, 6 consecutive months of random clean screens <u>may</u> be ordered by the Court as a condition precedent to return of child to home **O.C.G.A. § 15-11-55(f)** – this is discretionary for the Court but DFCS policy requires 6 months clean screens, Court may override DFCS policy, See Chapter 31 for DFCS Policy 2102.9 & 2109.19 o Reasons for Removal, the articulated risk of harm the child would be subject if returned to the home should remain constant and each risk should be addressed in the Case Plan; if new or different risks are identified by DFCS after the adjudication then a new petition should be filed & another hearing should be held to consider the newly identified risks to the child; due process requires the parent is given notice & an opportunity to be heard o Set **Disposition** hearing date o CASA Appointment **O.C.G.A. § 15-11-9.1**
Order	**O.C.G.A. § 15-11-54** o Juvenile Court orders should contain explicit, case specific findings of fact and conclusions of law as to each element of deprivation o If the Court finds the child deprived, the Court shall also indicate whether the deprivation was the result of parental drug or alcohol abuse **O.C.G.A. § 15-11-55(f)** o If the Court finds the deprivation was the result of parental drug or alcohol abuse, the Court MAY require that custody cannot be returned to the parent until the parent undergoes substance abuse treatment and produces 6 consecutive months of clean, random and negative substance abuse screens

Documents / Information Needed	○ Placement of child, any disruptions to placements ○ Release of information for child or parent, general HIPPA release order ○ Reports from: forensic eval / psych eval / medical & dental screen or exam ○ Progress of **CCFA** – due 30 days after removal? ○ Home evaluations of relative placement options ○ **Case Plan** due 30 days after removal ○ Photos / police reports / criminal records ○ Birth Certificate of child ○ MDT – Multidisciplinary Team Meeting scheduled???
Dismissal	○ If DFCS asks for a dismissal, then testimony or written statement as to how child is no longer at risk ○ Is there a Safety Plan signed by offending parent? if yes, it should be submitted as an exhibit to support dismissal ○ Does Court order the opening of a CPS case or wraparound services for a specific period of time? CPS may be referred to as Family Preservation Services (FPS) ○ Verify child is not afraid to go home ○ In lieu of an outright dismissal, suggest child be returned to the parents, DFCS put services in place, leave Petition open, & all parties come back to court to confirm services have adequately addressed risk factors & then dismissal ○ If Court dismisses Petition after hearing evidence, Court may still request DFCS services or CPS (FPS) referral
Continuance	○ Need to state specific reasons for continuance on the record & in continuance order, what are the expected case actions during the continuance period • Further investigation • Necessary witness • Service / notice on parties • Begin services to allow child to return home • Home evaluation of relative

Change of Placement Notification	**O.C.G.A. § 15-11-55(d)** Placement Stability for children in foster care is addressed in this statute by mandating 5 day advance notice of proposed changes in placement to: • The child (if 14 years or older) • The child's legal representative • The court • Parents (guardian) & • All attorneys of record o Any of the noticed parties or the Court may "request a hearing with regard to the child's Case Plan or the permanency plan in order for the court to consider the change in the location of the child's placement and any changes to the Case Plan or permanency plan resulting from the child's change in placement" o At a "Change of Placement" hearing the Court should consider DFCS proposed Case Plan & permanency plan recommendations which includes placement changes; the Court then should then either accept or reject the DFCS plan including findings of fact "upon which the court relied in determining to reject or accept the Case Plan or permanency plan" o If the DFCS plan is rejected, then the Court may order DFCS to "devise a new Case Plan and permanency plan recommendation, including a new recommendation as to the location of the child within the resources of the department, or make any other order relative to placement or custody outside the Department of Human Resources as the court finds to be in the best interest of the child and consistent with this subsection o Placement or a change of legal custody by the Court outside the Department of Human Resources relieves DFCS of further responsibility for or custody of the child
Child Support	**O.C.G.A. § 15-11-28 (c)(2)(A) & (B)** o Juvenile Court has concurrent jurisdiction to order temporary child support where there is a finding of deprivation & there is NOT an existing child support order from Superior Court o Juvenile Court may only modify the terms of an existing child support order to direct payments to the current caretaker of the child o If there is not an existing child support order, then the parental obligation to pay child support should be addressed in the Juvenile Court at the adjudication or disposition. Failure to address child support at the deprivation hearing does NOT alleviate the parental obligation to pay child support o The child support issue will likely be part of the Case Plan or pursued through the child support services unit of DHR o Even where child support is not ordered by any court, the Court of Appeals routinely holds that a parent has an obligation to support their children in DFCS custody regardless of whether the parent is under a court order to do so o The parent's failure to pay child support may be used as a factor to support a termination of the parent rights to the child o Parent attorneys might request a minimal child support amount or a time-limited child support abeyance to allow parents to use all possible resources to work on the Case Plan o Case Law involving Child Support in deprivation & termination cases Child Support Cases

	○ Georgia law requires a parent to financially support his or her child while the child is in foster care, even in the absence of a court order and even if unable to earn income. *In the Interest of A. R. A. S.* , 278 Ga. App. 608, 613 (2) (c) (629 SE2d 822) (2006), *In the Interest of T. H.* , 290 Ga. App. 421, 425 (1) (c) (659 SE2d 813) (2008) ○ Parent's failure to pay child support "is compelling evidence that [they are] not an able parent." *In the Interest of T. G. Y.* , 279 Ga. App. 449, 451 (1) (631 SE2d 467) (2006) ○ On appeal, the State argues that the father did not pay child support while S. M. W. was in foster care, "even though he was ordered to do so." We see no evidence in the record that the father was ever ordered to pay child support. While a parent has a duty to support a child in foster care even absent a court order, *In the Interest of R. W.*, 248 Ga. App. 522, 525 (2) (546 SE2d 882) (2001), under the circumstances here, where no specific amount was ordered by the juvenile court, we do not find that the failure to pay child support, standing alone, justifies the termination of parental rights. *In the Interest of S. M. W.*, 287 Ga. App. 288 (2007). In Re S.M.W. reversed a TPR which was based on the father's failure to pay child support; the father had substantially complied with his other Case Plan goals: received a substance abuse assessment, regularly participated in drug and alcohol treatment, tested negative for drugs and had obtained sufficient housing. ○ *"*a parent's failure to pay child support is compelling evidence that the parent is not an able parent*"* *In the Interest of T. B.*, 267 Ga. App. 484, 486-487 (1) (600 SE2d 432) (2004)
Diligent Search & Notice to Relatives or Others w/ Ongoing Relationship **§15-11-55(a)**	**§15-11-55(a)(2)(B)** within 30 days of the child's removal DFCS shall exercise due diligence to identify a parent or relative or other persons who have demonstrated an ongoing commitment to the child who shall be provided a notice that: (i) child has been or is being removed from parental custody; (ii) explains options the relative has to participate in the care / placement of the child and any options that may be lost by failing to respond to the notice; (iii) describes the process for becoming a foster family home and the additional services and supports available for children placed in approved foster homes; & (iv) describes any financial assistance the relative may be eligible. The results of the Diligent Search & Notice shall be documented in writing and filed with the court by the time of the first review.
Parent to Provide Relative Information – § 15-11-55(a)	**§15-11-55(a)(2)(D)** court shall order in preliminary disposition that the parent or other legal guardian shall provide <u>within ten days</u> the names and addresses of all relatives and other persons who might be considered as possible placements for the child, this is an <u>ongoing parental responsibility and duty</u> to supplement relative information at each judicial review or citizen panel review.

Practice Points

- How does parental behavior impact welfare of child? DFCS must show causal relationship between parent conduct & harm to the child
- Child & Parent Attorneys should receive copies of any document or exhibit submitted into evidence
- For any child <u>under 3 years</u> with a finding of deprivation**<u>, MUST</u>** have a Babies Can't Wait (BCW) referral for developmental assessment & referral for BCW services; may need to be included in adjudicatory Order
- For any child <u>over 14 years</u>, the Case Plan **<u>MUST</u>** include a referral & plan for Independent Living Services and Written transitional Living Plan; may need to be included in the adjudicatory order
- Was child present for Court? Did Child want to attend Court Hearing? Was Child position presented to the Court? How will child be advised of the outcome of court hearing if child not present.
- Change of Placement Notification requirements [**O.C.G.A. § 15-11-55(d)]** should be monitored by child & parent attorneys - this is NOT a discretionary function for DFCS but it is often not followed or adequately addressed

- **O.C.G.A. § 15-11-41** requires all hearings to be recorded by stenographic notes, electronic or mechanical recording unless waived by the child and the child's parent, guardian or attorney; See *In the Interest of D.P*. 284 Ga. App. 453, 644 S.E. 2d 299 (2007)where a deprivation case was reversed and remanded because there was not a transcription of the hearing and there was not a waiver of transcription in the record
- **O.C.G.A. § 15-11-78 (a) (Exclusion of public from hearings; exceptions):** "Only the parties, their counsel, witnesses, persons accompanying a party for his or her assistance, and any other persons the court finds have a proper interest in the proceeding or in the work of the court may be admitted by the court." In re M.S., 295 Ga.App. 401, 671 S.E.2d 886 (2008) Affirmed Juvenile Court allowing the assistant district attorney, who was assigned to prosecute one of the parents for abuse to the child, to attend the child's deprivation hearing. The parent attorney objected, the child attorney did not object and the court held allowing the ADA in the courtroom was not detrimental to the child and within the judge's discretion pursuant to **O.C.G.A. § 15-11-78 (a)**
- **unappealed deprivation order**
  The Court of Appeals has repeatedly clarified the limitation of the "unappealed deprivation order".
- In the *Interest of R. C. M*., 284 Ga. App. 791, 798 (III) (1) fn. 6 (645 SE2d 363) (2007), the Court of Appeals stated:

  > *This truncated analysis overestimates the effect of unappealed deprivation orders. An unappealed order adjudicating a child deprived does indeed bind a parent to the finding that at the time of the order the child was deprived for the reasons given in the order. And where the Department shows that the conditions upon which an earlier finding of deprivation was based still exist at the time of the hearing on the termination petition, the fact that the parent did not appeal the earlier deprivation order will preclude the parent from challenging the allegation of current deprivation. But OCGA § 15-11-94 (b) (4) (A) requires the Juvenile Court to determine whether "[t]he child is a deprived child" —that is, at the time of the hearing on the petition for termination of parental rights —not whether the child has ever been a deprived child. In this case, the father's inability that supported earlier the initial finding of deprivation, that is, his absence due to incarceration, no longer existed at the time of the hearing on the termination petition. As a result, the father's failure to appeal the earlier deprivation orders did not preclude him from challenging the Juvenile Court's finding that the children were deprived at the time of the hearing on the termination petition. We remind all petitioners, Juvenile Courts, and our brethren on this Court to give due consideration to all the statutory elements in this process and not to presume that a child is deprived based on the faulty premise, "once deprived, always deprived."*

In a more recent case, the Court of Appeals stated "Applying this analysis, this Court has repeatedly held that unappealed deprivation orders bind the parents insofar as they establish that the existence of certain conditions (at the times those orders were entered) constituted a clear and convincing showing that the child was deprived as defined under the law; but only upon a further showing by the department that the conditions upon which this finding was based still exist at the time of the hearing on the termination petition will this criterion be met." *In the Interest of P. D. W.,* A09A0484, February 18, 2009, 09 FCDR 656 (03/13/09), See also *In the Interest of D. W.*, 294 Ga. App. 89, 92 (1) (a) (668 SE2d 533) (2008); *In the Interest of A. G.,* 293 Ga. App. 383, 386 (1) (667 SE2d 176) (2008); *In the Interest of B. T.,* 291 Ga. App. 604, 607 (a) (662 SE2d 656) (2008).

O.C.G.A. Code Sections

15-11-28 Jurisdiction of Juvenile Court.

(a) Exclusive original jurisdiction. Except as provided in subsection (b) of this Code section, the court shall have exclusive original jurisdiction over juvenile matters and shall be the sole court for initiating action:

(1) Concerning any child:

(A) Who is alleged to be delinquent;

(B) Who is alleged to be unruly;

(C) Who is alleged to be deprived;

15-11-29 Venue in juvenile proceedings.
(a) A proceeding under this article may be commenced in the county in which the child resides. If delinquent or unruly conduct is alleged, the proceeding may be commenced in the county in which the acts constituting the alleged delinquent or unruly conduct occurred. If deprivation is alleged, the proceeding may be brought in the county in which the child is present when it is commenced; provided, however, that for the convenience of the parties and witnesses, the court may transfer the proceeding to the county in which the child resides. If the proceeding is transferred, certified copies of all legal and social documents and records pertaining to the proceeding on file with the clerk of court shall accompany the transfer. A Juvenile Court judge, an associate Juvenile Court judge, a judge pro tempore of the Juvenile Court, or any person sitting as a Juvenile Court judge may conduct hearings in connection with any proceeding under this article in any county within the judicial circuit.

(b) When a Superior Court judge sits as Juvenile Court judge, hearings in connection with any proceeding under this article may be heard before the judge in any county within the judicial circuit over which the judge presides.

15-11-37 Preliminary determination - filing of petition.
A petition alleging delinquency, deprivation, or unruliness of a child shall not be filed unless the court or a person authorized by the court has determined and endorsed upon the petition that the filing of the petition is in the best interest of the public and the child.

15-11-38 Persons who may make petition.
Subject to Code Section 15-11-37, the petition alleging delinquency, deprivation, or unruliness of a child may be made by any person, including a law enforcement officer, who has knowledge of the facts alleged or is informed and believes that they are true.

15-11-38.1 Contents of petition - verification.
The petition shall be verified and may be on information and belief. It shall set forth plainly:

(1) The facts which bring the child within the jurisdiction of the court, with a statement that it is in the best interest of the child and the public that the proceeding be brought and, if delinquency or unruly conduct is alleged, that the child is in need of supervision, treatment, or rehabilitation, as the case may be;

(2) The name, age, and residence address, if any, of the child on whose behalf the petition is brought;

(3) The names and residence addresses, if known to petitioner, of the parents, guardian, or custodian of the child and of the child's spouse, if any; or, if neither the child's parents, nor the child's guardian, nor the child's custodian resides or can be found within the state or if their respective places of residence address are unknown, the name of any known adult relative residing within the county or, if there is none, the known adult relative residing nearest to the location of the court; and

(4) If the child is in custody and, if so, the place of his or her detention and the time the child was taken into custody.

15-11-39 Time for hearing - summons - waiver of service.
(a) After the petition has been filed the court shall set a hearing thereon, which, if the child is in detention, shall not be later than ten days after the filing of the petition. In the event the child is not in detention, the court shall set a hearing thereon which shall be not later than 60 days from the date of the filing of the petition.

(b) The court shall direct the issuance of a summons to the parents, guardian, or other custodian, a guardian ad litem, and any other persons who appear to the court to be proper or necessary parties to the proceeding, requiring them to appear before the court at the time fixed to answer the allegations of the petition. The summons shall also be directed to the child if he or she is 14 or more years of age or is alleged to be a delinquent or unruly child. A copy of the petition shall accompany the summons unless the summons is served by publication, in which case the published summons shall indicate the general nature of the allegations and where a copy of the petition can be obtained.

(c) The court may endorse upon the summons an order directing the parents, guardian, or other custodian of the child to appear personally at the hearing and directing the person having the physical custody or control of the child to bring the child to the hearing. In the event a parent, guardian, or other custodian of the child willfully fails to appear personally at the hearing after being ordered to so appear, or the parent, guardian, or other custodian of the child willfully fails to bring the child to the hearing after being so directed, the court may enter any order authorized by and in accordance with the provisions of Code Section 15-11-5.

(d) The summons shall state that a party is entitled to counsel in the proceedings and that the court will appoint counsel if the party is unable without undue financial hardship to employ counsel.

(e) A party other than the child may waive service of summons by written stipulation or by voluntary appearance at the hearing. If the child is present at the hearing, the child's counsel, with the consent of the parent, guardian, other custodian, or guardian ad litem, may waive service of summons in the child's behalf.

15-11-39.1 Service of summons - costs of service.
(a) If a party to be served with a summons is within this state and can be found, the summons shall be served upon him or her personally at least 24 hours before the hearing. If a party to be served is within this state and cannot be found but his or her address is known or can with reasonable diligence be ascertained, the summons may be served upon such party by mailing him or her a copy thereof by registered or certified mail or statutory overnight delivery at least five days before the hearing. If a party to be served is outside this state but he or she can be found or his or her address is known or his or her whereabouts or address can with reasonable diligence be ascertained, service of the summons may be made either by delivering a copy thereof to such party personally or by mailing a copy to him or her by registered or certified mail or statutory overnight delivery at least five days before the hearing.

(b) If, after reasonable effort, a party to be served with a summons cannot be found and such party's post office address cannot be ascertained, whether he or she is within or outside this state, the court may order service of the summons upon him or her by publication in accordance with Code Sections 9-11-4 and 9-11-5. The hearing shall not be earlier than five days after the date of the last publication.

(c) Service of the summons may be made by any suitable person under the direction of the court.

(d) The court may authorize the payment from county funds of the costs of service and of necessary travel expenses incurred by persons summoned or otherwise required to appear at the hearing.

15-11-39.2 Provisional hearing - summons served by publication.
(a) If service of summons upon a party is made by publication, the court may conduct a provisional hearing upon the allegations of the petition and enter an interlocutory order of disposition if:
(1) The petition alleges delinquency, unruly conduct, or deprivation of the child;
(2) The summons served upon any party:
(A) States that prior to the final hearing on the petition designated in the summons a provisional hearing thereon will be held at a specified time and place;
(B) Requires the party who is served other than by publication to appear and answer the allegations of the petition at the provisional hearing;
(C) States further that findings of fact and orders of disposition made pursuant to the provisional hearing will become final at the final hearing unless the party served by publication appears at the final hearing; and
(D) Otherwise conforms to Code Section 15-11-39; and
(3) The child is personally before the court at the provisional hearing.

(b) All provisions of this article applicable to a hearing on a petition, to orders of disposition, and to other proceedings dependent thereon shall apply under this Code section, but findings of fact and orders of disposition shall have only interlocutory effect pending final hearing on the petition. The rights and duties

of the party served by publication are not affected except as provided in subsection (c) of this Code section.

(c) If the party served by publication fails to appear at the final hearing on the petition, the findings of fact and interlocutory orders made shall become final without further evidence and shall be governed by this article as if made at the final hearing. If the party appears at the final hearing, the findings and orders shall be vacated and disregarded and the hearing shall proceed upon the allegations of the petition without regard to this Code section.

15-11-54. Findings in deprivation proceedings.
(a) Findings. After hearing the evidence on any petition alleging deprivation, the court shall make and file its findings as to whether the child is a deprived child. If the court finds that the child is not a deprived child, it shall dismiss the petition and order the child discharged from any detention or other restriction theretofore ordered in the proceeding.
(b) Findings with regard to result of alcohol abuse or drug abuse. If the court finds that a child is deprived, the court shall also make and file a finding as to whether such deprivation is the result of alcohol abuse or drug abuse by a parent or guardian.
(c) Disposition. The court shall proceed immediately or at a postponed hearing to make a proper disposition of the case in accordance with Code Section 15-11-55 if the court finds from clear and convincing evidence that the child is deprived.

15-11-55(d) Disposition of deprived child. (Change of Placement Notification)
(d) The policy of this state is that children in the custody of the Division of Family and Children Services should have stable placements. Not less than five days in advance of any placement change, the division shall notify the court, a child who is 14 years of age or older, the child's parents, guardian, or other custodian, and any attorney of record of such change in the location of the child's placement while the child is in the division's custody; provided, however, that if the child's health or welfare may be endangered by any delay in changing the child's placement, only the court and any attorney of record shall be notified of such placement change within 24 hours of such change. A child who is 14 years of age or older, the child's parents, guardian, or other custodian, and any attorney of record may request a hearing with regard to the child's Case Plan or the permanency plan in order for the court to consider the change in the location of the child's placement and any changes to the Case Plan or permanency plan resulting from the child's change in placement location. Such hearing shall be held within five days of receiving notice of a change in the location of the child's placement and prior to any such placement change, unless the child's health or welfare may be endangered by any delay in changing the child's placement. At the hearing to consider the child's Case Plan and permanency plan, the court shall consider the Case Plan and permanency plan recommendations made by the division, including a recommendation as to the location of the placement of the child, and shall make findings of fact upon which the court relied in determining to reject or accept the Case Plan or permanency plan and the recommendations made by the division, including the location of the child's placement. If the court rejects the recommendations of the division, the court shall demonstrate that the division's recommendations were considered and explain why it did not follow the recommendations. If the court rejects the division's Case Plan and permanency plan recommendations, including the change in the location of the placement of the child, the court may order the division to devise a new Case Plan and permanency plan recommendation, including a new recommendation as to the location of the child within the resources of the department, or make any other order relative to placement or custody outside the Department of Human Resources as the court finds to be in the best interest of the child and consistent with this subsection. Placement or a change of legal custody by the court outside the Department of Human Resources shall relieve the department of further responsibility for the child so placed.

15-11-55.1 Notice of deprivation proceedings.
In advance of any hearing or other proceeding to be held with respect to a child pursuant to Code Section 15-11-55 or a deprivation hearing to be held with respect to a child pursuant to paragraph (3) of subsection (c) of Code Section 15-11-49 and Code Sections 15-11-39 and 15-11-39.2, the court shall provide notice or shall direct that a party shall provide notice of such hearing or other proceeding, including their right to be heard at such hearing or other proceeding, to the foster parents of the child, and

to any pre-adoptive parents or relatives providing care for the child, consistent with the form and timing of notice to parties; provided, however, that this provision shall not be construed to require a foster parent, pre-adoptive parent, or relative caring for the child to be made a party to the hearing solely on the basis of such notice and right to be heard.

§ 15-11-55. (Excerpt) Disposition of Deprived Child

(a)(2)(B) Except for dispositions pursuant to paragraph (1) of subsection (a) of Code Section 15-11-66 and Code Section 15-11-67, within 30 days after the removal of a child from the custody of the parent or parents of the child, the Department of Human Services shall exercise due diligence to identify a parent or relative of the child or other persons who have demonstrated an ongoing commitment to the child All identified adult relatives of the child, subject to exceptions due to family or domestic violence, shall be provided with notice:
(i) Specifying that the child has been or is being removed from parental custody;
(ii) Explaining the options the relative has to participate in the care and placement of the child and any options that may be lost by failing to respond to the notice;
(iii) Describing the process for becoming an approved foster family home and the additional services and supports available for children placed in approved foster homes; and
(iv) Describing any financial assistance for which the relative may be eligible.
(C) The results of such search and notification shall be documented in writing and filed with the court by the time of the first review. During such 30 day period, the court may order that the child be placed in the temporary legal custody of the Department of Human Services or any other appropriate entity or person.
(D) The court shall order in its preliminary disposition that the parent or other legal guardian of the child shall provide within ten days the names and addresses of all relatives and other persons who might be considered as possible placements for the child. The parties shall have an ongoing duty to supplement this information during the course of the case at each judicial review or citizen panel review. The court shall include in all published summons a notice that this information must be provided.

15-11-78. Exclusion of public from hearing; exceptions.
(a) Except as otherwise provided by subsection (b) of this Code section, the general public shall be excluded from hearings involving delinquency, deprivation, or unruliness. Only the parties, their counsel, witnesses, persons accompanying a party for his or her assistance, and any other persons as the court finds have a proper interest in the proceeding or in the work of the court may be admitted by the court. The court may temporarily exclude the child from the hearing except while allegations of his or her delinquency or unruly conduct are being heard.
(b) The general public shall be admitted to:
(1) An adjudicatory hearing involving an allegation of a designated felony pursuant to Code Section 15-11-63;
(2) An adjudicatory hearing involving an allegation of delinquency brought in the interest of any child who has previously been adjudicated delinquent; provided, however, the court shall close any delinquency hearing on an allegation of sexual assault or any delinquency hearing at which any party expects to introduce substantial evidence related to matters of deprivation;
(3) Any child support hearing;
(4) Any hearing in a legitimation action filed pursuant to Code Section 19-7-22; or
(5) At the court's discretion, any dispositional hearing involving any proceeding under this article.

Uniform Rules for the Juvenile Courts of Georgia
Rule 6
FILING OF PETITION

6.1 When May a Petition Be Filed.
A petition may be filed only when the petition is in proper form and it has been properly endorsed by the court or a designee thereof.

6.2 Definition of Filing.
The filing of a petition shall consist of the act of presenting to the clerk of the Juvenile Court, or to a deputy clerk if authorized, a petition in proper form (verified and endorsed) which said clerk or deputy clerk shall accept and note thereon by rubber stamp, automatic date/time stamp or other means, the exact date and time of filing.

6.3 Preliminary Determination.
A petition alleging delinquency, deprivation or unruliness of a child shall not be filed unless the court or its designee has determined and endorsed upon the petition that the filing of the petition is in the best interest of the public and the child.

6.4 Style of the Petition.
The petition and all other documents in the proceeding shall be styled "In the interest of..., a child," except upon appeal, in which event the anonymity of the child shall be preserved by appropriate use of the initials.

6.5 Content of Petition.
See O.C.G.A. § 15-11-38.1.

6.6 Amendment to Petition.
A petition may be amended at any time prior to adjudication, provided that the court shall grant the parties such additional time to prepare as may be required to ensure a full and fair hearing. Amendments shall be freely permitted in the interest of justice and the welfare of the child. When the amended petition constitutes or adds additional charges the petition shall be served in accordance with O.C.G.A. §§ 15-11-39 and 15-11-39.1. Where the child is detained amendments to the petition shall not delay the hearing more than ten (10) days beyond the time originally fixed for the hearing unless a continuance is requested by the child or the child's attorney.

6.7 Withdrawal of Petition.
If it appears after a petition has been filed that an informal adjustment rather than an adjudication would be in the best interest of the child, the petitioner may file a motion to withdraw the petition. The petition shall be withdrawn upon approval by the judge. Such approval does not result in a dismissal of the case, but only in the substitution of informal adjustment for a formal adjudication

6.8 Time Limitations.
If a child who is alleged to be delinquent or deprived is detained or placed in shelter care, a detention hearing shall be held within 72 hours from the moment the child is placed in detention or shelter care to determine whether detention or shelter care is required, provided that if the 72 hour time period expires on a Saturday, Sunday or legal holiday, the hearing shall be held on the next day which is not a Saturday, Sunday, or legal holiday. With respect to any child alleged to be unruly, the informal detention hearing shall be held promptly and not later than 72 hours. If a child is not detained and the case is to be further prosecuted other than by informal adjustment, a petition must be made and filed with the court within 30 days from the date of the child's release. If a child who is alleged to be delinquent or unruly is not released from detention, a petition must be made and filed within 72 hours of the detention hearing. If a child who is alleged to be deprived is not released from detention, a petition must be made and filed within five [5] days of the detention hearing. After the petition has been filed, the court shall fix a time for a hearing thereon, which, if the child is in detention, shall not be later than ten (10) days after the filing of the petition. In the event the child is not in detention, the court shall fix a time for a hearing thereon which shall be not later than sixty (60) days from the date of the filing of the petition.
Any child who is the subject of a delinquency or unruly proceeding or any party in a deprivation or termination of parental rights proceeding may request a rehearing of an associate judge's findings and recommendations in said proceeding. A written request for a rehearing before the judge on an associate judge's findings and recommendations shall be made within five (5) days of the date of receiving notice of the findings and recommendations, unless the fifth day falls on a weekend or legal holiday, in which event the time shall be extended to the next working day.

6.9 Responsive Pleadings and Motions.
No answer to the petition or any other pleading need be filed by any child, parent or legal guardian. A party may file a written pleading or motion to the allegations of the petition before the hearing. Copies of such pleadings shall be made available to the other parties to the case.

Uniform Rules for the Juvenile Courts of Georgia
Rule 11
ADJUDICATORY HEARING

11.1 Nature and Purpose.
The purpose of the adjudicatory hearing is to determine if the allegations contained in the petition are true.

11.2 Dismissal.
In matters involving delinquency and/or unruliness, if the court finds that the petitioner has not met the burden of proof, it shall dismiss the proceeding, discharge the child from detention or other restrictions previously ordered by the court and enter an order of acquittal. In matters involving deprivation or termination of parental rights, the court shall dismiss the petition, with findings of fact and conclusions of law, if the evidence fails to sustain the allegations by clear and convincing evidence.

11.3 Continuance.
On the motion of the court or that of a party, the court may continue a hearing for a reasonable time upon good cause shown. However, in cases involving allegations of deprivation the granting of continuances beyond the statutory limitations as defined in O.C.G.A. § 15-11-39(a) shall be by written order and the specific reason for the continuance must be stated therein.

11.4 Social History.
The social history of the child shall not be presented to the judge until after said child is adjudicated to have committed the delinquent or unruly act.

CASA – Court Appointed Special Advocate
O.C.G.A. 15-11-9.1 Court appointed special advocate (CASA) duties.
(a) As used in this Code section, the term:
(1) "Court appointed special advocate" or "CASA" means a community volunteer who:
(A) Has been screened and trained regarding deprivation, child development, and Juvenile Court procedures;
(B) Has met all of the requirements of an affiliate court appointed special advocate program;
(C) Is being actively supervised by an affiliate court appointed special advocate program; and
(D) Has been appointed as a lay guardian ad litem by the court in a Juvenile Court deprivation proceeding.
(2) "Affiliate court appointed special advocate program" means a locally-operated program operating with the approval of the local Juvenile Court which screens, trains, and supervises volunteers to advocate for the best interest of abused and neglected children in deprivation proceedings.
(b) (1) Before executing duties as a CASA, and upon completion of all the requirements of an affiliate court appointed special advocate program, a CASA shall be sworn in by a judge of the Juvenile Court in the court or circuit in which he or she wishes to serve. A CASA shall not be assigned a case prior to being sworn in by a Juvenile Court judge as set forth in this paragraph.
(2) If a Juvenile Court judge determines that a child involved in a deprivation proceeding needs a CASA, the judge shall have the authority to appoint a CASA, and in such circumstance shall sign an order appointing a CASA at the earliest possible stage of the proceedings. Such order shall impose on a CASA all the duties, rights, and responsibilities set forth in this Code section.

(c) The role of a CASA in Juvenile Court deprivation proceedings shall be to advocate for the best interests of the child.
(d) In all cases to which a CASA is assigned, except as ordered by the judge, a CASA shall:

(1) Conduct an independent assessment to determine the facts and circumstances surrounding the case;
(2) Maintain regular and sufficient in-person contact with the child;
(3) Submit written reports to the court regarding the child's best interests;
(4) Advocate for timely court hearings to obtain permanency for the child;
(5) Request a judicial citizen review panel or judicial review of the case;
(6) Collaborate with the child's attorney, if any;
(7) Attend all court hearings and other proceedings to advocate for the child's best interests;
(8) Monitor compliance with the Case Plan and all court orders; and
(9) Review all court related documents.

(e) As a lay guardian ad litem, a CASA shall not be required to:
(1) Engage in activities which could reasonably be construed as the practice of law; or
(2) Obtain legal counsel or other professional services for a child.

(f) (1) Except as provided in Article 5 of this chapter, the "Georgia Child Advocate for the Protection of Children Act," a CASA shall be notified of all court hearings, judicial reviews, judicial citizen review panels, and other significant changes of circumstances of the child's case to which the CASA has been appointed to the same extent and in the same manner as the parties to the case are notified of such matters.
(2) A CASA shall be notified of the formulation of any Case Plan of the child's case to which the CASA has been appointed and may be given the opportunity to be heard by the court about such plans.

(g) Upon presentation of an order appointing a CASA as a guardian ad litem, such CASA shall have access to all records and information relevant to the child's case to which such CASA has been appointed when such records and information are not otherwise protected from disclosure pursuant to Code Section 19-7-5. Such records and information shall not include records and information provided under Article 5 of this chapter, the "Georgia Advocate for the Protection of Children Act," or provided under Chapter 4A of Title 49. The CASA's right to access such records shall be as otherwise authorized by law.

(h) (1) All records and information acquired, reviewed, or produced by a CASA during the course of his or her appointment shall be deemed confidential and shall not be disclosed except as ordered by the court.
(2) Except as provided in Code Section 49-5-41, any CASA who discloses confidential information obtained during the course of his or her appointment shall be guilty of a misdemeanor. CASA's shall maintain all information and records regarding mental health, developmental disability, and substance abuse according to the confidentiality requirements contained in Code Section 37-3-166, 37-4-125, or 37-7-166, as applicable.

(i) Any CASA authorized and acting in good faith, in the absence of fraud or malice, and in accordance with the duties required by this Code section shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed as a result of taking or failing to take any action pursuant to this Code section. This Code section shall not be construed as imposing any additional duty on a CASA which is not already otherwise imposed by law.

(j) (1) The court may remove a CASA from a case upon finding that the CASA has acted in a manner contrary to the child's best interest, or if the court otherwise deems continued service as unwanted or unnecessary.
(2) The court may discharge a CASA for nonparticipation in a case or upon finding that the CASA has acted in a manner contrary to the mission and purpose of the affiliate court appointed special advocate program.

Chapter 4 Disposition Hearing/Diligent Search for Relatives

Authority	**O.C.G.A. § 15-11-55, 55.1, 56, 57, 58, 58.1** **Uniform Rules For The Juvenile Courts Of Georgia, Rule 15**
Purpose	o Decide where child will be placed following a deprivation adjudication o What services are needed by the family & child o Best long term or permanency plan for child o Receive **Case Plan** (must be in writing & filed w/ court) o Receive **Diligent Search for Relative** or other persons who have demonstrated an ongoing commitment to the child o Diligent Search must be in writing & filed w/ court before disposition can occur
Pleading	o Deprivation Petition o Deprivation Adjudication Order, Case Plan & Diligent Search o Supplemental Dispositional Orders will incorporate Judicial Citizen Panel Review Recommendations o Reports or reports from DFCS inference to the permanency plan
Jurisdiction	**O.C.G.A. § 15-11-28(a)(1)** o Child under 18 years alleged to be deprived in state o Same as adjudication
Venue	**O.C.G.A. § 15-11-29** o Child present in the county when action commenced o Found in the county o Custodial parents residence o Same as adjudication **O.C.G.A. § 15-11-30.5** Allows the **Intra State Transfer** of a disposition upon the request of a party or on the Court's own motion, for purposes of Reunification. The transfer & coordination with receiving County should be monitored. See Chapter 18
Timing & Diligent Search	o Immediately following adjudication if **O.C.G.A. § 15-11-55** satisfied and **Case Plan** prepared o May be postponed to comply with **O.C.G.A. § 15-11-55** and for preparation of **Case Plan** o **O.C.G.A. § 15-11-55** requires a reasonably diligent search for a parent, relative or individual(s) who have demonstrated an ongoing commitment to the child that must be completed & submitted in writing to the Court prior to a final disposition Order and no later than 30 days from the child's removal • Diligent search completed within 30 days of removal • Parents or guardians must identify other relatives within 10 days of court action • All adult relatives must be notified of the deprivation action and the child's removal within 30 days of the child's removal o Usually completed by the CCFA (Comprehensive Child and Family Assessment) provider o Child & parent attorneys should review the contents of the diligent search with the client (child or parent)
Diligent Search & Notice to Relatives or Others w/ Ongoing	**§15-11-55(a)(2)(B)** within 30 days of the child's removal DFCS shall exercise due diligence to identify a parent or relative or other persons who have demonstrated an ongoing commitment to the child who shall be provided a notice that: (i) child has been or is being removed from parental custody; (ii) explains options the relative has to participate in the care / placement of the child

Relationship **§15-11-55(a)**	and any options that may be lost by failing to respond to the notice; (iii) describes the process for becoming a foster family home and the additional services and supports available for children placed in approved foster homes; & (iv) describes any financial assistance the relative may be eligible. The results of the Diligent Search & Notice shall be documented in writing and filed with the court by the time of the first review.
Parent to Provide Relative Information – § 15-11-55(a)	**§15-11-55(a)(2)(D)** court shall order in preliminary disposition that the parent or other legal guardian shall provide <u>within ten days</u> the names and addresses of all relatives and other persons who might be considered as possible placements for the child, this is an <u>ongoing parental responsibility and duty</u> to supplement relative information at each judicial review or citizen panel review.
Caveat	**Case Plan should be filed with court 30 days after removal, this is both State & Federal law**
Parties	○ DFCS, mother, father (legal or putative), Special Assistant Attorney General (SAAG), Child Attorney, legal guardian, Attorney for parent, CASA, ○ age appropriate children, child may be excluded **O.C.G.A. § 15-11-78 (a)**
Notice	Reasonable
Notice to Non Parties	**O.C.G.A. § 15-11-55.1 & 15-11-58(p)** Notice of hearing to foster parents of the child, pre-adoptive parents or relatives caring for the child. Notice to be consistent with form & timing of notice to parents. These persons do not become parties to the action but do have the right to be heard during the proceeding.
Standard of Proof	○ Clear and Convincing ○ Even though some hearsay is accepted during disposition hearings, "all information helpful in determining the questions presented, including oral and written reports, may be received by the court and relied upon to the extent of its probative value even though not otherwise competent in the hearing on the petition" **O.C.G.A. § 15-11-56(a)** it is limited to the legally probative value of the evidence The Court of Appeals has recently ruled "In the absence of any relevant witness testimony or documentary evidence properly certifying the record, however, exhibit S-4 consisted entirely of hearsay. "[I]t is well settled that hearsay lacks probative value" and, even in a dispositional hearing, must be disregarded." In the Interest of A.R. et al., children. 296 Ga.App. 62 673 S.E.2d 586 (2009) ○ The Court or parties attempting to introduce and admit hearsay will frequently state the hearsay is "for dispositional purposes only"; the Court of Appeals has ruled there must be relevant witness testimony or documentary evidence properly certifying the record before the hearsay is probative, <u>*In the Interest of E. C.*</u> , 271 Ga. App. 133, 135 (1) (609 SE2d 381) (2004) & <u>*In the Interest of H. S.*</u> , 285 Ga. App. 839, 842 (648 SE2d 143) (2007)
Case Plan Options	Reunification or Concurrent or Non-Reunification (NR) then **Non-Reunification Hearing** required within 30 days or Another Planned Permanent Living Arrangement

Disposition Options **Custody Options**	**O.C.G.A. § 15-11-55** If child adjudicated deprived, the disposition options: o Permit child to remain with parents with OR without conditions or limitations & supervision as directed by the Court to protect the child • includes a putative father • Court may order "aftercare services" to stabilize placement for a court specified length of time, DFCS Policy1009.18 1009.19 & 1009.20 & *Kenny A* Consent Order with DFCS excerpt from page 10, paragraph 6 See Chapter 31. o Transfer legal custody to specified person or entity, subject to Court imposed limitations & conditions, this includes • Retransfer back to parent, guardian or custodian • Any individual including putative father, who after study is found to be qualified to receive & care for child Court should receive written home evaluation or assessment before placement. • A licensed child care agency or private organization • Any public agency authorized to receive & care for children except Department of Juvenile Justice (DJJ) • Individual in another state, with or without supervision – should be compliant with the **Interstate Compact for the Placement of Children (ICPC)** as described in Chapter 19 ▪ If an out of state placement is being considered, request an In Court Review **PRIOR** to the child's removal out of state to address any visitation / care issues & for the Court to receive a copy of ICPC Home evaluation o If a relative is awarded custody the custody order is for two years EXCEPT where the Court grants a Non-Reunification Petition & awards custody to a relative until the child reaches 18 years old, See Chapter 10 o **O.C.G.A. § 15-11-55(c)** allows the Court to make a sua sponte judicial review of the child's placement & the Court may direct DFCS to comply with the current placement plan, order DFCS to make a new placement plan or relieve DFCS of custody and place the child outside of DFCS - this custody is usually back to parent, other relative or individual or entity
Duration of Court Order	o Custody to DFCS, then 12 month from initial removal o Custody to relative or non-relative, Court may award custody for up to 2 years o Custody to relative or non-relative with a Non-Reunification finding and a Petition to Modify, custody until the child turns 18 years old o Non-Reunification and Custody to Relative, see Chapter 9
Caveat	Court cannot split legal and physical custody between DFCS & other unrelated party; **- exception commitment to DJJ & DFCS**: o both agencies are expected to work together pursuant to a Cooperative agreement signed by both agencies but the Cooperative Agreement is currently expired o DFCS & DJJ should work toward a consolidated Case Plan whenever the child requires the services of both child welfare and juvenile justice o The Court may direct the agencies to present a consolidated Case Plan as being in the child's best interest o The Court may require both the DJJ and the DFCS case managers to both

	appear at court hearings o Frequently there is little coordination of planning or services; dual commitments need monitoring & judicial oversight to maximize the benefit to the child & family
Right to Attorney	**O.C.G.A. §15-11-6 Party / Parent** o Parents/legal guardian should be advised of right to counsel on the record o If indigent, right to appointed counsel or a clear waiver on the record o If non-indigent, then did parent exercise reasonable diligence to obtain an attorney, court findings should be on the record (In the Interest of P.D.W. et al.,children. 296 Ga. App. 189, 674 S.E.2d 338 (2009)) o Inquiry about incarcerated parents, transport to hearings? o Father, legal or putative, right to counsel? **O.C.G.A. §15-11-6(b) Child's Right to Counsel** Counsel must be provided for a child not represented by the child's parent, guardian, or custodian. o Courts & Judges vary on the interpretation of the child's right to representation in deprivation cases; this issue is being addressed on a statewide basis, contact Georgia Association of Counsel for Children found at www.gaccchildlaw.org for further information o Attorneys appointed to represent the child in a deprivation case should obtain an Order of Appointment from the Judge which outlines and clarifies the role and duties the Judge is appointing the attorney to fulfill o See also the child's right to effective attorney representation in the February 7, 2005 order entered by Federal District Judge Marvin Shoob in the *Kenny A. v. Perdue* case, *Kenny A. v. Perdue et. al*., 356 F.Supp.2d 1353 (N.D. Ga. 2005)
Reasonable Efforts	**O.C.G.A. § 15-11-58 (a)** o To achieve goals of the Case Plan, either reunification or other permanency option for the child o To preserve & reunify families prior to placement in DFCS custody o To prevent or eliminate the need for removal of the child from the home o To make it possible for the child to return to the home
RE for Sibling Joint Placement	**§ 15-11-58(c)(7)** DFCS must use RE to place siblings together in the same placement unless DFCS documents that joint placement of siblings would be contrary to the safety or well-being of any of the siblings and when siblings are not jointly placed that there is ongoing frequent visitation or other interaction, DFCS such sibling contact would be contrary to the safety or well-being of any of the siblings
Educational Stability Assurance	**§ 15-11-58(c)(8)** DFCS must make an assurances: that the child placement considers the appropriateness of the current educational setting and the proximity to the school in which the child is enrolled at the time of placement; that DFCS has coordinated with appropriate local educational agencies to ensure that the child remains in the school in which the child is enrolled at the time of placement; or when remaining in the same school is not in the child's best interests the DFCS and the local educational agencies have cooperated to assure the immediate and appropriate enrollment in a new school, with all of the educational records of the child provided to the new school
90 Day Transition Plan	**§ 15-11-58(c)(9)** During the **90 period prior to the foster child reaching 18, DFCS to assist & support child in developing** a personalized transition plan to includes specific options on housing, health insurance, education, local opportunities for mentors and continuing support services, work force supports and employment services

Change of Placement Notification	**O.C.G.A. § 15-11-55(d) and See DFCS Policy 1009.10 to 1009.16** o Placement Stability for children in foster care is statutorily addressed by mandating 5 day advance notice of proposed changes in placement to: • the child (if 14 years or older), • the child's legal representative, • the Court, • parents (guardian) & • all attorneys of record o Any of the noticed parties or the Court may "request a hearing with regard to the child's Case Plan or the permanency plan in order for the court to consider the change in the location of the child's placement and any changes to the Case Plan or permanency plan resulting from the child's change in placement." o At a "Change of Placement" hearing the Court should consider DFCS proposed Case Plan & permanency plan recommendations which includes placement changes; the Court then should then either accept or reject the DFCS plan including findings of fact "upon which the court relied in determining to reject or accept the Case Plan or permanency plan" o If the DFCS plan is rejected, then the Court may order DFCS to "devise a new Case Plan and permanency plan recommendation, including a new recommendation as to the location of the child within the resources of the department, or make any other order relative to placement or custody outside the Department of Human Resources as the court finds to be in the best interest of the child and consistent with this subsection o Placement or a change of legal custody by the court outside the Department of Human Resources relieves DFCS of further responsibility for and custody of the child
Decision Points	o Who gets custody? o Accept or reject Case Plan? o Are Case Plan goals supported by the findings of fact contained in the adjudication order? o Accept or reject long term care plan goal (reunify or not)? o Reasonable efforts to implement Case Plan? o Does **Non-Reunification hearing** need to be scheduled? o **O.C.G.A. § 15-11-57 -** Order counseling for child & parent designed to deter future conditions of deprivation o **O.C.G.A. § 15-11-55(f)** If deprivation is a result of alcohol / drug abuse, court may require offending parent to have 6 months of random clean screens prior to placing the child back in the home, DFCS policy requires 6 months of clean screens but the Judge has discretion as to the 6 months of clean screens & the Judge's decision overrides DFCS policy o Visitation between child & parent / sibling contact, DFCS policy 1009 to 1009.8, See Chapter 31
Order	o Court issues order addressing custody, permanency / Case Plan goal, acceptance of Diligent Search documentation, approving Case Plan, and any special considerations with visitation, court ordered counseling

Practice Points

- Case Plan is the roadmap for the future of the case, who & what needs to be done, in addition the time frame to complete goals
- If Case Plan is **Non-Reunification (NR)**, then a separate hearing MUST be held within 30 days of the announcement that Non-Reunification is the goal
- If custody to other than the parent, the parents rights are only temporarily suspended, until expiration of order or further action by Court

DFCS Policy 2102.3a addresses components of the Reasonably Diligent Search:

Summary of O.C.G.A. §15-11-58 Reasonable efforts to reunify family	
Section (a)	The types of reasonable efforts required by DFCS o To preserve & reunify families prior to placement in DFCS custody o To prevent or eliminate the need for removal of the child from the home o To make it possible for the child to return to the home The circumstances when reasonable efforts are NOT required (i.e. Non-Reunification) o parent committed murder or voluntary manslaughter of another child o parent convicted of murder or voluntary manslaughter of the other parent o parent committed felony assault on the child causing serious bodily injury o involuntary termination of parental rights to a sibling Permanency Hearing requirements when Non-Reunification is pursued by DFCS hearing within 30 days, Concurrent Case Planning allowed & Reasonable Efforts to finalize permanency
Section (b)	Case Plan requirements o Case Plan required within 30 days of the child's removal o Parents to be given 5 days notice of Case Plan meeting or Citizen Panel Review
Section (c) RE for Sibling Joint Placement & Educational Stability Assurance & 90 Day Transition Plan	The required contents of a Reunification Case Plan o Why the child is in foster care, why the child cannot be protected in the home & description of services provided to the family to prevent removal o How the Case Plan achieves the least restrictive placement for the child, how the placement meets the child's best interest and special needs o Specific actions required of the parents & DFCS so that child may return home o Time frames for the above actions o DFCS person responsible for implementing the Case Plan o Visitation & meaningful contact between parent & child **§ 15-11-58(c)(7)** DFCS must use RE to place siblings together in the same placement unless DFCS documents that joint placement of siblings would be contrary to the safety or well-being of any of the siblings and when siblings are not jointly placed that there is ongoing frequent visitation or other interaction, DFCS such sibling contact would be contrary to the safety or well-being of any of the siblings **§ 15-11-58(c)(8)** DFCS must make an assurances: that the child placement considers the appropriateness of the current educational setting and the proximity to the school in which the child is enrolled at the time of placement; that DFCS has coordinated with appropriate local educational agencies to ensure that the child remains in the school in which the child is enrolled at the time of placement; or when remaining in the same school is not in the child's best interests the DFCS and the local educational agencies have cooperated to assure the immediate and appropriate enrollment in a new school, with all of the educational records of the child provided to the new school **§ 15-11-58(c)(9)** During the 90 period prior to the foster child reaching 18, DFCS to assist & support child in developing a personalized transition plan to includes specific options on housing, health insurance, education, local opportunities for mentors and continuing support services, work force supports and employment services

Section (d)	How the Case Plan is to be submitted to the Court & incorporated into the Court's order
Section (e)	Directs that if the Case Plan is Non-Reunification then a hearing should be scheduled within 30 days to determine whether Non-Reunification is the appropriate plan
Section (f)	The contents of the Non-Reunification Case Plan o Each reason for removal o Why the child cannot be protected in the home & the harm which the child would be exposed to in the home o The services offered & provided to prevent the child's removal from the home o All the reasons why reunification services would be detrimental to the child & whether any of the grounds for termination of parental rights exist o RE for Sibling Joint Placement o Educational Stability Assurance
Section (g)	At the Non-Reunification hearing, DFCS is to notify the Court whether termination of parental rights will be pursued and if not the Court may appoint a Guardian Ad Litem (GAL) to determine independently whether termination should be initiated on behalf of the child & the GAL may be authorized to pursue the recommended action
Section (h)	Standard of proof for the Non-Reunification hearing o The court shall determine by clear & convincing evidence whether reasonable efforts to reunify the child would be detrimental to the child & whether reunification services should cease o Rebuttable presumption that reunification services should cease where the Court finds by clear & convincing evidence that: • The parent has unjustifiably failed to comply with a previously ordered reunification Case Plan • A child has been removed from the home at least twice before & reunification services were previously provided • Any grounds for terminating parental rights exist per O.C.G.A. § 15-11-94(b) • Any of the aggravating parental circumstances exist (parent committed murder or voluntary manslaughter of another child; parent has been convicted of murder or voluntary manslaughter of the other parent, parent committed felony assault on the child causing serious bodily injury or involuntary termination of parental rights to a sibling)
Section (i)	Custody options when Non-Reunification is granted by the Court o Provides for the filing of a Petition to Modify Custody following Non Reunification o Custody granted until the child is 18 years old o Custody to relative, then custody is to be reviewed by the court every 36 months o Custody to non- relative then custody to be reviewed by the court every 12 months
Section (j)	Permanency Hearing at the time of the Non-Reunification Hearing described in subsection (e) & hearing should conform to mandates of subsection (o)
Section (k)	Provides for the following time limits: o Custody to DFCS is for 12 months from the date child entered foster care o Date child entered foster care is the first judicial finding of abuse or neglect; DFCS & most Courts calculate this date from the date of the safekeeping authorization, thereby maximizing the child federal IV-E funding for the foster care episode o All foster child cases shall be reviewed, by the Court or a Judicial Citizen Panel Review, no later than 6 months from the date the child entered foster care & each six months thereafter DFCS shall notify the Court at each review whether a termination of parental rights will be filed & the court may appoint a Guardian Ad Litem (GAL) to investigate & pursue termination if needed

Section (l)	Provides that following the Case Plan review if no party requests a hearing within 5 days then the Case Plan reviewed should be submitted to the Court for incorporation into a supplemental dispositional order which should provide for one of the following: 1. Return the child to parent or guardian, with or without conditions 2. Continue the child in the current custodial placement which is deemed appropriate 3. Reject current placement as inappropriate & direct DFCS to submit a revised Case Plan. Also provides for the citizen panel to make a recommendation to the Court for the appointment of a Guardian Ad Litem (GAL) to investigate & pursue termination of parental rights as appropriate
Section (m)	Provides that unless the child is in the care of a relative then DFCS shall file a termination of parental rights, when the Court has determined the child has been o In DFCS custody for 15 out of the most recent 22 months OR o Determined by the Court to be an **abandoned infant,** defined as being left under circumstances that the identity of the parent is unknown, identity cannot be determined & the parent has NOT come forward for 3 months after the child was found, **O.C.G.A.§ 15-11-94 (b)(3)** o **DFCS Policy 1002.14**, at *The petition must be filed within 60 days of the court's determination of abandonment or a parent's felony conviction o Any of the aggravating parental circumstances exist, parent committed murder or voluntary manslaughter of another child; parent convicted of murder or voluntary manslaughter of the other parent, parent committed felony assault on the child causing serious bodily injury or involuntary termination of parental rights to a sibling o OR DFCS has provided a compelling reason why termination is not in the child's best interest OR DFCS has not provided the child's family timely services to accomplish the Case Plan goals
Section (n) Motion to Extend (MTE)	Provides for extension of DFCS custody for an additional 12 months if o The Motion to Extend Hearing is held **prior to** the expiration of the prior court order o Reasonable notice of the factual basis of the extension is provided to parties o The extension is necessary to accomplish the purposes of the order extended
Section (o) **Permanency Hearing & 90 Day Transition Plan**	Provides for a Permanency Hearing to be held o Within 30 days of DFCS submitting a Case Plan for Non Reunification o No later than 12 months of the child entering DFCS custody & every 12 months thereafter, may be held at the same time as the Motion to Extend Subsection (o) also states that at the Permanency Hearing o DFCS shall submit a report detailing efforts toward achieving permanency o Permanency Hearing may be held by Judicial Citizen Panel Review as long as DFCS is not recommending Non Reunification o All parties including the child's placement resource are given 5 days written notice o Child consulted in an age appropriate manner about proposed permanency plan o During the 90 period prior to the foster child reaching 18, DFCS to assist & support child in developing a personalized transition plan to includes specific options on housing, health insurance, education, local opportunities for mentors and continuing support services, work force supports and employment services
Section (p)	Provides for written notice of the above hearings to the child's placement resource, including an opportunity to be heard & court order shall include consideration of testimony offered by parties & placement resources

O.C.G.A. Code Sections

§ 15-11-55. Disposition of Deprived Child

(a) If the child is found to be a deprived child, the court may make any of the following orders of disposition best suited to the protection and physical, mental, and moral welfare of the child:
(1) Permit the child to remain with his or her parents, guardian, or other custodian, including a putative father, subject to conditions and limitations as the court prescribes, including supervision as directed by the court for the protection of the child;
(2)(A)Subject to conditions and limitations as the court prescribes, transfer temporary legal custody to any of the persons or entities described in this paragraph. Without limiting the generality of the foregoing, such conditions and limitations shall include a provision that the court shall approve or direct the retransfer of the physical custody of the child back to the parents, guardian, or other custodian either upon the occurrence of specified circumstances or in the discretion of the court. Any such retransfer of physical custody may be made subject to such further conditions and limitations as the court prescribes, including supervision for the protection of the child. The persons or entities to whom or which temporary legal custody may be transferred shall include the following:
(i)Any individual including a putative father who, after study by the probation officer or other person or agency designated by the court, is found by the court to be qualified to receive and care for the child;
(ii)An agency or other private organization licensed or otherwise authorized by law to receive and provide care for the child;
(iii)Any public agency authorized by law to receive and provide care for the child; provided, however, that for the purpose of this Code section, the term 'public agency' shall not include the Department of Juvenile Justice; or
(iv)An individual in another state with or without supervision by an appropriate officer under Code Section 15-11-89.
(B) Except for dispositions pursuant to paragraph (1) of subsection (a) of Code Section 15-11-66 and Code Section 15-11-67, within 30 days after the removal of a child from the custody of the parent or parents of the child, the Department of Human Services shall exercise due diligence to identify a parent or relative of the child or other persons who have demonstrated an ongoing commitment to the child All identified adult relatives of the child, subject to exceptions due to family or domestic violence, shall be provided with notice:
(i) Specifying that the child has been or is being removed from parental custody;
(ii) Explaining the options the relative has to participate in the care and placement of the child and any options that may be lost by failing to respond to the notice;
(iii) Describing the process for becoming an approved foster family home and the additional services and supports available for children placed in approved foster homes; and
(iv) Describing any financial assistance for which the relative may be eligible.
(C) The results of such search and notification shall be documented in writing and filed with the court by the time of the first review. During such 30 day period, the court may order that the child be placed in the temporary legal custody of the Department of Human Services or any other appropriate entity or person.
(D) The court shall order in its preliminary disposition that the parent or other legal guardian of the child shall provide within ten days the names and addresses of all relatives and other persons who might be considered as possible placements for the child. The parties shall have an ongoing duty to supplement this information during the course of the case at each judicial review or citizen panel review. The court shall include in all published summons a notice that this information must be provided.
(E) The Council of Juvenile Court Judges shall be authorized to create uniform rules and forms to implement the provisions of this paragraph; or
(3) Without making any of the orders specified in paragraphs (1) and (2) of this subsection, transfer custody of the child to the court of another state exercising jurisdiction over children if authorized by and in accordance with Code Section 15-11-87 if the child is or is about to become a resident of that state.

(b) Unless a child found to be deprived is found also to be delinquent, such child shall not be committed to or confined in an institution or other facility designed or operated for the benefit of delinquent children.

(c) Notwithstanding any other provision of law, the court after transferring temporary legal custody of a child to the Division of Family and Children Services within the Department of Human Services may at any time conduct sua sponte a judicial review of the current placement plan being provided to said child. After its review the court may order the division to comply with the current placement plan, order the division to devise a new placement plan within available division resources, or make any other order relative to placement or custody outside the Department of Human Services as the court finds to be in the best interest of the child. Placement or a change of legal custody by the court outside the Department of Human Services shall relieve the department of further responsibility for the child so placed.

(d) The policy of this state is that children in the custody of the Division of Family and Children Services should have stable placements. Not less than five days in advance of any placement change, the division shall notify the court, a child who is 14 years of age or older, the child´s parents, guardian, or other custodian, and any attorney of record of such change in the location of the child´s placement while the child is in the division´s custody; provided, however, that if the child´s health or welfare may be endangered by any delay in changing the child´s placement, only the court and any attorney of record shall be notified of such placement change within 24 hours of such change. A child who is 14 years of age or older, the child´s parents, guardian, or other custodian, and any attorney of record may request a hearing with regard to the child´s case plan or the permanency plan in order for the court to consider the change in the location of the child´s placement and any changes to the case plan or permanency plan resulting from the child´s change in placement location. Such hearing shall be held within five days of receiving notice of a change in the location of the child´s placement and prior to any such placement change, unless the child´s health or welfare may be endangered by any delay in changing the child´s placement. At the hearing to consider the child´s case plan and permanency plan, the court shall consider the case plan and permanency plan recommendations made by the division, including a recommendation as to the location of the placement of the child, and shall make findings of fact upon which the court relied in determining to reject or accept the case plan or permanency plan and the recommendations made by the division, including the location of the child´s placement. If the court rejects the recommendations of the division, the court shall demonstrate that the division´s recommendations were considered and explain why it did not follow the recommendations. If the court rejects the division´s case plan and permanency plan recommendations, including the change in the location of the placement of the child, the court may order the division to devise a new case plan and permanency plan recommendation, including a new recommendation as to the location of the child within the resources of the department, or make any other order relative to placement or custody outside the Department of Human Services as the court finds to be in the best interest of the child and consistent with this subsection. Placement or a change of legal custody by the court outside the Department of Human Services shall relieve the department of further responsibility for the child so placed.

(e) A juvenile court shall not be required to make an order of disposition pursuant to this Code section regarding a child who is discharged from a facility in which the child was hospitalized or habilitated pursuant to Chapter 3, 4, or 7 of Title 37 unless the child is to be discharged into the physical custody of any person who had such custody when the court made its most recent finding that such child was deprived.

(f) If a child is found to be a deprived child and the deprivation is found to have been the result of alcohol or other drug abuse by a parent or guardian, as specified in subsection (b) of Code Section 15-11-54, and the court orders transfer of temporary legal custody of the child, as provided in paragraph (2) of subsection (a) of this Code section, the court is authorized to further order that legal custody of the child may not be transferred back to the child´s custodian or guardian whose abuse of alcohol or another drug resulted in the child´s deprivation unless such person undergoes substance abuse treatment and random substance abuse screenings and those screenings remain negative for a period of no less than six consecutive months.

15-11-55.1 Notice of deprivation proceedings.
In advance of any hearing or other proceeding to be held with respect to a child pursuant to Code Section 15-11-55 or a deprivation hearing to be held with respect to a child pursuant to paragraph (3) of subsection (c) of Code Section 15-11-49 and Code Sections 15-11-39 and 15-11-39.2, the court shall provide notice or shall direct that a party shall provide notice of such hearing or other proceeding, including their right to be heard at such hearing or other proceeding, to the foster parents of the child, and to any pre-adoptive parents or relatives providing care for the child, consistent with the form and timing of notice to parties; provided, however, that this provision shall not be construed to require a foster parent, pre-adoptive parent, or relative caring for the child to be made a party to the hearing solely on the basis of such notice and right to be heard.

15-11-56 Evidence in deprivation proceedings - continuances.
(a) Evidence. In dispositional hearings under subsection (c) of Code Section 15-11-54 and in all proceedings involving custody of a child, all information helpful in determining the questions presented, including oral and written reports, may be received by the court and relied upon to the extent of its probative value even though not otherwise competent in the hearing on the petition. The parties or their counsel shall be afforded an opportunity upon request to examine and controvert written reports so received and to cross-examine individuals making the reports, except that portions of such reports not relied on by the court in reaching its decision which, if revealed, would be prejudicial to the interests of the child or any party to the proceeding may be withheld in the court's discretion. Confidential sources of information need not be disclosed.

(b) Continuances; scheduling. On its own motion or that of a party, the court may continue the hearings under subsection (c) of Code Section 15-11-54 for a reasonable period to receive reports and other evidence bearing on the disposition of a child. In this event, the court shall make an appropriate order for protection of the child during the period of the continuance. In scheduling investigations and hearings, the court shall give priority to proceedings in which a child has been removed from his or her home before an order of disposition has been made.

15-11-57 Deprivation - counseling or counsel and advice.
When any child is before a Juvenile Court and such child is found by the court to be a deprived child, the court shall be authorized, in addition to any other disposition authorized by this article, to order such child and such child's parents or guardian to participate in counseling or in counsel and advice as determined by the court. Such counseling and counsel and advice may be provided by the court, court personnel, probation officers, professional counselors or social workers, psychologists, physicians, qualified volunteers, or appropriate public, private, or volunteer agencies as directed by the court and shall be designed to assist in deterring future conditions of deprivation, or other conduct or conditions which would be harmful to the child or society.

§ 15-11-58. Reasonable Efforts to Reunify Family

(a) A court's order removing a child from the child's home shall be based upon a finding by that court that continuation in the home would be contrary to the welfare of the child. If the court places custody of the child in the Division of Family and Children Services of the Department of Human Services, the court shall also determine as a finding of fact whether reasonable efforts were made by the Division of Family and Children Services of the Department of Human Services and any other appropriate agencies to preserve and reunify families prior to the placement of a child in the custody of the Department of Human Services, to prevent or eliminate the need for removal of the child from that child's home, and to make it possible for the child to return safely to the child's home. Such findings shall also be made at every subsequent review of the court's order under this chapter.
(1) In determining reasonable efforts to be made with respect to a child, as described in this subsection, and in making such reasonable efforts, the child's health and safety shall be the paramount concern;
(2) Except as provided in paragraph (4) of this subsection, reasonable efforts shall be made to preserve and reunify families:

(A) Prior to the placement of a child in the custody of the Department of Human Services, to prevent or eliminate the need for removing the child from the child's home; and
(B) To make it possible for a child to return safely to the child's home;
(3) If continuation of reasonable efforts of the type described in paragraph (2) of this subsection is determined to be inconsistent with the permanency plan for the child, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child;
(4) Reasonable efforts of the type described in paragraph (2) of this subsection shall not be required to be made with respect to a parent of a child if a court of competent jurisdiction has determined that:
(A) The parent has subjected the child to aggravated circumstances which may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse;
(B) The parent has:
(i) Committed murder of another child of the parent;
(ii) Been convicted of the murder of the other parent of the child;
(iii) Committed voluntary manslaughter of another child of the parent;
(iv) Aided or abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of another child of the parent; or
(v) Committed a felony assault that results in serious bodily injury to the child or another child of the parent; or
(C) The parental rights of the parent to a sibling have been terminated involuntarily;
(5) If reasonable efforts of the type described in paragraph (2) of this subsection are not made with respect to a child as a result of a determination made by a court of competent jurisdiction in accordance with paragraph (4) of this subsection:
(A) A permanency hearing in accordance with subsection (o) of this Code section shall be held for the child within 30 days after such determination; and
(B) Reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child; and
(6) Reasonable efforts to place a child for adoption or with a legal guardian may be made concurrently with reasonable efforts of the type described in paragraph (2) of this subsection.

(b) Within 30 days of the date a child who is placed in the custody of the Department of Human Services is removed from the home and at each subsequent review of the disposition order, the Division of Family and Children Services of the Department of Human Services must submit a written report to the court which shall either include a case plan for a reunification of the family or include a statement of the factual basis or bases for determining that a plan for reunification is not appropriate. Such report shall become a discrete part of the case record in a format determined by the Division of Family and Children Services of the Department of Human Services and shall be made available to the parents or guardian of the foster child. The contents of the report shall be determined at a meeting to be held by the Division of Family and Children Services of the Department of Human Services in consultation with the judicial citizen review panel, if one is designated by the court for such purpose, and the parents and children, when available. The parents shall be given written notice of the meeting at least five days in advance and shall be advised that the report will be submitted to the court for consideration to become an order of the court. The report submitted to the court shall also contain any dissenting recommendations of the judicial citizen review panel, if applicable, and any recommendations of the parents, if such are available.

(c) If the report contains a plan for reunification services, such plan if adopted by the court shall be in effect until modification by the court. The plan shall address each reason requiring removal and shall contain at least the following:
(1) The purpose for which the child was placed in foster care, including a statement of the reasons why the child cannot be adequately protected at home and the harm which may occur if the child remains in the home, and shall also include a description of the services offered and the services provided to prevent removal of the child from the home;

(2) A discussion of how the plan is designed to achieve a placement in a safe setting that is the least restrictive, most family-like, and most appropriate setting available and in close proximity to the home of the parents, consistent with the best interests and special needs of the child;
(3) A clear description of the specific actions to be taken by the parents and the specific services to be provided by the Division of Family and Children Services of the Department of Human Services or other appropriate agencies in order to bring about the identified changes that must be made in order for the child to be safely returned home; provided, however, that all services and actions required of the parents which are not directly related to the circumstances necessitating separation cannot be made conditions of the return of the child without further court review;
(4) Specific time frames in which the goals of the plan are to be accomplished to fulfill the purpose of the reunification plan;
(5) The person within the Division of Family and Children Services of the Department of Human Services or other agency who is directly responsible for ensuring that the plan is implemented;
(6) Consideration of the advisability of a reasonable visitation schedule which allows the parents to maintain meaningful contact with their children through personal visits, telephone calls, and letters;
(7) A statement that reasonable efforts have been made and a requirement that reasonable efforts shall be made for so long as the child remains in the custody of the department:
(A) To place siblings removed from their home in the same foster care, kinship, guardianship, or adoptive placement, unless the Division of Family and Children Services documents that such a joint placement would be contrary to the safety or well-being of any of the siblings; and
(B) In the case of siblings removed from their home who are not so jointly placed, for frequent visitation or other ongoing interaction between the siblings, unless the Division of Family and Children Services documents that such frequent visitation or other ongoing interaction would be contrary to the safety or well-being of any of the siblings;
(8) Provisions ensuring the educational stability of the child while in foster care, including:
(A) An assurance that the placement of the child in foster care takes into account the appropriateness of the current educational setting and the proximity to the school in which the child is enrolled at the time of placement;
(B) An assurance that the state agency has coordinated with appropriate local educational agencies to ensure that the child remains in the school in which the child is enrolled at the time of placement; or
(C) If remaining in such school is not in the best interests of the child, an assurance by the Division of Family and Children Services that such division and the local educational agencies have cooperated to assure the immediate and appropriate enrollment in a new school, with all of the educational records of the child provided to such new school; and
(9) A requirement that the Division of Family and Children Services of the Department of Human Services case manager and staff, and, as appropriate, other representatives of the child, provide the child with assistance and support in developing a transition plan that is personalized at the direction of the child; includes specific options on housing, health insurance, education, local opportunities for mentors and continuing support services, and work force supports and employment services; and is as detailed as the child may elect in the 90 day period immediately prior to the date on which the child will attain 18 years of age.

(d) If the submitted report contains a proposed plan for reunification services, and no hearing is requested as provided in this Code section, the court shall enter a dispositional order or supplemental order incorporating all elements of the plan for reunification services which the court finds essential to reunification of the child with his or her family, specifying what must be accomplished by all parties before reunification of the family can be achieved. If the report contains a plan for reunification services, a copy of the report must be transmitted to the parents at the same time the report is transmitted to the court, along with written notice that the report will be considered by the court without a hearing unless, within five days from the date the copy of the report was received, the parents request a hearing before the court to review the report. The Division of Family and Children Services of the Department of Human Services shall provide the custodian of the child, the foster parents of the child, and any preadoptive parents or relatives providing care for the child with a copy of those portions of the court approved plan that involve the permanency goal and the services to be provided to the child. The provisions of subsection (p) of this Code section concerning notice, opportunity to be heard, authority of the court, and content of the court's order are applicable to proceedings under this subsection.

(e) If the report submitted to the court does not contain a plan for reunification services, upon proper notice being provided to the parents, the court shall, no later than 30 days following the filing of the report, hold a hearing to review the report and the determination that a plan for reunification services is not appropriate.

(f) When a recommendation is made that reunification services are not appropriate and should not be allowed, the report shall address each reason requiring removal and shall contain at least the following:
(1) The purpose for which the child was placed in foster care, including a statement of the reasons why the child cannot be adequately and safely protected at home and the harm which may occur if the child remains in the home, and a description of the services offered and the services provided to prevent removal of the child from the home;
(2) A clear statement describing all of the reasons supporting a finding that reasonable efforts to reunify a child with the child's family will be detrimental to the child, and that reunification services therefore need not be provided, including specific findings as to whether any of the grounds for terminating parental rights exist, as set forth in subsection (b) of Code Section 15-11-94 or paragraph (4) of subsection (a) of this Code section; and
(3) The statements, provisions, and requirements found in paragraphs (7) and (8) of subsection (c) of this Code section.

(g) At the hearing held for the purpose of reviewing the determination by the Division of Family and Children Services of the Department of Human Services that a reunification plan is not appropriate, the representative of the Division of Family and Children Services shall notify the court whether and when it intends to proceed with termination of parental rights at that time. If the Division of Family and Children Services indicates that it does not intend to petition for the termination of parental rights, the court may appoint a guardian ad litem and charge such guardian with the duty of determining whether termination proceedings should be commenced.

(h) When reviewing the determination by the Division of Family and Children Services of the Department of Human Services that a reunification plan is not appropriate, the court shall determine by clear and convincing evidence whether reasonable efforts to reunify a child with his or her family will be detrimental to the child and that reunification services, therefore, should not be provided or should be terminated. There shall be a presumption that reunification services should not be provided if the court finds by clear and convincing evidence that:
(1) The parent has unjustifiably failed to comply with a previously ordered plan designed to reunite the family;
(2) A child has been removed from the home on at least two previous occasions and reunification services were made available on those occasions;
(3) Any of the grounds for terminating parental rights exist, as set forth in subsection (b) of Code Section 15-11-94; or
(4) Any of the circumstances set out in paragraph (4) of subsection (a) of this Code section exist, making it unnecessary to provide reasonable efforts to reunify.
(i)(1) If the court has entered an order finding that reasonable efforts to reunify a child with his or her family would be detrimental to the child in accordance with subsection (h) of this Code section and if the court finds that referral for termination of parental rights and adoption is not in the best interest of the child, the court may, upon proper petition, enter a custody order which shall remain in effect until the child's eighteenth birthday:
(A) Placing the child in the custody of a relative of the child if such a person is willing and, after study by the probation officer or other person or agency designated by the court, is found by the court to be qualified to receive and care for the child;
(B) Placing the child in the custody of any nonrelative individual who, after study by the probation officer or other person or agency designated by the court, is found by the court to be qualified to receive and care for the child;
(C) Placing the child in the custody of a suitable individual custodian in another state pursuant to the provisions of Code Section 15-11-89; or

(D) In the case where the court has found a compelling reason that a placement pursuant to subparagraph (A), (B), or (C) of this paragraph is not in the child's best interest, placing the child in the custody of an agency or organization licensed or otherwise authorized by law to receive and provide care for the child which is operated in a manner that provides such care, guidance, and control as would be provided in a family home as defined in the court's order.
Such order may be modified following a petition for modification by a party or upon motion of the court pursuant to Code Section 15-11-40.
(2) A probation officer, judicial citizen review panel established by the court, or other person or agency designated by the court shall, after study or review, submit a report to the court addressing whether the custodian to whom custody of a child has been given pursuant to this Code section continues to be qualified to receive and care for the child within:
(A) Thirty-six months of an order placing a child in the custody of a relative pursuant to subparagraph (A) of paragraph (1) of this subsection and every 36 months thereafter; or
(B) Twelve months of an order placing a child in the custody of a nonrelative, an out-of-state custodian, or an agency or organization licensed or otherwise authorized by law to receive and provide care for the child pursuant to subparagraph (B), (C), or (D) of paragraph (1) of this subsection and every 12 months thereafter.
(3) Whenever a child is placed in the custody of an agency or organization licensed or otherwise authorized by law to receive and provide care for the child pursuant to subparagraph (D) of paragraph (1) of this subsection, such agency or organization shall be charged with the responsibility of notifying the court within ten days in the event its license is placed on probation, suspended, revoked, or surrendered and, in such event, the court shall conduct a judicial review within ten days of such notification to determine whether another placement should be made for the child.

(j) At the hearing required by subsection (e) of this Code section, the court shall hold a permanency hearing in accordance with subsection (o) of this Code section and shall consider and incorporate a permanency plan for the child in its order which shall comply with subsection (o) of this Code section.

(k) Except as otherwise provided by law, an order of disposition placing a deprived child in foster care under the supervision of the Division of Family and Children Services of the Department of Human Services shall continue in force for 12 months after the date the child is considered to have entered foster care or until sooner terminated by the court. For the purposes of this Code section, the date the child is considered to have entered foster care shall be the date of the first judicial finding that the child has been subjected to child abuse or neglect, or the date that is 60 days after the date on which the child is removed from the home, whichever is earlier. All cases of children in foster care in the custody of the Division of Family and Children Services of the Department of Human Services shall be initially reviewed within 90 days of the entering of the dispositional order but no later than six months following the child's placement and shall be conducted by the juvenile court judge, by an associate juvenile court judge or judge pro tempore, or by judicial citizen review panels established by the court, as the court directs, meeting such standards and using such procedures as shall be established by court rule by the Supreme Court of Georgia, with the advice and consent of the Council of Juvenile Court Judges. At the time of each review of every case of a child in foster care in the custody of the Division of Family and Children Services of the Department of Human Services, a representative of the Division of Family and Children Services shall notify the court whether such division intends to proceed with the termination of parental rights at that time. If such division indicates that it does not intend to petition for the termination of parental rights at that time, the court may appoint a guardian ad litem and charge such guardian with the duty of determining whether termination proceedings should be commenced. In the event the review is conducted by judicial citizen review panels, the panel shall transmit its report, including its findings and recommendations and those of such division, along with such division's proposed revised plan for reunification or other permanency plan, if necessary, to the court and the parents within five days after the review. Any party may request a hearing on the proposed revised plan in writing within five days after receiving a copy of such plan. The Division of Family and Children Services of the Department of Human Services shall provide the custodian of the child, the foster parents of the child, and any preadoptive parents or relatives providing care for the child with a copy of those portions of the report of the judicial citizen review panel that involve the recommended permanency goal and the recommended services to

be provided to the child. Following such initial review, additional periodic reviews shall be held at six-month intervals. The provisions of subsection (p) of this Code section concerning notice, opportunity to be heard, authority of the court, and content of the court's order are applicable to proceedings under this subsection.

(l) If no hearing is requested or scheduled by the court on its own motion, the court shall review the proposed revised plan and enter a supplemental order incorporating a revised plan as part of its disposition in the case. In the event that a hearing is held, the court shall, after hearing evidence, enter a supplemental order incorporating all elements that the court finds essential in the proposed revised plan. The provisions of subsection (p) of this Code section concerning notice, opportunity to be heard, authority of the court, and content of the court's order are applicable to proceedings under this subsection. The judge's supplemental order shall be entered within a reasonable time from the conclusion of the hearing or expiration of the time for the hearing to be requested and shall also provide one of the following:
(1) That the child return to the home of his or her parents, legal guardian, or custodian with or without court imposed conditions;
(2) That the child continue in the current custodial placement and that the current placement is appropriate for the child's needs; or
(3) That the child continue in the current custodial placement but that the current placement plan is no longer appropriate for the child's needs and direct the department to devise another plan within available resources. The new plan must be submitted within ten days for court approval. Copies of any court approved revised plan shall be furnished to all parties. The Division of Family and Children Services of the Department of Human Services shall provide the custodian of the child, the foster parents of the child, and any preadoptive parents or relatives providing care for the child with a copy of those portions of the court approved revised plan that involve the permanency goal and the services to be provided to the child.
In the event that the judicial citizen review panel determines that the parents have unjustifiably failed to comply with the ordered plan designed to reunite the family and that such failure is significant enough to warrant consideration of termination of parental rights, the panel may make a recommendation to the guardian ad litem of the child, the Division of Family and Children Services of the Department of Human Services, and the intake officer of the court that a petition for termination of parental rights should be prepared. Any such party or officer of the court shall file a petition if, upon examination, they find sufficient evidence. In the event that no guardian ad litem has been appointed when the judicial citizen review panel recommends that a petition to terminate parental rights be filed, the court shall have the authority to appoint a guardian ad litem who shall have the duty to determine whether termination proceedings should be commenced."

(m) In the event that a child has been in foster care under the responsibility of the Division of Family and Children Services of the Department of Human Services for 15 of the most recent 22 months, or, if the court has determined a child to be an abandoned infant, as set forth in subsection (b) of Code Section 15-11-94, or has made a determination that the parent has committed murder of another child of the parent; been convicted of the murder of the other parent of the child; committed voluntary manslaughter of another child of the parent; aided or abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of another child of the parent, or committed felony assault that has resulted in serious bodily injury to the child or to another child of the parent, the department shall file a petition to terminate the parental rights of the child's parents or, if such a petition has been filed by another party, seek to be joined as a party to the petition, and, concurrently, to identify, recruit, process, and approve a qualified family for an adoption, unless, at the option of the Division of Family and Children Services of the Department of Human Services, the child is being cared for by a relative; the case plan documents a compelling reason for determining that filing such a petition would not be in the best interests of the child; or the Division of Family and Children Services of the Department of Human Services has not provided to the family of the child, consistent with the specific time frames for the accomplishment of the case plan goals, such services deemed necessary for the safe return of the child to the child's home.

(n) The court which made the order may extend its duration for not more than 12 months if:

(1) A hearing is held upon motion of the Division of Family and Children Services of the Department of Human Services prior to the expiration of the order;
(2) Reasonable notice of the factual basis of the motion and of the hearing and opportunity to be heard are given to the parties affected; and
(3) The court finds that the extension is necessary to accomplish the purposes of the order extended.

(o)(1) With respect to each child in the custody of the Department of Human Services, a permanency hearing shall be held no later than 30 days after the Division of Family and Children Services of the Department of Human Services has submitted a written report to the court which does not contain a plan for reunification services as provided in subsection (j) of this Code section, or no later than 12 months after the child is considered to have entered foster care, whichever comes first. Thereafter, a permanency hearing shall be held not less frequently than every 12 months during the time the child continues in the custody of the Department of Human Services. A permanency hearing may be held by the court at the time of the hearing on a motion to extend custody permitted by subsection (n) of this Code section. The provisions of subsection (p) of this Code section concerning notice, opportunity to be heard, authority of the court, and content of the court's order are applicable to proceedings under this paragraph.
(2) At the time of the permanency hearing, the Division of Family and Children Services of the Department of Human Services shall submit for the court's consideration a report recommending a permanency plan for the child which shall include whether and, if applicable, when the child shall be returned to the parent or parents; referred for termination of parental rights and adoption; referred for legal guardianship; placed permanently with a fit and willing relative; or, in the case where the division has provided a compelling reason that none of the foregoing options would be in the best interest of the child, placed in another planned permanent living arrangement. The report shall include documentation of the steps to be taken by the Division of Family and Children Services of the Department of Human Services to finalize the permanent placement of the child. When the permanency plan recommended is referral for termination of parental rights and adoption, such report shall include child specific recruitment efforts such as the use of state, regional, and national adoption exchanges, including electronic exchange systems. The provisions of subsection (p) of this Code section concerning notice, opportunity to be heard, authority of the court, and content of the court's order are applicable to proceedings under this paragraph.
(3) The permanency hearing may be conducted as the court directs by the juvenile court judge or by an associate juvenile court judge or judge pro tempore. The court may also direct that the permanency hearing be conducted by a judicial citizen review panel established by the court in the manner provided in subsection (k) of this Code section, unless the permanency hearing is one required under subsection (j) of this Code section as a result of a recommendation that reunification services are not appropriate. The judicial citizen review panel may conduct its hearing in the same manner as it conducts a case review under subsection (k) of this Code section. The provisions of subsection (p) of this Code section concerning notice, opportunity to be heard, authority of the court, and content of the court's order are applicable to proceedings under this paragraph.
(A) The panel shall transmit its report, including its findings and recommendations and those of the Division of Family and Children Services, to the court and the parties within five days after such hearing. The report of the judicial citizen review panel shall include all the elements required in paragraphs (5) and (6) of this subsection. Any party may request a hearing on the proposed permanency plan by submitting a request in writing within five days of receiving a copy of such plan. If a hearing is not requested, the court shall review the proposed permanency plan and enter a supplemental order incorporating all elements required by paragraphs (5) and (6) of this subsection that the court finds essential in the proposed permanency plan. In the event a hearing before the court is requested on the report transmitted by the judicial citizen review panel, the court shall, after hearing evidence, enter a supplemental order incorporating all the elements required in paragraphs (5) and (6) of this subsection.
(B) If a permanency hearing is held before the court, the court shall, after hearing evidence, enter a supplemental order incorporating all elements of the proposed permanency plan required by paragraphs (5) and (6) of this subsection that the court finds essential in the proposed permanency plan.
(4) The parents, the custodian of the child, the foster parents of the child, any preadoptive parent or relative providing care for the child, and other parties shall be given written notice of a permanency hearing at least five days in advance and shall be advised that the permanency plan recommended by the Division of Family and Children Services of the Department of Human Services will be submitted to

the court for consideration to become an order of the court. Procedural safeguards shall be applied with respect to parental rights pertaining to the removal of the child from the home of his or her parents, to a change in the child´s placement, and to any determination affecting visitation privileges of parents. Procedural safeguards shall also be applied to assure that the court or the judicial citizen review panel conducting a permanency hearing, including any hearing regarding transition of the child from foster care to independent living, shall consult, in an age-appropriate manner, with the child regarding the proposed permanency or transition plan for such child. The provisions of subsection (p) of this Code section concerning notice, opportunity to be heard, authority of the court, and content of the court´s order are applicable to proceedings under this paragraph.
(5) The permanency plan incorporated in the court's order shall include whether and, if applicable, when the child shall be returned to the parent or parents, referred for termination of parental rights and adoption, referred for legal guardianship, or placed permanently with a fit and willing relative. If the court finds that there is a compelling reason that it would not be in the child's best interests to be returned to the parent or parents, referred for termination of parental rights and adoption, referred for legal guardianship, or placed permanently with a fit and willing relative, then the court's order shall document the compelling reason and provide that the child should be placed in another planned permanent living arrangement as defined in the court's order. The provisions of subsection (p) of this Code section concerning notice, opportunity to be heard, authority of the court, and content of the court's order are applicable to proceedings under this paragraph.
(6) The court or judicial citizen review panel which conducts the permanency hearing shall determine, as a finding of fact, whether the Division of Family and Children Services of the Department of Human Services has made reasonable efforts to finalize the permanency plan which is in effect at the time of the hearing. Further, the court or the judicial citizen review panel, if applicable, shall determine as a finding of fact whether, in the case of a child placed out of the state, the out-of-state placement continues to be appropriate and in the best interest of the child and, in the case of a child who has attained the age of 14, shall determine the services needed to assist the child to make a transition from foster care to independent living. Also, in the case of a child whose permanency plan provides that the child will not be returned to the parent, the court or judicial citizen review panel, if applicable, shall consider in-state and out-of-state placement options for such child. Such findings of fact shall be made a part of the report of the judicial citizen review panel to the court and any supplemental order entered by the court.
(7) A supplemental order of the court adopting the permanency plan shall be entered within 30 days after the court has determined that reunification efforts will not be made by the Division of Family and Children Services of the Department of Human Services, if applicable, or within 12 months after the child is considered to have entered foster care, whichever is first, and at least every 12 months thereafter while the child is in foster care, unless the court finds good cause why such order cannot be entered by that time. The supplemental order shall include a requirement that the Division of Family and Children Services of the Department of Human Services case manager and staff, and, as appropriate, other representatives of the child, provide the child with assistance and support in developing a transition plan that is personalized at the direction of the child; includes specific options on housing, health insurance, education, local opportunities for mentors and continuing support services, and work force supports and employment services; and is as detailed as the child may elect in the 90 day period immediately prior to the date on which the child will attain 18 years of age.

(p) In advance of each review, hearing, or other proceeding to be held with respect to a child pursuant to this Code section, the court shall provide written notice or shall direct that a party shall provide written notice of such review, hearing, or other proceeding, including their right to be heard at such review, hearing, or other proceeding to the custodian of the child, to the foster parents of the child, and to any preadoptive parents or relatives providing care for the child, consistent with the form and timing of notice to parties; provided, however, that this provision shall not be construed to require a custodian, foster parent, preadoptive parent, or relative caring for the child to be made a party to the review, hearing, or other proceeding solely on the basis of such notice and opportunity to be heard. At each such review, hearing, or proceeding, the court in its discretion, based upon the evidence, may enter an order accepting or rejecting any report of the Division of Family and Children Services of the Department of Human Services, ordering an additional evaluation, appointing a guardian ad litem, or undertaking such other review as it deems necessary and appropriate to determine the disposition that is in the child´s best interest. The court´s order may incorporate all or part of the report of the Division of Family and Children

Services of the Department of Human Services. In its order the court shall include findings of fact which reflect the court´s consideration of the oral and written testimony offered by the parents, the custodian of the child, the foster parents of the child, any preadoptive parents or relatives providing care for the child who are required to be provided with notice and a right to be heard in any review, hearing, or proceeding to be held with respect to the child, and the Division of Family and Children Services of the Department of Human Services. A disposition may be made under the terms of this Code section only if the court finds that such disposition is in the best interest of the child.

15-11-58.1 Term or order of disposition - extension.
(a) Except as otherwise provided by law, an order of disposition in a proceeding involving deprivation, except an order involving the appointment of a guardian of the person or property of a child, continues in force for not more than two years. The court may sooner terminate its order or extend its duration for further periods. An order of extension may be made if:

(1) A hearing is held prior to the expiration of the order upon motion of a party or on the court's own motion;

(2) Reasonable notice of the factual basis of the motion and of the hearing and opportunity to be heard are given to the parties affected;

(3) The court finds that the extension is necessary to accomplish the purposes of the order extended; and

(4) The extension does not exceed two years from the expiration of the prior order.

(b) The court may terminate an order of disposition of a child adjudicated as deprived or an extension of such a disposition order prior to its expiration, on or without an application of a party, if it appears to the court that the purposes of the order have been accomplished.

(c) Unless otherwise provided by law, when a child adjudicated as deprived reaches 18 years of age all orders affecting him or her then in force terminate and he or she is discharged from further obligation or control.

Uniform Rules for the Juvenile Courts of Georgia
Rule 15
LIMITATIONS OF TIME ON ORDERS OF DISPOSITION

15.1 Termination of Parental Rights.
See O.C.G.A. § 15-11-93.

15.2 Other Orders of Disposition.
Any other order of disposition in a proceeding including delinquency, unruliness and deprivation, except in an order involving the appointment of a guardian of the person or property of a child, continues in force for not more than two years. Provided, however, that an order placing a deprived child in foster care under the supervision of the Department of Human Resources shall continue in force for 12 months after the date the child is considered to have entered foster care or until the court sooner terminates its order. A child is considered to have entered foster care on the date of the first judicial finding that the child has been subjected to child abuse or neglect or the date that is 60 days after the date on which the child is removed from the home, whichever is earlier. The court may sooner terminate its order or extend its duration for further periods as provided by O.C.G.A. § 15-11-58 and 15- 11-70.

15.3 Termination of Order.
Except as provided in O.C.G.A. § 15-11-70, the court may terminate an order of disposition or extension prior to its expiration, on or without an application of a party, if it appears to the court that the purposes of the order have been accomplished.
Except as otherwise provided by law, when the child reaches 21 years of age, all orders affecting the child then in force terminate and the child is discharged from future obligation or control.

Chapter 5 Review Hearing

Authority	**O.C.G.A. § 15-11-58(k) & (l), 15-11-55(c)** **Uniform Rules For The Juvenile Courts Of Georgia, Rule 24**
Purpose	o To check progress on Case Plan goals, promotes accountability of all parties o To determine if permanent plan for child is still appropriate o To determine if goals & services are still appropriate o To determine if there is a continued need for an out of home placement for the child
Pleading	o May be scheduled as part of a Court Order or as a Separate Motion for Court Review o Confirm the issues to be reviewed or the relief sought are stated in either the court order or the motion
Jurisdiction	Same as Adjudication, attaches to a pending deprivation action
Venue	Same as Adjudication, attaches to a pending deprivation action
Timing	o Anytime at the request of a party or the Court's own Motion o In Court Review Hearing may be requested by Citizen Panel Review o Deprivation cases **MUST** be reviewed **EVERY SIX months** either in Court or by the Citizen Review Panel o Parties have 5 days to request an in court review following a Judicial Citizen Panel Review
Parties	Same parties as the Adjudication & Disposition
Service / Notice	o Personal service to the parent / legal guardian o Reasonable notice o Written notice to foster parents
Notice to Non Parties	**O.C.G.A. § 15-11-55.1 & 15-11-58(p)** Notice of hearing to foster parents of the child, pre-adoptive parents or relatives caring for the child. Notice to be consistent with form & timing of notice to parents. These persons do not become parties to the action but do have the right to be heard during the proceeding.
Standard of Proof	Clear & convincing proof
Right to Attorney	**O.C.G.A. §15-11-6 Party / Parent** o Parents/legal guardian should be advised of right to counsel on the record o If indigent, right to appointed counsel or a clear waiver on the record o If non-indigent, then did parent exercise reasonable diligence to obtain an attorney, court findings should be on the record (In the Interest of P.D.W. et al.,children. 296 Ga. App. 189, 674 S.E.2d 338 (2009)) o Inquiry about incarcerated parents, transport to hearings? o Father, legal or putative, right to counsel? **O.C.G.A. §15-11-6(b) Child's Right to Counsel** Counsel must be provided for a child not represented by the child's parent, guardian, or custodian. o Courts & Judges vary on the interpretation of the child's right to representation in deprivation cases; this issue is being addressed on a statewide basis, contact Georgia Association of Counsel for Children found at www.gaccchildlaw.org for further information

	○ Attorneys appointed to represent the child in a deprivation case should obtain an Order of Appointment from the Judge which outlines and clarifies the role and duties the Judge is appointing the attorney to fulfill ○ See also the child's right to effective attorney representation in the February 7, 2005 order entered by Federal District Judge Marvin Shoob in the *Kenny A. v. Perdue* case, *Kenny A. v. Perdue et. al*., 356 F.Supp.2d 1353 (N.D. Ga. 2005)
Reasonable Efforts	Is DFCS using reasonable efforts within the resources available to implement the Case Plan goals
Decision Points	○ Is there progress on Case Plan? ○ Are there any changes which need to be made in the Case Plan goals which must be done by Court Order? ○ Does a **Contempt Action** need to be initiated by any party to enforce compliance with Court ordered goals? **O.C.G.A. § 15-11-5** ○ Are the specific services made available appropriate for the child & family? ○ Changes made by parents ○ Likelihood of success by parents? -- what is timeframe for success? ○ Receive reports by service providers ○ Summary of visitation & effect on child ○ Are the needs of the child needs being met? ○ Receive reports from GAL or CASA ○ Does child need to remain in out of home placement? ○ Court may "sua sponte" at any review hearing modify custody back to the parents & relieve DFCS of custody, **O.C.G.A. § 15-11-55(c)**
Order	○ Recite the reasons why child is still in need of continued placement ○ Why Case Plan is appropriate and what if any changes need to be made to the Case Plan by Order of the Court ○ Report on reasonable efforts by DFCS ○ Make any other orders necessary to resolve deprivation issue for family & child ○ Schedule next hearing
Documents / Information Needed	○ Documentation of parental & DFCS compliance with the court approved Case Plan including the permanency plan ○ Prior court orders & panel reviews

Practice Points

- Reviews potentially keep parties more engaged in the process & encouraged to follow the Case Plan
- Parties tend to be more compliant with court orders and Case Plans just before the Review Hearing date
- Encourages compliance through potential consequences, possible contempt sanctions if Rule Nisi filed
- Accountability for all parties is increased where there are frequent reviews and monitoring

Citizen Panel Review

Citizen Panel Review programs use local volunteers selected by the Juvenile Court Judge and specially trained to meet periodically on a particular case to review the Case Plan progress and continued appropriateness.

Citizen Review Panels meet initially within 90 days of a disposition order or no later than six months following the child's date of removal and no later than every six months thereafter while the child is in placement.

Citizen Panel Reviews make findings and submit recommendations to the Judge for approval in a report that includes the following:

1. The necessity and appropriateness of the current placement
2. Whether reasonable efforts have been made by the local DFCS office to obtain permanency for the child
3. The degree of compliance with the specific goals and objectives set out in the Case Plan for all appropriate parties and their level of participation
4. Whether any progress has been made in improving the conditions that caused the child's removal from the home
5. Any specific changes that need to be made in the Case Plan, including a change in the permanency goal and the projected date when permanency for the child is likely to be achieved

If no hearing is requested, the Juvenile Court Judge will review the proposed revised plan and enter a supplemental order incorporating the revised plan as part of its disposition of the case.

O.C.G.A. Code Sections

15-11-5 Juvenile Court contempt powers.

(a) In addition to all other inherent powers of the court to enforce its lawful orders, the court may punish a person for contempt of court for willfully disobeying an order of the court or for obstructing or interfering with the proceedings of the court or the enforcement of its orders, subject to the law relating to the procedures therefore and the limitations thereon.

(b) In addition or as an alternative to the punishment provided in subsection (a) of this Code section, after notice and opportunity for hearing, the court may impose any or all of the following sanctions when a parent, guardian, or other custodian willfully violates any order issued by the court directed to that parent, guardian, or other custodian:

(1) Require the parent, guardian, or other custodian of the child to make restitution in an amount not to exceed $2,500.00 for any damage or loss caused by the child's wrongful act;

(2) Impose a fine not to exceed $1,000.00;

(3) Reimburse the state for the costs of detention, treatment, or rehabilitation of the child;

(4) Require the parent, guardian, or other custodian of the child to perform court approved community service designed to contribute to the ability of the parent, guardian, or other custodian to provide proper parental care and supervision of the child; or

(5) Require the parent, guardian, or other custodian of the child to enter into a contract or plan as a part of the disposition of any charges against the child, so as to provide for the supervision and control of the child by the parent, guardian, or custodian and reunification of the child with the parent, guardian, or custodian.

15-11-55 Disposition of deprived child. Section (c) only for sua sponte review

(c) Notwithstanding any other provision of law, the court after transferring temporary legal custody of a child to the Division of Family and Children Services within the Department of Human Resources may at any time conduct sua sponte a judicial review of the current placement plan being provided to said child. After its review the court may order the division to comply with the current placement plan, order the division to devise a new placement plan within available division resources, or make any other order relative to placement or custody outside the Department of Human Resources as the court finds to be in the best interest of the child. Placement or a change of legal custody by the court outside the Department of Human Resources shall relieve the department of further responsibility for the child so placed.

Summary of O.C.G.A. §15-11-58 Reasonable efforts to reunify family

Section (k)	Provides for the following time limits: o Custody to DFCS is for 12 months from the date child entered foster care o Date child entered foster care is the first judicial finding of abuse or neglect; DFCS & most Courts calculate this date from the date of the safekeeping authorization, thereby maximizing the child federal IV-E funding for the foster care episode o All foster child cases shall be reviewed, by the Court or a Judicial Citizen Panel Review, no later than 6 months from the date the child entered foster care & each

	six months thereafter DFCS shall notify the Court at each review whether a termination of parental rights will be filed & the court may appoint a Guardian Ad Litem (GAL) to investigate & pursue termination if needed
Section (l)	Provides that following the Case Plan review if no party requests a hearing within 5 days then the Case Plan reviewed should be submitted to the Court for incorporation into a supplemental dispositional order which should provide for one of the following: 4. Return the child to parent or guardian, with or without conditions 5. Continue the child in the current custodial placement which is deemed appropriate 6. Reject current placement as inappropriate & direct DFCS to submit a revised Case Plan. Also provides for the citizen panel to make a recommendation to the Court for the appointment of a Guardian Ad Litem (GAL) to investigate & pursue termination of parental rights as appropriate

15-11-58 Reasonable efforts to reunify family. Sections (k) & (l) only

(k) Except as otherwise provided by law, an order of disposition placing a deprived child in foster care under the supervision of the Division of Family and Children Services of the Department of Human Resources shall continue in force for 12 months after the date the child is considered to have entered foster care or until sooner terminated by the court. For the purposes of this Code section, the date the child is considered to have entered foster care shall be the date of the first judicial finding that the child has been subjected to child abuse or neglect, or the date that is 60 days after the date on which the child is removed from the home, whichever is earlier. All cases of children in foster care in the custody of the Division of Family and Children Services of the Department of Human Resources shall be initially reviewed within 90 days of the entering of the dispositional order but no later than six months following the child's placement and shall be conducted by the Juvenile Court judge, by an associate Juvenile Court judge or judge pro tempore, or by judicial citizen review panels established by the court, as the court directs, meeting such standards and using such procedures as shall be established by court rule by the Supreme Court of Georgia, with the advice and consent of the Council of Juvenile Court Judges. At the time of each review of every case of a child in foster care in the custody of the Division of Family and Children Services of the Department of Human Resources, a representative of the Division of Family and Children Services shall notify the court whether such division intends to proceed with the termination of parental rights at that time. If such division indicates that it does not intend to petition for the termination of parental rights at that time, the court may appoint a guardian ad litem and charge such guardian with the duty of determining whether termination proceedings should be commenced. In the event the review is conducted by judicial citizen review panels, the panel shall transmit its report, including its findings and recommendations and those of such division, along with such division's proposed revised plan for reunification or other permanency plan, if necessary, to the court and the parents within five days after the review. Any party may request a hearing on the proposed revised plan in writing within five days after receiving a copy of such plan. The Division of Family and Children Services of the Department of Human Resources shall provide the custodian of the child, the foster parents of the child, and any pre-adoptive parents or relatives providing care for the child with a copy of those portions of the report of the judicial citizen review panel that involve the recommended permanency goal and the recommended services to be provided to the child. Following such initial review, additional periodic reviews shall be held at six-month intervals. The provisions of subsection (p) of this Code section concerning notice, opportunity to be heard, authority of the court, and content of the court's order are applicable to proceedings under this subsection.

(l) If no hearing is requested or scheduled by the court on its own motion, the court shall review the proposed revised plan and enter a supplemental order incorporating a revised plan as part of its disposition in the case. In the event that a hearing is held, the court shall, after hearing evidence, enter a supplemental order incorporating all elements that the court finds essential in the proposed revised plan. The provisions of subsection (p) of this Code section concerning notice, opportunity to be heard, authority of the court, and content of the court's order are applicable to proceedings under this subsection. The judge's supplemental order shall be entered within a reasonable time from the conclusion of the hearing or expiration of the time for the hearing to be requested and shall also provide one of the following:

(1) That the child return to the home of his or her parents, legal guardian, or custodian with or without court imposed conditions;

(2) That the child continue in the current custodial placement and that the current placement is appropriate for the child's needs; or

(3) That the child continue in the current custodial placement but that the current placement plan is no longer appropriate for the child's needs and direct the department to devise another plan within available resources. The new plan must be submitted within ten days for court approval. Copies of any court approved revised plan shall be furnished to all parties. The Division of Family and Children Services of the Department of Human Resources shall provide the custodian of the child, the foster parents of the child, and any pre-adoptive parents or relatives providing care for the child with a copy of those portions of the court approved revised plan that involve the permanency goal and the services to be provided to the child.

In the event that the judicial citizen review panel determines that the parents have unjustifiably failed to comply with the ordered plan designed to reunite the family and that such failure is significant enough to warrant consideration of termination of parental rights, the panel may make a recommendation to the guardian ad litem of the child, the Division of Family and Children Services of the Department of Human Resources, and the intake officer of the court that a petition for termination of parental rights should be prepared. Any such party or officer of the court shall file a petition if, upon examination, they find sufficient evidence. In the event that no guardian ad litem has been appointed when the judicial citizen review panel recommends that a petition to terminate parental rights be filed, the court shall have the authority to appoint a guardian ad litem who shall have the duty to determine whether termination proceedings should be commenced.

Uniform Rules for the Juvenile Courts of Georgia
Rule 3.10, 18 & 24

3.10 Records of Judicial Citizen Review Panels.
All findings, reports, documents, recommendations, and other records created for or by judicial citizen review panels constituted pursuant to O.C.G.A. §15-11-58, other than records which are a part of a child's court record as defined in Rule 3.2, shall be maintained by the Court as judicial citizen review panel records. With respect to each child, these judicial citizen review panel records may be destroyed by the Court after two years have elapsed since the date of the most recent record pertaining to that child or after the child becomes 18 years of age, whichever occurs first.

18. CONTEMPT ORDERS

18.1 Contempt of Court.
See O.C.G.A. §15-11-5.

18.2 Rule Nisi.
Upon the filing of a petition alleging that a party has willfully and intentionally failed to abide by an order of the court, or on the court's own motion, the court shall issue a show cause order, or rule nisi, commanding the party to appear before the court at a designated time to show cause why said party should not be held in contempt of court.

Chapter 6 Protective Order & Contempt Actions

Authority	**O.C.G.A. § 15-11-11 & § 15-11-5** **Uniform Rules for the Juvenile Courts of Georgia, Rule 18**
Purpose	o Court can restrain or control the conduct of a person where a deprivation order of disposition of a child has been or is about to be made o May allow the child to return home under close judicial oversight & conditions
Pleading	Protective Order option comes before the Court by: o A specified prayer for relief in a Deprivation Petition o Filed as a separate action, petition o Oral motion in open Court o Application of a party o On the Court's own motion
Jurisdiction	**O.C.G.A. § 15-11-28(a)(1)** o Child under 18 years alleged to be deprived in state o Same as adjudication
Venue	**O.C.G.A. § 15-11-29** o Child present in the county when action commenced o Found in the county o Custodial parents residence o Same as adjudication
Timing	o Where an order of deprivation disposition of a child has been made by the Court or is about to be made by the Court o Adjudication of deprivation has been made by the Court
Parties	o Person whose behavior is sought to be controlled or restrained o Parties to the deprivation action
Service / Notice	The person whose behavior is sought to be controlled o Due notice of the application for a Protective Order or motion o Grounds for the request for a Protective Order o An opportunity to be heard o Personal service to the person to be controlled because order may be enforced by a **contempt action – O.C.G.A. 15-11-5** Parties if not the subject of the Protective Order o Notice to the parties or o Service to the parties if the application for Protective Order is pursued separate from the deprivation adjudication or disposition
Notice to Non Parties	**O.C.G.A. § 15-11-55.1** Notice of hearing to foster parents of the child, pre-adoptive parents or relatives caring for the child. Notice to be consistent with form & timing of notice to parents. These persons do not become parties to the action but do have the right to be heard during the proceeding.
Standard of Proof	Clear & convincing that the Protective Order is in the child's best interest
Enforcement	o Pursuant to **O.C.G.A. 15-11-5,** Protective Order may be enforced by a Contempt Citation & if the welfare of the child requires then the issuance of a warrant to take the alleged violator into custody o Removal of the child from the custody of the alleged violator is NOT a remedy under a Protective Order without obtaining a **safekeeping authorization** from the Court, *In the Interest of S.Y.,* 264 Ga. App. 623, 591 S.E. 2d 489 (2003)

Right to Attorney	**O.C.G.A. §15-11-6 Party / Parent** o Parents/legal guardian should be advised of right to counsel on the record o If indigent, right to appointed counsel or a clear waiver on the record o If non-indigent, then did parent exercise reasonable diligence to obtain an attorney, court findings should be on the record (In the Interest of P.D.W. et al.,children. 296 Ga.App. 189, 674 S.E.2d 338 (2009)) o Inquiry about incarcerated parents, transport to hearings? o Father, legal or putative, right to counsel? **O.C.G.A. §15-11-6(b) Child's Right to Counsel** Counsel must be provided for a child not represented by the child's parent, guardian, or custodian. o Courts & Judges vary on the interpretation of the child's right to representation in deprivation cases; this issue is being addressed on a statewide basis, contact Georgia Association of Counsel for Children found at www.gaccchildlaw.org for further information o Attorneys appointed to represent the child in a deprivation case should obtain an Order of Appointment from the Judge which outlines and clarifies the role and duties the Judge is appointing the attorney to fulfill o See also the child's right to effective attorney representation in the February 7, 2005 order entered by Federal District Judge Marvin Shoob in the *Kenny A. v. Perdue* case, *Kenny A. v. Perdue et. al*., 356 F.Supp.2d 1353 (N.D. Ga. 2005)
Reasonable Efforts	As part of the Disposition or Review of the deprivation action
Decision Points	o What actions need to be controlled by the court
Stipulation / Consent	Stipulation or consent is available, but make sure the parties or the person being controlled by the Protective Order is advised of the consequences of violation of the Court's Order
Order	May require a party or other "served person" o To stay away from the home of the child o To permit a parent to visit the child at stated periods o To abstain from offensive conduct against the child, child's parent or any custodian of the child o Clean the home, abstain from actions which make the child's home improper o To cooperate with DFCS or their service providers o To ensure child attends school o To participate in counseling with child o To enter & successfully complete a substance abuse treatment program
Documents / Information Needed	How will controlling the behavior of the individual or party promote the best interest of the child and the family

Practice Points

- Provides more accountability for parties to comply with Case Plan goals
- May provide closer monitoring of the child & family when the child is reunified
- Consider converting a custody to DFCS case to a Protective Order when the family is close to reunification thereby allowing the child to return to the caretaker under direct court supervision

O.C.G.A. Code Sections

15-11-11 Protective orders - hearing – enforcement

(a) On application of a party or on the court's own motion, the court may make an order restraining or otherwise controlling the conduct of a person if an order of disposition of a child has been or is about to be made in a proceeding under this article and due notice of the application or motion and the grounds therefore and an opportunity to be heard thereon have been given to the person against whom the order is directed. Such an order may require any such person:

(1) To stay away from the home or the child;

(2) To permit a parent to visit the child at stated periods;

(3) To abstain from offensive conduct against the child, the child's parent, or any person to whom custody of the child is awarded;

(4) To give proper attention to the care of the home;

(5) To cooperate in good faith with an agency to which custody of a child is entrusted by the court or with an agency or association to which the child is referred by the court;

(6) To refrain from acts of commission or omission that tend to make the home not a proper place for the child;

(7) To ensure that the child attends school pursuant to any valid law relating to compulsory attendance;

(8) To participate with the child in any counseling or treatment deemed necessary after consideration of employment and other family needs; and

(9) To enter into and complete successfully a substance abuse program approved by the court.

(b) After notice and opportunity for hearing afforded to a person subject to a protective order, the order may be modified or extended for a further specified period, or both, or may be terminated if the court finds that the best interests of the child and the public will be served thereby.

(c) Protective orders may be enforced by citation to show cause for contempt of court by reason of any violation thereof and, where protection of the welfare of the child so requires, by the issuance of a warrant to take the alleged violator into custody and bring him or her before the court.

15-11-5 Juvenile Court contempt powers.

(a) In addition to all other inherent powers of the court to enforce its lawful orders, the court may punish a person for contempt of court for willfully disobeying an order of the court or for obstructing or interfering with the proceedings of the court or the enforcement of its orders, subject to the law relating to the procedures therefore and the limitations thereon.

(b) In addition or as an alternative to the punishment provided in subsection (a) of this Code section, after notice and opportunity for hearing, the court may impose any or all of the following sanctions when a parent, guardian, or other custodian willfully violates any order issued by the court directed to that parent, guardian, or other custodian:

(1) Require the parent, guardian, or other custodian of the child to make restitution in an amount not to exceed $2,500.00 for any damage or loss caused by the child's wrongful act;

(2) Impose a fine not to exceed $1,000.00;

(3) Reimburse the state for the costs of detention, treatment, or rehabilitation of the child;

(4) Require the parent, guardian, or other custodian of the child to perform court approved community service designed to contribute to the ability of the parent, guardian, or other custodian to provide proper parental care and supervision of the child; or

(5) Require the parent, guardian, or other custodian of the child to enter into a contract or plan as a part of the disposition of any charges against the child, so as to provide for the supervision and control of the child by the parent, guardian, or custodian and reunification of the child with the parent, guardian, or custodian.

Uniform Rules for the Juvenile Courts of Georgia
Rule 18. CONTEMPT ORDERS
18.1 Contempt of Court.
See O.C.G.A. §15-11-5.

18.2 Rule Nisi.
Upon the filing of a petition alleging that a party has willfully and intentionally
failed to abide by an order of the court, or on the court's own motion, the court shall issue a show cause order, or rule nisi, commanding the party to appear before the court at a designated time to show cause why said party should not be held in contempt of court.

Chapter 7 Permanency Hearing

Authority	**O.C.G.A. § 15-11-58 (a, j, o & p)**
Purpose	o To receive the **permanent plan** o To determine whether reasonable efforts have been made to **finalize** the permanent plan
Pleadings	o May be held at the same time as the **Motion to Extend** or **Non-Reunification Hearing** but should be a distinct hearing with specific findings relevant to the permanency plan for the child o May be conducted by the **Citizen Panel Review Panel** except where DFCS is moving for Non-Reunification (Panel may recommend Non-Reunification to the Court & request appointment of a Guardian Ad Litem (GAL) to investigate & pursue termination of parental rights) o MUST be annually, every 12 months from the date the child entered foster care
Jurisdiction	Same as Adjudication, Motion to Extend & Non-Reunification
Venue	Same as Adjudication, Motion to Extend & Non-Reunification
Timing	**O.C.G.A. §15-11-58 (o)(1)** o Within 30 days of DFCS submitting a Case Plan for Non Reunification o No later than 12 months of the child entering DFCS custody & every 12 months thereafter o May be held at the same time as the Motion to Extend Hearing **O.C.G.A. §15-11-58 (j)** o Permanency Hearing must also be held whenever there is a Non-Reunification Hearing
Parties	Same as Adjudication
Service / Notice	**O.C.G.A. § 15-11-58 (o)(4)** o Written Notice, at least 5 days in advance of hearing, including notice of the permanency plan recommended by DFCS **O.C.G.A. § 15-11-39.1, Civil Practice Act § 9-11-4 & § 9-11-5** • Formal service required – summons & copy of petition • Party may waive if on record & by appearance at hearing, party must make objections to service on the record • Personal service to parent / legal custodian - whereabouts known within state, then service must be perfected at least 24 hours prior to the hearing • Certified/registered mail, overnight delivery to parent / legal guardian – if within the State but cannot be found but address is known or can with diligence be ascertained then service must be perfected at least 5 days prior to the hearing • Personal, certified/registered mail, overnight delivery to parent / legal guardian – if outside the State where address is known or can with diligence be ascertained, then service must be perfected at least 5 days prior to the hearing • Publication if after reasonable efforts to locate the parent, the whereabouts continue to be unknown, then service must be perfected by publication once a week for 30 days with the hearing set no sooner than 5 days after the last publication date See Chapter 17 for **O.C.G.A. § 9-11-4 & § 9-11-5** o Child shall be consulted in an age appropriate manner in reference to the permanency plan recommendation or a transition plan for the child

Notice to Non Parties	**O.C.G.A. § 15-11-55.1 & 15-11-58(o)(4)** o Written Notice, at least 5 days in advance of hearing, including notice of the permanency plan recommended by DFCS o Notice of hearing to foster parents to the child, pre-adoptive parents or relatives caring for the child. Notice to be consistent with form & timing of notice to parents. These persons do not become parties to the action but do have the right to be heard during the proceeding.
Standard of Proof	Clear & convincing that the disposition is in the child's best interest
Right to Attorney	**O.C.G.A. §15-11-6 Party / Parent** o Parents/legal guardian should be advised of right to counsel on the record o If indigent, right to appointed counsel or a clear waiver on the record o If non-indigent, then did parent exercise reasonable diligence to obtain an attorney, court findings should be on the record (In the Interest of P.D.W. et al.,children. 296 Ga.App. 189, 674 S.E.2d 338 (2009)) o Inquiry about incarcerated parents, transport to hearings? o Father, legal or putative, right to counsel? **O.C.G.A. §15-11-6(b) Child's Right to Counsel** Counsel must be provided for a child not represented by the child's parent, guardian, or custodian. o Courts & Judges vary on the interpretation of the child's right to representation in deprivation cases; this issue is being addressed on a statewide basis, contact Georgia Association of Counsel for Children found at www.gaccchildlaw.org for further information o Attorneys appointed to represent the child in a deprivation case should obtain an Order of Appointment from the Judge which outlines and clarifies the role and duties the Judge is appointing the attorney to fulfill o See also the child's right to effective attorney representation in the February 7, 2005 order entered by Federal District Judge Marvin Shoob in the *Kenny A. v. Perdue* case, *Kenny A. v. Perdue et. al*., 356 F.Supp.2d 1353 (N.D. Ga. 2005)
Reasonable Efforts (RE)	**O.C.G.A. §15-11-58 (a)(5)(A)& (B) & §15-11-58 (a)(6)** o To finalize the Permanent Plan o RE to make a timely placement of the child consistent with the permanency plan o RE to complete whatever steps necessary to finalize the permanent placement of the child **O.C.G.A. §15-11-58 (a)(6)** o **Concurrent Planning** specifically authorized o RE to permanently place the child in adoptive home or with a legal guardian at the same time RE are being used to make it possible for the child to return home
90 Day Transition Plan	**§ 15-11-58(o)** During the 90 period prior to the foster child reaching 18, DFCS to assist & support child in developing a personalized transition plan to includes specific options on housing, health insurance, education, local opportunities for mentors and continuing support services, work force supports and employment services

Decision Points	Confirm elements of the permanent plan & if it is appropriate o Return to parent o Refer for TPR / adoption o Refer for legal guardianship o Placement with a fit & willing relative o **Or** if a compelling reason exists why none of the above are in the child's best interest, then Another Planned Permanent Living Arrangement (AAPLA) o Articulate steps taken to finalize permanent plan o If child 14 or older, considerations of the transition plan to take the child from foster care to independent living, ILP & WTLP (Written Transitional Living Plan) o If child is in an out of state placement, is out of state placement still appropriate & in the child's best interest
Order	**O.C.G.A. §15-11-58 (o)(7)** Order must be entered within 30 days of the Court's adoption of the permanency plan & every 12 month thereafter until the child achieve permanency & 90 Day Transition Plan **O.C.G.A. §15-11-58 (p)** o Order accepts or rejects report & permanency plan recommended by DFCS o May direct the appointment of a Guardian Ad Litem (GAL) to make additional evaluation necessary to determine the child's best interest o Court Order shall include findings of fact reflecting the Court's consideration of the oral & written testimony offered by the parents, the custodian of the child, the foster parents of the child, any pre-adoptive parents or relatives providing care for the child who were given notice of the hearing including an opportunity to be heard o Disposition made based upon the child's best interest
Documents / Information Needed	o Motion To Extend o Non-Reunification Motion o Always: Case Plan & report on progress of child & family

Practice Points

- Recommend scheduling the Permanency Hearing & the Motion to Extend at 11 months following the child's removal, then Court Order will NEVER inadvertently expire
- Motion to Extend may then combined
- Promotes accountability for the permanent plan

Summary of O.C.G.A. §15-11-58 Reasonable efforts to reunify family	
Section (a)	The types of reasonable efforts required by DFCS o To preserve & reunify families prior to placement in DFCS custody o To prevent or eliminate the need for removal of the child from the home o To make it possible for the child to return to the home The circumstances when reasonable efforts are NOT required (i.e. Non-Reunification) o parent committed murder or voluntary manslaughter of another child o parent convicted of murder or voluntary manslaughter of the other parent o parent committed felony assault on the child causing serious bodily injury o involuntary termination of parental rights to a sibling Permanency Hearing requirements when Non-Reunification is pursued by DFCS hearing within 30 days, Concurrent Case Planning allowed & Reasonable Efforts to finalize permanency
Section (j)	Permanency Hearing at the time of the Non-Reunification Hearing described in subsection (e) & hearing should conform to mandates of subsection (o)

Section (o) Permanency Hearing & 90 Day Transition Plan	Provides for a Permanency Hearing to be held o Within 30 days of DFCS submitting a Case Plan for Non Reunification o No later than 12 months of the child entering DFCS custody & every 12 months thereafter, may be held at the same time as the Motion to Extend Subsection (o) also states that at the Permanency Hearing o DFCS shall submit a report detailing efforts toward achieving permanency o Permanency Hearing may be held by Judicial Citizen Panel Review as long as DFCS is not recommending Non Reunification o All parties including the child's placement resource are given 5 days written notice o Child consulted in an age appropriate manner about proposed permanency plan o During the 90 period prior to the foster child reaching 18, DFCS to assist & support child in developing a personalized transition plan to includes specific options on housing, health insurance, education, local opportunities for mentors and continuing support services, work force supports and employment services
Section (p)	Provides for written notice of the above hearings to the child's placement resource, including an opportunity to be heard & court order shall include consideration of testimony offered by parties & placement resources

Code Sections - OCGA

15-11-58 Reasonable efforts to reunify family. (Sections a, j, o & p)
(a) A court's order removing a child from the child's home shall be based upon a finding by that court that continuation in the home would be contrary to the welfare of the child. If the court places custody of the child in the Division of Family and Children Services of the Department of Human Resources, the court shall also determine as a finding of fact whether reasonable efforts were made by the Division of Family and Children Services of the Department of Human Resources and any other appropriate agencies to preserve and reunify families prior to the placement of a child in the custody of the Department of Human Resources, to prevent or eliminate the need for removal of the child from that child's home, and to make it possible for the child to return safely to the child's home. Such findings shall also be made at every subsequent review of the court's order under this chapter.

(1) In determining reasonable efforts to be made with respect to a child, as described in this subsection, and in making such reasonable efforts, the child's health and safety shall be the paramount concern;

(2) Except as provided in paragraph (4) of this subsection, reasonable efforts shall be made to preserve and reunify families:

(A) Prior to the placement of a child in the custody of the Department of Human Resources, to prevent or eliminate the need for removing the child from the child's home; and

(B) To make it possible for a child to return safely to the child's home;

(3) If continuation of reasonable efforts of the type described in paragraph (2) of this subsection is determined to be inconsistent with the permanency plan for the child, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child;

(4) Reasonable efforts of the type described in paragraph (2) of this subsection shall not be required to be made with respect to a parent of a child if a court of competent jurisdiction has determined that:

(A) The parent has subjected the child to aggravated circumstances which may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse;

(B) The parent has:

(i) Committed murder of another child of the parent;

(ii) Been convicted of the murder of the other parent of the child;

(iii) Committed voluntary manslaughter of another child of the parent;

(iv) Aided or abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of another child of the parent; or

(v) Committed a felony assault that results in serious bodily injury to the child or another child of the parent; or

(C) The parental rights of the parent to a sibling have been terminated involuntarily;

(5) If reasonable efforts of the type described in paragraph (2) of this subsection are not made with respect to a child as a result of a determination made by a court of competent jurisdiction in accordance with paragraph (4) of this subsection:

(A) A permanency hearing in accordance with subsection (o) of this Code section shall be held for the child within 30 days after such determination; and

(B) Reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child; and

(6) Reasonable efforts to place a child for adoption or with a legal guardian may be made concurrently with reasonable efforts of the type described in paragraph (2) of this subsection.

(j) At the hearing required by subsection (e) of this Code section, the court shall hold a permanency hearing in accordance with subsection (o) of this Code section and shall consider and incorporate a permanency plan for the child in its order which shall comply with subsection (o) of this Code section.

(o)(1) With respect to each child in the custody of the Department of Human Services, a permanency hearing shall be held no later than 30 days after the Division of Family and Children Services of the Department of Human Services has submitted a written report to the court which does not contain a plan for reunification services as provided in subsection (j) of this Code section, or no later than 12 months after the child is considered to have entered foster care, whichever comes first. Thereafter, a permanency hearing shall be held not less frequently than every 12 months during the time the child continues in the custody of the Department of Human Services. A permanency hearing may be held by the court at the time of the hearing on a motion to extend custody permitted by subsection (n) of this Code section. The provisions of subsection (p) of this Code section concerning notice, opportunity to be heard, authority of the court, and content of the court's order are applicable to proceedings under this paragraph.

(2) At the time of the permanency hearing, the Division of Family and Children Services of the Department of Human Services shall submit for the court's consideration a report recommending a permanency plan for the child which shall include whether and, if applicable, when the child shall be returned to the parent or parents; referred for termination of parental rights and adoption; referred for legal guardianship; placed permanently with a fit and willing relative; or, in the case where the division has provided a compelling reason that none of the foregoing options would be in the best interest of the child, placed in another planned permanent living arrangement. The report shall include documentation of the steps to be taken by the Division of Family and Children Services of the Department of Human Services to finalize the permanent placement of the child. When the permanency plan recommended is referral for termination of parental rights and adoption, such report shall include child specific recruitment efforts such as the use of state, regional, and national adoption exchanges, including electronic exchange systems. The provisions of subsection (p) of this Code section concerning notice, opportunity to be heard, authority of the court, and content of the court's order are applicable to proceedings under this paragraph.

(3) The permanency hearing may be conducted as the court directs by the juvenile court judge or by an associate juvenile court judge or judge pro tempore. The court may also direct that the permanency hearing be conducted by a judicial citizen review panel established by the court in the manner provided in subsection (k) of this Code section, unless the permanency hearing is one required under subsection (j) of this Code section as a result of a recommendation that reunification services are not appropriate. The judicial citizen review panel may conduct its hearing in the same manner as it conducts a case review under subsection (k) of this Code section. The provisions of subsection (p) of this Code section concerning notice, opportunity to be heard, authority of the court, and content of the court's order are applicable to proceedings under this paragraph.

(A) The panel shall transmit its report, including its findings and recommendations and those of the Division of Family and Children Services, to the court and the parties within five days after such hearing. The report of the judicial citizen review panel shall include all the elements required in paragraphs (5) and (6) of this subsection. Any party may request a hearing on the proposed permanency plan by submitting a request in writing within five days of receiving a copy of such plan. If a hearing is not requested, the court shall review the proposed permanency plan and enter a supplemental order incorporating all elements required by paragraphs (5) and (6) of this subsection that the court finds essential in the proposed permanency plan. In the event a hearing before the court is requested on the report transmitted by the judicial citizen review panel, the court shall, after hearing evidence, enter a supplemental order incorporating all the elements required in paragraphs (5) and (6) of this subsection.

(B) If a permanency hearing is held before the court, the court shall, after hearing evidence, enter a supplemental order incorporating all elements of the proposed permanency plan required by paragraphs (5) and (6) of this subsection that the court finds essential in the proposed permanency plan.

(4) The parents, the custodian of the child, the foster parents of the child, any preadoptive parent or relative providing care for the child, and other parties shall be given written notice of a permanency hearing at least five days in advance and shall be advised that the permanency plan recommended by the Division of Family and Children Services of the Department of Human Services will be submitted to the court for consideration to become an order of the court. Procedural safeguards shall be applied with respect to parental rights pertaining to the removal of the child from the home of his or her parents, to a change in the child´s placement, and to any determination affecting visitation privileges of parents. Procedural safeguards shall also be applied to assure that the court or the judicial citizen review panel conducting a permanency hearing, including any hearing regarding transition of the child from foster care to independent living, shall consult, in an age-appropriate manner, with the child regarding the proposed permanency or transition plan for such child. The provisions of subsection (p) of this Code section concerning notice, opportunity to be heard, authority of the court, and content of the court´s order are applicable to proceedings under this paragraph.

(5) The permanency plan incorporated in the court's order shall include whether and, if applicable, when the child shall be returned to the parent or parents, referred for termination of parental rights and adoption, referred for legal guardianship, or placed permanently with a fit and willing relative. If the court finds that there is a compelling reason that it would not be in the child's best interests to be returned to the parent or parents, referred for termination of parental rights and adoption, referred for legal guardianship, or placed permanently with a fit and willing relative, then the court's order shall document the compelling reason and provide that the child should be placed in another planned permanent living arrangement as defined in the court's order. The provisions of subsection (p) of this Code section concerning notice, opportunity to be heard, authority of the court, and content of the court's order are applicable to proceedings under this paragraph.

(6) The court or judicial citizen review panel which conducts the permanency hearing shall determine, as a finding of fact, whether the Division of Family and Children Services of the Department of Human Services has made reasonable efforts to finalize the permanency plan which is in effect at the time of the hearing. Further, the court or the judicial citizen review panel, if applicable, shall determine as a finding of fact whether, in the case of a child placed out of the state, the out-of-state placement continues to be appropriate and in the best interest of the child and, in the case of a child who has attained the age of 14, shall determine the services needed to assist the child to make a transition from foster care to independent living. Also, in the case of a child whose permanency plan provides that the child will not be returned to the parent, the court or judicial citizen review panel, if applicable, shall consider in-state and out-of-state placement options for such child. Such findings of fact shall be made a part of the report of the judicial citizen review panel to the court and any supplemental order entered by the court.

(7) A supplemental order of the court adopting the permanency plan shall be entered within 30 days after the court has determined that reunification efforts will not be made by the Division of Family and Children Services of the Department of Human Services, if applicable, or within 12 months after the child is

considered to have entered foster care, whichever is first, and at least every 12 months thereafter while the child is in foster care, unless the court finds good cause why such order cannot be entered by that time. The supplemental order shall include a requirement that the Division of Family and Children Services of the Department of Human Services case manager and staff, and, as appropriate, other representatives of the child, provide the child with assistance and support in developing a transition plan that is personalized at the direction of the child; includes specific options on housing, health insurance, education, local opportunities for mentors and continuing support services, and work force supports and employment services; and is as detailed as the child may elect in the 90 day period immediately prior to the date on which the child will attain 18 years of age.

(p) In advance of each review, hearing, or other proceeding to be held with respect to a child pursuant to this Code section, the court shall provide written notice or shall direct that a party shall provide written notice of such review, hearing, or other proceeding, including their right to be heard at such review, hearing, or other proceeding to the custodian of the child, to the foster parents of the child, and to any pre-adoptive parents or relatives providing care for the child, consistent with the form and timing of notice to parties; provided, however, that this provision shall not be construed to require a custodian, foster parent, pre-adoptive parent, or relative caring for the child to be made a party to the review, hearing, or other proceeding solely on the basis of such notice and opportunity to be heard. At each such review, hearing, or proceeding, the court in its discretion, based upon the evidence, may enter an order accepting or rejecting any report of the Division of Family and Children Services of the Department of Human Resources, ordering an additional evaluation, appointing a guardian ad litem, or undertaking such other review as it deems necessary and appropriate to determine the disposition that is in the child's best interest. The court's order may incorporate all or part of the report of the Division of Family and Children Services of the Department of Human Resources. In its order the court shall include findings of fact which reflect the court's consideration of the oral and written testimony offered by the parents, the custodian of the child, the foster parents of the child, any pre-adoptive parents or relatives providing care for the child who are required to be provided with notice and a right to be heard in any review, hearing, or proceeding to be held with respect to the child, and the Division of Family and Children Services of the Department of Human Resources. A disposition may be made under the terms of this Code section only if the court finds that such disposition is in the best interest of the child.

Chapter 8 Motion to Extend (MTE)

Authority	**O.C.G.A. § 15-11-58 (n) & 15-11-58.1** **Uniform Rules For The Juvenile Courts Of Georgia, Rule 4.5**
Purpose	o To determine whether extended custody to DFCS is necessary to accomplish the purposes of the original Order o Order can only be extended ONE time & then DFCS **MUST** start with a new action (safekeeping authorization, complaint, petition)
Pleadings	Motion containing factual basis for the extension
Jurisdiction	Same as Order being extended
Venue	Same as order being extended
Timing	o Filed & heard prior to expiration of the Order being extended o Except hearing may be continued past expiration of prior Order ONLY IF parent requests an attorney or waives the time limit o If the Motion to Extend Hearing is NOT held prior to the expiration of the original order then the Motion should be dismissed & the deprivation case has to be restarted from the beginning with a safekeeping authorization, complaint, petition
Parties	Parents, DFCS, attorneys for Parents, SAAG, Child Attorney
Service / Notice	o Reasonable notice, if address known or o If only "last known" address for parents is known then parents may be mailed notice & Motion to the "last known address" o If there is not a "known" address or a "last known address" then publication which will probably place the hearing outside the time limit of the expiration of the prior order which results in the case having to be restarted from the beginning with a safekeeping authorization, complaint, petition
Notice to Non Parties	**O.C.G.A. § 15-11-55.1 & 15-11-58(p)** Notice of hearing to foster parents of the child, pre-adoptive parents or relatives caring for the child. Notice to be consistent with form & timing of notice to parents. These persons do not become parties to the action but do have the right to be heard during the proceeding.
Standard of Proof	o Clear & Convincing that extension of the original order is necessary to accomplish the purposes of the original Order
Right to Attorney	**O.C.G.A. §15-11-6 Party / Parent** o Parents/legal guardian should be advised of right to counsel on the record o If indigent, right to appointed counsel or a clear waiver on the record o If non-indigent, then did parent exercise reasonable diligence to obtain an attorney, court findings should be on the record (In the Interest of P.D.W. et al.,children. 296 Ga.App. 189, 674 S.E.2d 338 (2009)) o Inquiry about incarcerated parents, transport to hearings? o Father, legal or putative, right to counsel? **O.C.G.A. §15-11-6(b) Child's Right to Counsel** Counsel must be provided for a child not represented by the child's parent, guardian, or custodian. o Courts & Judges vary on the interpretation of the child's right to representation in deprivation cases; this issue is being addressed on a statewide basis, contact Georgia Association of Counsel for Children found at www.gaccchildlaw.org for further information o Attorneys appointed to represent the child in a deprivation case should obtain an

	Order of Appointment from the Judge which outlines and clarifies the role and duties the Judge is appointing the attorney to fulfill o See also the child's right to effective attorney representation in the February 7, 2005 order entered by Federal District Judge Marvin Shoob in the *Kenny A. v. Perdue* case, *Kenny A. v. Perdue et. al*., 356 F.Supp.2d 1353 (N.D. Ga. 2005)
Reasonable Efforts	o RE to provide services to the child & family which promote accomplishing the goals of the original Court Order o To reunify the family & achieve permanency for the child o To finalize permanency for the child
Decision Points	o Have the purposes of the original Order been accomplished? o Has DFCS used reasonable efforts? o Is the stated Case Plan still appropriate? o Are there barriers to reunification which were NOT part of the reasons for removal? If so then if these barriers prevent reunification a new deprivation petition should be initiated
Stipulation / Consent	o Parties may consent or stipulate to the extension of the original court order but the time limit of 15 out of the most recent 22 months is still in effect o Where there is a consent to the extension make sure effective services are in place to accomplish the goals of the original court order
Order	o Requires specific findings of fact concerning whether the purposes of the original Order have been accomplished o Have any Case Plan goals been achieved, if no why not o What Case Plan goals remain as barriers to reunification or other permanency plan for the child o Analysis of which goals have been achieved and what are the Barriers to Reunification
Documents / Information Needed	o Permanency Plan recommendations from DFCS & Judicial Citizen Panel Review o Documentation of services provided to family o Documentation of the goal that have been accomplished
Dismissal	o Dismissal would allow the original Court Order to expire & legal / physical custody of the child would revert to the parent or guardian at the time of the initial removal o The Court may order aftercare services if the child is returned to the parent or permanency with a relative or third party through direct custody or guardianship, DFCS policy states an "aftercare Case Plan" should be in place, See Chapter 31 o If there is also a pending termination of parental rights & the TPR is granted then the Motion to Extend may be moot depending on the award of custody following the grant of the TPR

Practice Points

- Try to calendar the **Permanency Hearing** at the same time as the **Motion to Extend**
- If at the time of the Motion to Extend, there are barriers to reunification which were NOT addressed in the original order then these issues require the filing of a new action
- The parents are entitled to a full hearing on any new or different causes of deprivation that were not identified in the original order
- It is not unusual for new or different risk factors to emerge between the original order and the Motion to Extend, but these risk factors cannot be merged into the original deprivation action, a new action is

required with DFCS having the burden to prove by clear & convincing evidence the child is deprived as a result of these additional or different risk factors
- Court should make specific findings of fact
- Could some of the Case Plan goals be accomplished with the child back in the home and wraparound or aftercare services in place? Or under a Protective Order??

Code Sections - OCGA

15-11-58 (n) Motion to Extend
The court which made the order may extend its duration for not more than 12 months if:
(1) A hearing is held upon motion of the Division of Family and Children Services of the Department of Human Resources prior to the expiration of the order;
(2) Reasonable notice of the factual basis of the motion and of the hearing and opportunity to be heard are given to the parties affected; and
(3) The court finds that the extension is necessary to accomplish the purposes of the order extended.

15-11-58.1 Term or order of disposition - extension
(a) Except as otherwise provided by law, an order of disposition in a proceeding involving deprivation, except an order involving the appointment of a guardian of the person or property of a child, continues in force for not more than two years. The court may sooner terminate its order or extend its duration for further periods. An order of extension may be made if:

(1) A hearing is held prior to the expiration of the order upon motion of a party or on the court's own motion;

(2) Reasonable notice of the factual basis of the motion and of the hearing and opportunity to be heard are given to the parties affected;

(3) The court finds that the extension is necessary to accomplish the purposes of the order extended; and

(4) The extension does not exceed two years from the expiration of the prior order.

(b) The court may terminate an order of disposition of a child adjudicated as deprived or an extension of such a disposition order prior to its expiration, on or without an application of a party, if it appears to the court that the purposes of the order have been accomplished.

(c) Unless otherwise provided by law, when a child adjudicated as deprived reaches 18 years of age all orders affecting him or her then in force terminate and he or she is discharged from further obligation or control.

Uniform Rules for the Juvenile Courts of Georgia
Rule 4.5
Motion for Extension.
A motion for the court to extend its previous order pursuant to O.C.G.A. §15-11-58(n) or (o) shall be treated as a new proceeding in the court and shall be subject to the provisions of Rule 4.1 regarding the filing of a complaint form, JUV-2. The motion shall not be filed in the office of the clerk of Juvenile Court unless it is accompanied by a properly completed complaint form. The case shall be entered into the Juvenile Court docket and treated as any other new proceeding.

Chapter 9 Non-Reunification Hearing (NR)

Authority	**O.C.G.A. § 15-11-58 (e, f, g, h, i, o, p)**
Purpose	○ Determine if reunification services should continue to be offered to the family ○ Determine if offering reunification services to the parent continues to be in the child's best interest ○ Determine if the continuation of reunification services to the family would be detrimental to the child ○ **O.C.G.A. §15-11-58(j)** Permanency Hearing held with Non-Reunification Hearing ○ **O.C.G.A. §15-11-30.1** Non-Reunification Hearing is required before a permanent guardianship may be granted
Pleading	○ Petition for Non Reunification ○ Non-Reunification Case Plan ○ Petition should explicitly state the factual basis for the Non-Reunification Case Plan & whether one of the aggravating circumstances exists thereby invoking the rebuttable presumption that reasonable efforts should NOT be provided to the parents and the Non-Reunification Case Plan should be approved ○ Permanency Plan to be presented to the Court for approval
Jurisdiction	Same as Adjudication., Attaches to a pending deprivation action
Venue	Same as Adjudication., Attaches to a pending deprivation action
Timing	○ Within 30 days where an order of disposition in a deprivation case has been made stating Non-Reunification is the goal ○ Within 30 days of the filing of a separate motion for Non-Reunification ○ Within 30 days of DFCS submitting a Case Plan which states the goal is Non Reunification ○ May be separate action, ○ Prayer in a Deprivation Petition or Motion to Extend (services as notice of Non-Reunification which starts the 30 day time limit for the NR Hearing) ○ Part of Case Plan or recommendation from Judicial Citizens Panel Review (services as notice of Non-Reunification which starts the 30 day time limit for the NR Hearing)
Parties	Same parties as the Adjudication
Service / Notice	**O.C.G.A. § 15-11-39.1, Civil Practice Act § 9-11-4 & § 9-11-5** ○ Formal service required – summons & copy of petition ○ Party may waive if on record & by appearance at hearing, party must make objections to service on the record ○ Personal service to parent / legal custodian - whereabouts known within state, then service must be perfected at least 24 hours prior to the hearing ○ Certified/registered mail, overnight delivery to parent / legal guardian – if within the State but cannot be found but address is known or can with diligence be ascertained then service must be perfected at least 5 days prior to the hearing ○ Personal, certified/registered mail, overnight delivery to parent / legal guardian – if outside the State where address is known or can with diligence be ascertained, then service must be perfected at least 5 days prior to the hearing ○ Publication if after reasonable efforts to locate the parent, the whereabouts continue to be unknown, then service must be perfected by publication once a week for 30 days with the hearing set no sooner than 5 days after the last publication date See Chapter 17 for **O.C.G.A. § 9-11-4 & § 9-11-5**

Notice to Non Parties	**O.C.G.A. § 15-11-55.1 & 15-11-58(p)** Notice of hearing to foster parents of the child, pre-adoptive parents or relatives caring for the child. Notice to be consistent with form & timing of notice to parents. These persons do not become parties to the action but do have the right to be heard during the proceeding.
Standard of Proof	o Clear & convincing proof that offering reunification services to the family would be detrimental to the child o Is the evidence sufficient to invoke the rebuttable presumption that reunification services should not be offered to the family based on the existence of "aggravating circumstances" • The parent has unjustifiably failed to comply with a previously ordered reunification Case Plan • A child has been removed from the home at least twice before & reunification services were previously provided • Any grounds for terminating parental rights per O.C.G.A. § 15-11-94(b) o Written consent of parent o Parent failed to support child for 12 months or longer o Parent has **abandoned the child -** defined as the child being left under circumstances that the identity of the parent is unknown, identity cannot be determined & the parent has NOT come forward for 3 months after the child was found (O.C.G.A. §15-11-94 (b)(3)) o The court determines parental misconduct (O.C.G.A. §15-11-94(b)(4)) o The parent has been convicted of murdering the other parent • Any of the aggravating parental circumstances exist -parent committed murder or voluntary manslaughter of another child; parent has been convicted of murder or voluntary manslaughter of the other parent, parent committed felony assault on the child causing serious bodily injury or involuntary termination of parental rights to a sibling **O.C.G.A. §15-11-58(g)** At the Non-Reunification hearing, DFCS must notify the Court whether termination of parental rights will be pursued by DFCS & if DFCS is not pursuing termination, then the Court may choose to appoint a Guardian Ad Litem (GAL) to determine independently whether termination should be initiated on behalf of the child
Right to Attorney	**O.C.G.A. §15-11-6 Party / Parent** o Parents/legal guardian should be advised of right to counsel on the record o If indigent, right to appointed counsel or a clear waiver on the record o If non-indigent, then did parent exercise reasonable diligence to obtain an attorney, court findings should be on the record (In the Interest of P.D.W. et al., children. 296 Ga. App. 189, 674 S.E.2d 338 (2009)) o Inquiry about incarcerated parents, transport to hearings? o Father, legal or putative, right to counsel? **O.C.G.A. §15-11-6(b) Child's Right to Counsel** Counsel must be provided for a child not represented by the child's parent, guardian, or custodian. o Courts & Judges vary on the interpretation of the child's right to representation in deprivation cases; this issue is being addressed on a statewide basis, contact Georgia Association of Counsel for Children found at www.gaccchildlaw.org for further information o Attorneys appointed to represent the child in a deprivation case should obtain an

	Order of Appointment from the Judge which outlines and clarifies the role and duties the Judge is appointing the attorney to fulfill o See also the child's right to effective attorney representation in the February 7, 2005 order entered by Federal District Judge Marvin Shoob in the *Kenny A. v. Perdue* case, *Kenny A. v. Perdue et. al*., 356 F.Supp.2d 1353 (N.D. Ga. 2005)
Reasonable Efforts	To reunify or otherwise accomplish the goals of the court approved permanent plan o RE are determined in relation to the permanency goals established for the child o Parents may challenge DFCS & allege DFCS did not use RE to provide the parents or family the services necessary to achieve reunification
Decision Points	o Would it be detrimental to the child for the family to receive reunification services from DFCS o Are the facts of the case such as to invoke the "rebuttable presumption" that NR is the most appropriate plan o Is termination & adoption in the child's best interest, should a Guardian Ad Litem (GAL) be appointed by the Court to investigate & make recommendations as to the filing of a termination of parental rights o If NR is granted, but TPR & adoption are not appropriate what are the permanency options available for the child (permanent custody to relative, non relative, another agency, how will the child transition to adulthood o Are there any special terms for the NR which are in the child's best interest
Stipulation / Consent	o NR is a necessary step toward obtaining relative care subsidies, guardianship subsidies & other services for family members who are assuming permanent care & custody of the child o NR result is DFCS no longer obligated to offer reunification services to the family, but the parties may negotiate or make a request to the Court to allow continued contact or visits between the child & parent, family counseling or other services deemed in the child's best interest o Parents may wish to consent or stipulate to Non-Reunification conditioned on transfer of the child's custody to a specified caregiver o Always reserve, on the record, the right to withdraw a consent or stipulation in the event the Court does not accept all the terms or if the agreed upon result is not achieved
Documents Information Needed	Non-Reunification Case Plan must state o Each reason for removal o why the child cannot be protected in the home & the harm which the child would be exposed to in the home o the services offered & provided to prevent the child's removal from the home o all the reasons why reunification services would be detrimental to the child & whether any of the grounds for termination of parental rights exist

Order	○ Recite the child specific reasons why Non-Reunification is the appropriate plan ○ Approve the long term plan for the child ○ State the terms of the NR, such as visits or contact with parent/siblings/family; what will NR mean for the child & family ○ NR requires a separate order, should not be combined with an Extension of Custody Order or an Order modifying custody ○ 90 Day Transition Plan

Practice Points

- Non-Reunification is NOT a necessary step prior to TPR; if TPR & adoption is the goal then a NR hearing is redundant & might actually delay TPR
- Non-Reunification should only be granted where DFCS can show by clear and convincing evidence that reunification services would be detrimental to the child & necessary to achieve some other permanency goal such as custody to a relative or permanent guardianship
- Non-Reunification should NOT be a matter of convenience for DFCS not to have to work with a non-complying or difficult parent
- If Non-Reunification is granted, terms can still be dictated such as visits or contact with parent / siblings / extended family if in the child's best interest
- Non-Reunification **DOES NOT** end the child / parent right to visit or for DFCS to facilitate those visits
- **Concurrent Plan** is possible where DFCS is pursuing both reunification & other permanency options
- **Non-Reunification may be necessary to relative care funding or subsidies for some relative placements and permanent guardianships**

Summary of O.C.G.A. §15-11-58 Reasonable efforts to reunify family	
Section (e)	Directs that if the Case Plan is Non-Reunification then a hearing should be scheduled within 30 days to determine whether Non-Reunification is the appropriate plan
Section (f)	The contents of the Non-Reunification Case Plan ○ Each reason for removal ○ Why the child cannot be protected in the home & the harm which the child would be exposed to in the home ○ The services offered & provided to prevent the child's removal from the home ○ All the reasons why reunification services would be detrimental to the child & whether any of the grounds for termination of parental rights exist ○ RE for Sibling Joint Placement ○ Educational Stability Assurance
Section (g)	At the Non-Reunification hearing, DFCS is to notify the Court whether termination of parental rights will be pursued and if not the Court may appoint a Guardian Ad Litem (GAL) to determine independently whether termination should be initiated on behalf of the child & the GAL may be authorized to pursue the recommended action

Section (h)	Standard of proof for the Non-Reunification hearing o The court shall determine by clear & convincing evidence whether reasonable efforts to reunify the child would be detrimental to the child & whether reunification services should cease o Rebuttable presumption that reunification services should cease where the Court finds by clear & convincing evidence that: • The parent has unjustifiably failed to comply with a previously ordered reunification Case Plan • A child has been removed from the home at least twice before & reunification services were previously provided • Any grounds for terminating parental rights exist per O.C.G.A. § 15-11-94(b) • Any of the aggravating parental circumstances exist (parent committed murder or voluntary manslaughter of another child; parent has been convicted of murder or voluntary manslaughter of the other parent, parent committed felony assault on the child causing serious bodily injury or involuntary termination of parental rights to a sibling)
Section (i)	Custody options when Non-Reunification is granted by the Court o provides for the filing of a Petition to Modify Custody following Non Reunification o custody granted until the child is 18 years old o custody to relative, then custody is to be reviewed by the court every 36 months o custody to non relative then custody to be reviewed by the court every 12 months
Section (o) Permanency Hearing & 90 Day Transition Plan	Provides for a Permanency Hearing to be held o Within 30 days of DFCS submitting a Case Plan for Non Reunification o No later than 12 months of the child entering DFCS custody & every 12 months thereafter, may be held at the same time as the Motion to Extend Subsection (o) also states that at the Permanency Hearing o DFCS shall submit a report detailing efforts toward achieving permanency o Permanency Hearing may be held by Judicial Citizen Panel Review as long as DFCS is not recommending Non Reunification o All parties including the child's placement resource are given 5 days written notice o Child consulted in an age appropriate manner about proposed permanency plan o During the 90 period prior to the foster child reaching 18, DFCS to assist & support child in developing a personalized transition plan to includes specific options on housing, health insurance, education, local opportunities for mentors and continuing support services, work force supports and employment services
Section (p)	Provides for written notice of the above hearings to the child's placement resource, including an opportunity to be heard & court order shall include consideration of testimony offered by parties & placement resources

Code Sections – OCGA

15-11-58 Reasonable efforts to reunify family. (Sections e, f, g, h, i, o & p)
(e) If the report submitted to the court does not contain a plan for reunification services, upon proper notice being provided to the parents, the court shall, no later than 30 days following the filing of the report, hold a hearing to review the report and the determination that a plan for reunification services is not appropriate.

(f) When a recommendation is made that reunification services are not appropriate and should not be allowed, the report shall address each reason requiring removal and shall contain at least the following:
(1) The purpose for which the child was placed in foster care, including a statement of the reasons why the child cannot be adequately and safely protected at home and the harm which may occur if the child remains in the home, and a description of the services offered and the services provided to prevent removal of the child from the home;
(2) A clear statement describing all of the reasons supporting a finding that reasonable efforts to reunify a child with the child's family will be detrimental to the child, and that reunification services therefore need not be provided, including specific findings as to whether any of the grounds for terminating parental rights exist, as set forth in subsection (b) of Code Section 15-11-94 or paragraph (4) of subsection (a) of this Code section; and
(3) The statements, provisions, and requirements found in paragraphs (7) and (8) of subsection (c) of this Code section.

(g) At the hearing held for the purpose of reviewing the determination by the Division of Family and Children Services of the Department of Human Resources that a reunification plan is not appropriate, the representative of the Division of Family and Children Services shall notify the court whether and when it intends to proceed with termination of parental rights at that time. If the Division of Family and Children Services indicates that it does not intend to petition for the termination of parental rights, the court may appoint a guardian ad litem and charge such guardian with the duty of determining whether termination proceedings should be commenced.

(h) When reviewing the determination by the Division of Family and Children Services of the Department of Human Resources that a reunification plan is not appropriate, the court shall determine by clear and convincing evidence whether reasonable efforts to reunify a child with his or her family will be detrimental to the child and that reunification services, therefore, should not be provided or should be terminated. There shall be a presumption that reunification services should not be provided if the court finds by clear and convincing evidence that:
(1) The parent has unjustifiably failed to comply with a previously ordered plan designed to reunite the family;
(2) A child has been removed from the home on at least two previous occasions and reunification services were made available on those occasions;
(3) Any of the grounds for terminating parental rights exist, as set forth in subsection (b) of Code Section 15-11-94; or
(4) Any of the circumstances set out in paragraph (4) of subsection (a) of this Code section exist, making it unnecessary to provide reasonable efforts to reunify.

(i)(1) If the court has entered an order finding that reasonable efforts to reunify a child with his or her family would be detrimental to the child in accordance with subsection (h) of this Code section and if the court finds that referral for termination of parental rights and adoption is not in the best interest of the child, the court may, upon proper petition, enter a custody order which shall remain in effect until the child's eighteenth birthday:
(A) Placing the child in the custody of a relative of the child if such a person is willing and, after study by the probation officer or other person or agency designated by the court, is found by the court to be qualified to receive and care for the child;
(B) Placing the child in the custody of any nonrelative individual who, after study by the probation officer or other person or agency designated by the court, is found by the court to be qualified to receive and care for the child;
(C) Placing the child in the custody of a suitable individual custodian in another state pursuant to the provisions of Code Section 15-11-89; or
(D) In the case where the court has found a compelling reason that a placement pursuant to subparagraph (A), (B), or (C) of this paragraph is not in the child's best interest, placing the child in the custody of an agency or organization licensed or otherwise authorized by law to receive and provide care for the child which is operated in a manner that provides such care, guidance, and control as would be provided in a family home as defined in the court's order.

Such order may be modified following a petition for modification by a party or upon motion of the court pursuant to Code Section 15-11-40.

(2) A probation officer, judicial citizen review panel established by the court, or other person or agency designated by the court shall, after study or review, submit a report to the court addressing whether the custodian to whom custody of a child has been given pursuant to this Code section continues to be qualified to receive and care for the child within:

(A) Thirty-six months of an order placing a child in the custody of a relative pursuant to subparagraph (A) of paragraph (1) of this subsection and every 36 months thereafter; or

(B) Twelve months of an order placing a child in the custody of a nonrelative, an out-of-state custodian, or an agency or organization licensed or otherwise authorized by law to receive and provide care for the child pursuant to subparagraph (B), (C), or (D) of paragraph (1) of this subsection and every 12 months thereafter.

(3) Whenever a child is placed in the custody of an agency or organization licensed or otherwise authorized by law to receive and provide care for the child pursuant to subparagraph (D) of paragraph (1) of this subsection, such agency or organization shall be charged with the responsibility of notifying the court within ten days in the event its license is placed on probation, suspended, revoked, or surrendered and, in such event, the court shall conduct a judicial review within ten days of such notification to determine whether another placement should be made for the child.

(o)(1) With respect to each child in the custody of the Department of Human Services, a permanency hearing shall be held no later than 30 days after the Division of Family and Children Services of the Department of Human Services has submitted a written report to the court which does not contain a plan for reunification services as provided in subsection (j) of this Code section, or no later than 12 months after the child is considered to have entered foster care, whichever comes first. Thereafter, a permanency hearing shall be held not less frequently than every 12 months during the time the child continues in the custody of the Department of Human Services. A permanency hearing may be held by the court at the time of the hearing on a motion to extend custody permitted by subsection (n) of this Code section. The provisions of subsection (p) of this Code section concerning notice, opportunity to be heard, authority of the court, and content of the court's order are applicable to proceedings under this paragraph.

(2) At the time of the permanency hearing, the Division of Family and Children Services of the Department of Human Services shall submit for the court's consideration a report recommending a permanency plan for the child which shall include whether and, if applicable, when the child shall be returned to the parent or parents; referred for termination of parental rights and adoption; referred for legal guardianship; placed permanently with a fit and willing relative; or, in the case where the division has provided a compelling reason that none of the foregoing options would be in the best interest of the child, placed in another planned permanent living arrangement. The report shall include documentation of the steps to be taken by the Division of Family and Children Services of the Department of Human Services to finalize the permanent placement of the child. When the permanency plan recommended is referral for termination of parental rights and adoption, such report shall include child specific recruitment efforts such as the use of state, regional, and national adoption exchanges, including electronic exchange systems. The provisions of subsection (p) of this Code section concerning notice, opportunity to be heard, authority of the court, and content of the court's order are applicable to proceedings under this paragraph.

(3) The permanency hearing may be conducted as the court directs by the juvenile court judge or by an associate juvenile court judge or judge pro tempore. The court may also direct that the permanency hearing be conducted by a judicial citizen review panel established by the court in the manner provided in subsection (k) of this Code section, unless the permanency hearing is one required under subsection (j) of this Code section as a result of a recommendation that reunification services are not appropriate. The judicial citizen review panel may conduct its hearing in the same manner as it conducts a case review under subsection (k) of this Code section. The provisions of subsection (p) of this Code section concerning notice, opportunity to be heard, authority of the court, and content of the court's order are applicable to proceedings under this paragraph.

(A) The panel shall transmit its report, including its findings and recommendations and those of the Division of Family and Children Services, to the court and the parties within five days after such hearing. The report of the judicial citizen review panel shall include all the elements required in paragraphs (5) and (6) of this subsection. Any party may request a hearing on the proposed permanency plan by submitting a request in writing within five days of receiving a copy of such plan. If a hearing is not requested, the court shall review the proposed permanency plan and enter a supplemental order incorporating all elements required by paragraphs (5) and (6) of this subsection that the court finds essential in the proposed permanency plan. In the event a hearing before the court is requested on the report transmitted by the judicial citizen review panel, the court shall, after hearing evidence, enter a supplemental order incorporating all the elements required in paragraphs (5) and (6) of this subsection.

(B) If a permanency hearing is held before the court, the court shall, after hearing evidence, enter a supplemental order incorporating all elements of the proposed permanency plan required by paragraphs (5) and (6) of this subsection that the court finds essential in the proposed permanency plan.

(4) The parents, the custodian of the child, the foster parents of the child, any preadoptive parent or relative providing care for the child, and other parties shall be given written notice of a permanency hearing at least five days in advance and shall be advised that the permanency plan recommended by the Division of Family and Children Services of the Department of Human Services will be submitted to the court for consideration to become an order of the court. Procedural safeguards shall be applied with respect to parental rights pertaining to the removal of the child from the home of his or her parents, to a change in the child´s placement, and to any determination affecting visitation privileges of parents. Procedural safeguards shall also be applied to assure that the court or the judicial citizen review panel conducting a permanency hearing, including any hearing regarding transition of the child from foster care to independent living, shall consult, in an age-appropriate manner, with the child regarding the proposed permanency or transition plan for such child. The provisions of subsection (p) of this Code section concerning notice, opportunity to be heard, authority of the court, and content of the court´s order are applicable to proceedings under this paragraph.

(5) The permanency plan incorporated in the court's order shall include whether and, if applicable, when the child shall be returned to the parent or parents, referred for termination of parental rights and adoption, referred for legal guardianship, or placed permanently with a fit and willing relative. If the court finds that there is a compelling reason that it would not be in the child's best interests to be returned to the parent or parents, referred for termination of parental rights and adoption, referred for legal guardianship, or placed permanently with a fit and willing relative, then the court's order shall document the compelling reason and provide that the child should be placed in another planned permanent living arrangement as defined in the court's order. The provisions of subsection (p) of this Code section concerning notice, opportunity to be heard, authority of the court, and content of the court's order are applicable to proceedings under this paragraph.

(6) The court or judicial citizen review panel which conducts the permanency hearing shall determine, as a finding of fact, whether the Division of Family and Children Services of the Department of Human Services has made reasonable efforts to finalize the permanency plan which is in effect at the time of the hearing. Further, the court or the judicial citizen review panel, if applicable, shall determine as a finding of fact whether, in the case of a child placed out of the state, the out-of-state placement continues to be appropriate and in the best interest of the child and, in the case of a child who has attained the age of 14, shall determine the services needed to assist the child to make a transition from foster care to independent living. Also, in the case of a child whose permanency plan provides that the child will not be returned to the parent, the court or judicial citizen review panel, if applicable, shall consider in-state and out-of-state placement options for such child. Such findings of fact shall be made a part of the report of the judicial citizen review panel to the court and any supplemental order entered by the court.

(7) A supplemental order of the court adopting the permanency plan shall be entered within 30 days after the court has determined that reunification efforts will not be made by the Division of Family and Children Services of the Department of Human Services, if applicable, or within 12 months after the child is

considered to have entered foster care, whichever is first, and at least every 12 months thereafter while the child is in foster care, unless the court finds good cause why such order cannot be entered by that time. The supplemental order shall include a requirement that the Division of Family and Children Services of the Department of Human Services case manager and staff, and, as appropriate, other representatives of the child, provide the child with assistance and support in developing a transition plan that is personalized at the direction of the child; includes specific options on housing, health insurance, education, local opportunities for mentors and continuing support services, and work force supports and employment services; and is as detailed as the child may elect in the 90 day period immediately prior to the date on which the child will attain 18 years of age.

(p) In advance of each review, hearing, or other proceeding to be held with respect to a child pursuant to this Code section, the court shall provide written notice or shall direct that a party shall provide written notice of such review, hearing, or other proceeding, including their right to be heard at such review, hearing, or other proceeding to the custodian of the child, to the foster parents of the child, and to any pre-adoptive parents or relatives providing care for the child, consistent with the form and timing of notice to parties; provided, however, that this provision shall not be construed to require a custodian, foster parent, pre-adoptive parent, or relative caring for the child to be made a party to the review, hearing, or other proceeding solely on the basis of such notice and opportunity to be heard. At each such review, hearing, or proceeding, the court in its discretion, based upon the evidence, may enter an order accepting or rejecting any report of the Division of Family and Children Services of the Department of Human Resources, ordering an additional evaluation, appointing a guardian ad litem, or undertaking such other review as it deems necessary and appropriate to determine the disposition that is in the child's best interest. The court's order may incorporate all or part of the report of the Division of Family and Children Services of the Department of Human Resources. In its order the court shall include findings of fact which reflect the court's consideration of the oral and written testimony offered by the parents, the custodian of the child, the foster parents of the child, any pre-adoptive parents or relatives providing care for the child who are required to be provided with notice and a right to be heard in any review, hearing, or proceeding to be held with respect to the child, and the Division of Family and Children Services of the Department of Human Resources. A disposition may be made under the terms of this Code section only if the court finds that such disposition is in the best interest of the child.

Chapter 10 Petition to Modify, Petition to Vacate & Relative Care Subsidy

Authority	**O.C.G.A. § 15-11-40, 15-11-58(i)** ***Fostering Connection to Success and Increasing Adoptions Act* (H.R. 6893)** **Uniform Rules For The Juvenile Courts Of Georgia, Rule 16**
Purpose	To modify, change or vacate a prior court order where changed circumstances so require in the best interest of the child
Pleadings	o Petition to Modify setting forth in clear & concise language the grounds upon which the relief is requested o Petitions to Modify can request to modify any of the terms of the original order, the Case Plan, return custody to a parent, reinstate reunification services following a NR, vacate a deprivation order or termination of parental rights order provided the statutory grounds are established by clear & convincing evidence
Jurisdiction	Same as Adjudication.
Venue	Same as Adjudication
Timing	Anytime following deprivation adjudication
Parties	Same as Adjudication
Service / Notice	Personal to parents (this is a Petition!) **O.C.G.A. § 15-11-39.1, Civil Practice Act § 9-11-4 & § 9-11-5** o Formal service required – summons & copy of petition o Party may waive if on record & by appearance at hearing, party must make objections to service on the record o Personal service to parent / legal custodian - whereabouts known within state, then service must be perfected at least 24 hours prior to the hearing o Certified/registered mail, overnight delivery to parent / legal guardian – if within the State but cannot be found but address is known or can with diligence be ascertained then service must be perfected at least 5 days prior to the hearing o Personal, certified/registered mail, overnight delivery to parent / legal guardian – if outside the State where address is known or can with diligence be ascertained, then service must be perfected at least 5 days prior to the hearing o Publication if after reasonable efforts to locate the parent, the whereabouts continue to be unknown, then service must be perfected by publication once a week for 30 days with the hearing set no sooner than 5 days after the last publication date See Chapter 17 for **O.C.G.A. § 9-11-4 & § 9-11-5**
Notice to Non Parties	**O.C.G.A. § 15-11-55.1 & 15-11-58(p)** o Notice of hearing to foster parents of the child, pre-adoptive parents or relatives caring for the child. Notice to be consistent with form & timing of notice to parents. These persons do not become parties to the action but do have the right to be heard during the proceeding o Written to foster parents / caregiver for child (5 days) o Persons who are or would be affected by the relief sought.
Standard of Proof	**Preponderance of Evidence** where a parent is filing to modify custody back after a finding of deprivation, In Re J.N., 691 S.E.2d 396 (Ga. App., 2010), Docket number: A09A1966. See explanation below *. **Clear & convincing is probably still the standard for vacating an order or modification to a third party** Order should be vacated if: o It was obtained by fraud or mistake sufficient

	o The court lacked jurisdiction over a necessary party or of the subject matter o Newly discovered evidence so requires Order should be changed, modified or vacated based on changed circumstances & the best interest of the child
Right to Attorney	**O.C.G.A. §15-11-6 Party / Parent** o Parents/legal guardian should be advised of right to counsel on the record o If indigent, right to appointed counsel or a clear waiver on the record o If non-indigent, then did parent exercise reasonable diligence to obtain an attorney, court findings should be on the record (In the Interest of P.D.W. et al.children. 296 Ga.App. 189, 674 S.E.2d 338 (2009)) o Inquiry about incarcerated parents, transport to hearings? o Father, legal or putative, right to counsel? **O.C.G.A. §15-11-6(b) Child's Right to Counsel** Counsel must be provided for a child not represented by the child's parent, guardian, or custodian. o Courts & Judges vary on the interpretation of the child's right to representation in deprivation cases; this issue is being addressed on a statewide basis, contact Georgia Association of Counsel for Children found at www.gaccchildlaw.org for further information o Attorneys appointed to represent the child in a deprivation case should obtain an Order of Appointment from the Judge which outlines and clarifies the role and duties the Judge is appointing the attorney to fulfill o See also the child's right to effective attorney representation in the February 7, 2005 order entered by Federal District Judge Marvin Shoob in the *Kenny A. v. Perdue* case, *Kenny A. v. Perdue et. al*., 356 F.Supp.2d 1353 (N.D. Ga. 2005)
Reasonable Efforts	To finalize the permanent plan, reunification or other permanent plan
Decision Points	Should the Court order be modified, changed vacated to accomplish the goals of the Case Plan? Should the Case Plan be modified ? Typically modifications are for: o Return child to parent o Following a Non-Reunification hearing to grant custody of the child to a relative until the child reaches 18 • Must have in court or citizen panel reviews every 36 months to confirm the continued appropriateness of the placement o Following a Non-Reunification hearing to grant custody of the child to a non-relative until the child reaches 18 (infrequent) • Must have in court or citizen panel reviews every 12 months to confirm the continued appropriateness of the placement o Modify prior order granting Non-Reunification or custody to third party where the parent is attempting to regain custody or reinstate reunification services o If custody modified to relative, should child support be ordered, does the relative or child need aftercare services from DFCS to stabilize the placement, should parent contact or visitation be ordered
Stipulation / Consent	Parties may consent or stipulate to the modification & any additional terms may be proposed to the Court for consideration & inclusion in the Court's order

Order	○ Order should state the factual basis for either granting or denying the relief sought and the conclusions of law ○ Where custody is granted to a third party, the order should specifically state what the parent must accomplish prior to regaining custody of the child through a subsequent Petition to Modify ○ If custody modified back to the parent or to a third party, the Order should state whether the family requires aftercare services from DFCS to stabilize the placement, the Court may specify the amount time the aftercare services should be in place & any other conditions the Court deems in the child's best interest & protection
Documents / Information Needed	○ Home evaluation of proposed custodian, best practice to admit it into evidence ○ Prior court orders ○ Confirm all documents completed for **Relative Care Subsidy** ○ Is there a **Kinship Guardianship** - **Kinship Navigator Progra*m*** available for the family or **Permanent Guardianship option**
Relative Care Subsidy	○ **(Either regular or enhanced RCS)** ○ Two levels of payment ○ Regular **RCS** is $10.00 per day ○ **Enhanced RCS (ERCS)** is 80% of the foster care per diem for the age of the child at the time custody is transferred to the relative & relative caregiver household income is less than 150K ○ To move a child from foster care to **a fit & willing relative** with financial assistance from DFCS ○ **Requires Non-Reunification Order & Petition to Modify** ○ Should be used for older children in a foster home for whom TPR / adoption is not appropriate so the child may move from foster to relative placement ○ Parent may petition to modify the custody order – TPR is a more permanent plan but TPR may be inappropriate plan for some families as it may cause or increase internal family conflicts ○ Form 45, application & agreement must be signed prior to the Court's transfer of legal custody from DFCS to the relative caregiver ○ Financial assistance is reviewed annually by DFCS and the Court reviews the appropriateness of the placement every 36 months ○ Child must remain enrolled in school ○ Relative has received a favorable Relative Care Assessment (RCA) (home evaluation) ○ Proposed guardian is related by blood, marriage or adoption ○ Other support services available through DFCS to Relative Caregivers include: wraparound, PUP funds, initial & annual clothing allowance, Medicaid, physical or emotional therapy, training & educational support to relative

*** Standard of Proof**

In Re J.N., 691 S.E.2d 396 (Ga. App., 2010), Docket number: A09A1966.

Preponderance of Evidence is the standard of proof to be used in a parent's Petition to Modify Custody, pursuant to OCGA § 15-11-40(b), after there has been a finding of deprivation with temporary custody residing with the state. As opposed to the standard of Clear and Convincing.

> *The function of a standard of proof, as that concept is embodied in the Due Process Clause and in the realm of factfinding, is to instruct the factfinder concerning the degree of confidence our society thinks he should have in the correctness of factual conclusions for a particular type of adjudication.... In any given proceeding, the minimum standard of proof tolerated by the due process requirement reflects not only the weight of the private and public interests affected, but*

also a societal judgment about how the risk of error should be distributed between the litigants. Santosky v. Kramer, 455 U.S. 745, 754-755, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982). Requiring the state to prove a child deprivation claim under OCGA § 15-11-54 by the elevated standard of "clear and convincing evidence" accords with due process by focusing on the fundamental liberty interest that a parent has in the care and custody of his or her child, shifting the risk of error toward the state, and reducing the risk of an erroneous decision impairing that interest. Id. at 758-761, 102 S.Ct. 1388. By contrast, after the juvenile court found by clear and convincing evidence that Neese's children were deprived, that he was unfit to retain custody, and that efforts to reunify him with the children were not appropriate, Neese's interest in the children was substantially reduced, and the focus shifted to the children's now adverse interest in a secure and stable home, and the state's interest in the welfare of the children. In the Interest of J.C., 242 Ga. 737, 738, 251 S.E.2d 299 (1978); Santosky, 455 U.S. at 760, 767, n. 17, 102 S.Ct. 1388; OCGA § 15-11-94(a). Considering these interests in Neese's petition to modify the custody order under OCGA § 15-11-40(b), we find that due process is satisfied by placing the burden of proof on Neese under a "preponderance of the evidence" standard by which the risk of error in the proceeding is shared among the interests in "roughly equal fashion." Santosky, 455 U.S. at 755, 102 S.Ct. 1388; see In re Marilyn H., ,5 Cal.4th 295, 19 Cal.Rptr.2d 544, 851 P.2d 826 (1993). Accordingly, Neese had the burden to prove by a preponderance of the evidence that changed circumstances required in the best interest of the children that the requested modification be granted. OCGA § 15-11-40(b).

Practice Points

- Because parents can file to modify, Relative Placements may not be as stable as adoptions or where the child could be adopted by the relative, reasons for relative placement rather than relative adoption should be articulated on record,
- **Kinship Guardianship** - **Kinship Navigator Program** "to assist kinship caregivers in learning about, finding, and using programs and services to meet the needs of the children they are raising and their own needs, and to promote effective partnerships among public and private agencies to ensure kinship caregiver families"; this is a federal and state program in place in some Georgia counties
- ***Fostering Connection to Success and Increasing Adoptions Act*** (H.R. 6893) **Title I,** Section 101, **Connecting and Supporting Relative Caregivers** provides for Kinship Agreements as follows: **Kinship Guardianship Assistance Payments for Children**
  - Allows states the option of using Title IV-E funds to pay for kinship guardianship. These funds are available where the child is in relative foster care with the relative for at least six months consecutive months, the child has a strong attachment to the relative, the relative has committed to permanently caring for the child and neither adoption nor returning to the parents' home is an option for the child.
  - Directs the state to make a written, binding kinship agreement to include the amount of the kinship payments, how to apply for modifications of the kinship payments in the future and any services available the child and family under the kinship agreement.
  - Makes siblings of the child eligible for kinship care payments
  - Mandates that the Case Plans for children receiving kinship guardianship payments include six additional statements. A description of:
    1. the steps taken by the state to determine it is not appropriate for the child to be adopted or returned home;
    2. the reasons why any siblings are separated during placement;
    3. the reasons why kinship guardianship as a permanent plan is in the child's best interest;
    4. how the child meets the kinship guardianship requirements;
    5. the efforts made by the state to discuss adoption with the relative foster parent including documentation of the reasons why the relative is not pursuing; and
    6. the efforts made to discuss kinship guardianship with the parents.
  - Makes Medicaid automatic for kinship care children and children receiving adoption assistance.

- Independent living services and education or training vouchers are also federally required for children moving into kinship guardianships after age 16.
- Petition to Modify should **NOT** be confused with 15-11-55(c) which allows the Court to return custody to a parent or outside DFCS (relieving DFCS of custody) at any review or sua sponte
- Petition to Modify should NOT be confused with 15-11-58(l)(1) which allows the Court return custody to the parents
- See IN *THE INTEREST OF K. W. et al*., children, 291 Ga. App. 623 (2008) where a 2003 termination of parental rights was vacated and the mother's parental rights were reinstated based on newly discovered evidence & fraud

O.C.G.A. Code Sections

15-11-40 Modification or vacation of order - revocation of probation.

(a) An order of the court shall be set aside if:

(1) It appears that it was obtained by fraud or mistake sufficient therefore in a civil action;

(2) The court lacked jurisdiction over a necessary party or of the subject matter; or

(3) Newly discovered evidence so requires.

(b) An order of the court may also be changed, modified, or vacated on the ground that changed circumstances so require in the best interest of the child, except an order committing a delinquent child to the Department of Juvenile Justice, after the child has been transferred to the physical custody of the Department of Juvenile Justice, or an order of dismissal. An order granting probation to a child found to be delinquent or unruly may be revoked on the ground that the conditions of probation have not been observed.

(c) Any party to the proceeding, the probation officer, or any other person having supervision or legal custody of or an interest in the child may petition the court for the relief provided in this Code section. The petition shall set forth in clear and concise language the grounds upon which the relief is requested.

(d) After the petition is filed, the court shall fix a time for hearing and shall cause notice to be served, as a summons is served under Code Section 15-11-39.1, on the parties to the proceeding or those affected by the relief sought. After the hearing, which may be informal, the court shall deny or grant relief as the evidence warrants.

15-11-58 Reasonable efforts to reunify family. Section (i)

(i)(1) If the court has entered an order finding that reasonable efforts to reunify a child with his or her family would be detrimental to the child in accordance with subsection (h) of this Code section and if the court finds that referral for termination of parental rights and adoption is not in the best interest of the child, the court may, upon proper petition, enter a custody order which shall remain in effect until the child's eighteenth birthday:

(A) Placing the child in the custody of a relative of the child if such a person is willing and, after study by the probation officer or other person or agency designated by the court, is found by the court to be qualified to receive and care for the child;

(B) Placing the child in the custody of any nonrelative individual who, after study by the probation officer or other person or agency designated by the court, is found by the court to be qualified to receive and care for the child;

(C) Placing the child in the custody of a suitable individual custodian in another state pursuant to the provisions of Code Section 15-11-89; or

(D) In the case where the court has found a compelling reason that a placement pursuant to subparagraph (A), (B), or (C) of this paragraph is not in the child's best interest, placing the child in the custody of an agency or organization licensed or otherwise authorized by law to receive and provide care for the child which is operated in a manner that provides such care, guidance, and control as would be provided in a family home as defined in the court's order.

Such order may be modified following a petition for modification by a party or upon motion of the court pursuant to Code Section 15-11-40.

(2) A probation officer, judicial citizen review panel established by the court, or other person or agency designated by the court shall, after study or review, submit a report to the court addressing whether the

custodian to whom custody of a child has been given pursuant to this Code section continues to be qualified to receive and care for the child within:

(A) Thirty-six months of an order placing a child in the custody of a relative pursuant to subparagraph (A) of paragraph (1) of this subsection and every 36 months thereafter; or

(B) Twelve months of an order placing a child in the custody of a nonrelative, an out-of-state custodian, or an agency or organization licensed or otherwise authorized by law to receive and provide care for the child pursuant to subparagraph (B), (C), or (D) of paragraph (1) of this subsection and every 12 months thereafter.

(3) Whenever a child is placed in the custody of an agency or organization licensed or otherwise authorized by law to receive and provide care for the child pursuant to subparagraph (D) of paragraph (1) of this subsection, such agency or organization shall be charged with the responsibility of notifying the court within ten days in the event its license is placed on probation, suspended, revoked, or surrendered and, in such event, the court shall conduct a judicial review within ten days of such notification to determine whether another placement should be made for the child.

Uniform Rules for the Juvenile Courts of Georgia

Rule 16 MODIFICATION OR VACATION OF ORDER

16.1 Grounds for Modification or Vacation of Order. See O.C.G.A. §15-11-40.

16.2 Modification of Probation Rules.

A probation officer may submit a request to the judge that a condition of a child's probation be changed if that rule of probation has become inappropriate to the child's situation. The parent and child shall be notified of the proposed modifications and be given an opportunity to appear and object thereto or may agree in writing to the proposed changes and waive objections. Upon the written approval of the change by the judge, the child and his or her parents shall be served with a copy of the modification order.

16.3 Petition for Modification or Vacation. See O.C.G.A. §15-11-40(c).

16.4 Hearing. See O.C.G.A. §15-11-40(d).

Services & Subsidy Comparison for Guardianship, Relative Care & Relative Foster Care

	Relative Care: Reg.or Enhanced	Relative Foster Care	Relative Care till Child 18
Who has Custody	DFCS is custodian, Placement w/ Relative	DFCS is custodian Placement w/ Relative	DFCS Relieved of Custody when Custody Granted to Relative
Is there a minimum time child must be in foster care?	**No**	**No**	**Yes**
	Child may be placed with relative immediately upon entering FC	Child may be placed with relative immediately upon relative meeting FC standards	Child must be in FC for **12 months** prior to the grant of Custody to relative
Home / Relative Care Assessment	Yes	Yes, Relative must meet all FC requirements	Yes
Non-Reunification Necessary?	No	No	Yes
Impact Training?	No	Yes	No
Drug Screen?	Probably	Yes	Probably
Action By Juvenile Court	Deprivation Action, Petition & Extensions	Deprivation Action, Petition & Extensions	Deprivation Action, Non-Reunification & Cust Mod to Rel, DFCS Relieved of Cust, Ct Rev every 3 years
DFCS Action	Maintain custody through Ct Action, per diem, Home Evaluation	Maintain custody through Ct Action, per diem, Home Evaluation	DFCS Relieved of Cust: Home Assessment: Annual in house rev to maintain subsidy
DFCS Contact with Placement	Monthly -Subsidy payments must have annual eligibility reviews	Monthly	Annual: is home still appropriate & as ordered by Ct - Subsidy payments must have annual eligibility reviews
Per Diem Amounts	**Reg.** $10.00 per Day: **Enhanced** 80% of FC per diem for child's age when child entered Foster Care	$13.78 O to 6 years $15.50 7 to 12 years $17.75 13 & up	**Reg.** $10.00 per Day: **Enhanced** 80% of FC per diem for child's age when child entered FC
ILP Services	**Yes, IF** child was in Foster Care at 14 years, must participates in ILP program to remain eligible	**Yes, IF** child was in Foster Care at 14 years, must participates in ILP program to remain eligible	**Yes, IF** child was in Foster Care at 14 years, must participates in ILP program to remain eligible
Putative Father Family Considered for Placement	Yes unless TPR , Legitimation would be best	Yes unless TPR , Legitimation would be best	Yes unless TPR , Legitimation would be best
Medicaid	Yes b/c in DFCS custody but must be US Citizen	Yes b/c in DFCS custody but must be US Citizen	Only if Child meets one of Medicaid's 34 programs
Food Stamps	Maybe: Dependent on Household income	Maybe: Dependent on Household income	Maybe: Dependent on Household income
Clothing Allowance	No	Yes, Initial & Annual	No
Wraparound Services	Yes: to transition & stabilize placement, Court may Order	Yes: to transition & stabilize placement, Court may Order	Yes: to transition & stabilize placement, Court may Order
Citizen Panel Review	Yes	Yes	No, Unless Court directs Panel to perform the 3 year Reviews
Day Care	Yes	Yes	Income Eligible
PUP Funds	Maybe, for limited time to stabilize placement	Maybe, for limited time to stabilize placement	Maybe, for limited time to stabilize placement

Services & Subsidy Comparison for Guardianship, Relative Care & Relative Foster Care

	Temporary Guardianship Subsidy Reg.or Enhanced	Permanent Guardianship & Subsidy Reg., Enhanced or Waiver
Who has Custody	DFCS Relieved of Custody when Guardianship Granted	DFCS Relieved of Custody when Guardianship Granted
Is there a minimum time child must be in foster care?	**Yes**	**Yes**
	Child must be in FC for **12 months** prior to the grant of guardianship	Child must be in FC for **12 months** prior to the grant of guardianship
Home / Relative Care Assessment	Yes	Yes
Non-Reunification Necessary?	No Parents consent to guardianship	Yes
Impact Training?	No	No
Drug Screen?	Probably	Probably
Action By Juvenile Court	Deprivation Action, Guardianship MUST be granted by Juv Ct, DFCS Relieved of Cust, Guardian provide Ct w/ annual report on child	Deprivation Action, Guardianship MUST be granted by Juv Ct, DFCS Relieved of Cust, Court granted NR & Court found TPR is NOT appropriate
DFCS Action	DFCS Relieved of Custody, Home Assessment, Annual in house rev to maintain subsidy	DFCS Relieved of Custody, Home Assessment, Annual in house rev to maintain subsidy
DFCS Contact with Placement	None Required except Court may order - Subsidy payments must have annual eligibility reviews	None Required except Court may order - Subsidy payments must have annual eligibility reviews
Per Diem Amounts	**Reg.** $10.00 per Day: **Enhanced** 80% of FC per diem for child's age when child entered FC	**Reg.** $10.00 per Day: **Enhanced** 80% of FC per diem for child's age when child entered FC **Waiver** so that subsidy is 100% of the current FC per deim (See DFCS Policy 1006.2)
ILP Services	**Yes, IF** child was in Foster Care at 14 years, must participates in ILP program to remain eligible	**Yes, IF** child was in Foster Care at 14 years, must participates in ILP program to remain eligible
Putative Father Family Considered for Placement	Yes unless TPR , Legitimation would be best	Yes unless TPR , Legitimation would be best
Medicaid	Only if Child meets one of Medicaid's 34 programs	Only if Child meets one of Medicaid's 34 programs
Food Stamps	Maybe: Dependent on Household income	Maybe: Dependent on Household income
Clothing Allowance	No	No
Wraparound Services	Yes: to transition & stabilize placement, Court may Order	Yes: to transition & stabilize placement, Court may Order
Citizen Panel Review	No	No
Day Care	Income Eligible	Income Eligible
PUP Funds	Maybe, for limited time to stabilize placement	Maybe, for limited time to stabilize placement

Chapter 11 Termination of Parental Rights & Post TPR Reviews

Authority	**O.C.G.A. § 15-11-93 through 15-11-106**
Purpose	To permanently sever the parent – child relationship so that the child may be placed for adoption
Pleadings	o Petition to Terminate Parental Rights, o Verified & endorsed by Court o Must state clearly the effect of a termination of parental rights order o Conform to **O.C.G.A. § 15-11-38.1 Contents of petition; verification** o **O.C.G.A. § 15-11-95(d)** Putative Father Registry certificate
Jurisdiction	**O.C.G.A. § 15-11-28(a)(2)(C)** Usually in the same county as the deprivation action Terminates the legal parent-child relationship & rights of the biological father except when in connection with an adoption where Superior Court has concurrent jurisdiction
Venue	**O.C.G.A. § 15-11-29** Usually where deprivation action heard but could be in the county of residence of the child
Timing	**O.C.G.A. § 15-11-106** o Court is required to hear TPR within 90 days of filing of petition o Court should make a ruling on TPR petition within 30 days of conclusion of the TPR, there is a just cause exception to this rule **O.C.G.A. § 15-11-58(m)** Unless the child is in the care of a relative OR DFCS has provided a compelling reason why termination is not in the child's best interest OR DFCS has not provided the child's family timely services to accomplish the Case Plan goals, then DFCS shall file a termination of parental rights, when the Court has determined the child has been o in DFCS custody for 15 out of the most recent 22 months OR o determined by the Court to be an **abandoned infant** (defined as being left under circumstances that the identity of the parent is unknown, identity cannot be determined & the parent has NOT come forward for 3 months after the child was found **O.C.G.A. § 15-11-94 (b)(3) OR** o any of the aggravating parental circumstances exist, parent committed murder or voluntary manslaughter of another child; parent convicted of murder or voluntary manslaughter of the other parent, parent committed felony assault on the child causing serious bodily injury or involuntary termination of parental rights to a sibling
Parties	Parents, child, DFCS, SAAG, parents attorneys
Service / Notice	**O.C.G.A. § 15-11-96(a),(b) & (c)** o Summons shall be issued on the parents, guardian, lawful custodian & the current physical custodian 30 days in advance of the date & time for hearing o Copy of petition attached o Summons to current physical custodian requires the child's presence at the TPR hearing unless in the Court's discretion the child is excused **Legal Parties** o formal notice, personal or publication o Notice to putative & legal father o Summons & Petition to Terminate shall be served upon all parties at least thirty (30) days prior to the date of the termination hearing. **Legal Father defined** o has legally adopted a child; o was married to the biological mother the child at the time the child was conceived or born unless his paternity was disproved in a court hearing;

Service / Notice	○ married the legal mother of the child after the child was born and recognized the child as his own, unless paternity was disproved in a court hearing ○ has been determined to be the father in a paternity hearing; ○ has legitimated the child. **Biological / Putative Father** **O.C.G.A. § 15-11-96(d)** If biological father had paternity judicially established in an action in which he was a party, then he is entitle to service of summons & an opportunity to be heard unless he has executed a relinquishment of parental rights **O.C.G.A. § 15-11-96(e), (f), (h) & (i) Service to Biological Father with "known" identity but not legal** Provides for service to the "known" biological father by ○ Registered or certified mail to last known address ○ Personal service ○ Publication, once a week for 3 weeks Biological Father has a "known identity" when ○ His identity is known to the petitioner or the petitioner's attorney ○ He is a registrant on the **Putative Father Registry** who has acknowledged paternity of the child, **O.C.G.A. §19-11-9** ○ He is a registrant on the putative father registry who has indicated possible paternity of the child during a period of two years immediately prior to the child's date of birth or ○ The court finds from the evidence, including but not limited to an affidavit of the mother, **O.C.G.A. § 19-8-26(h),** that the biological father who is not the legal father has performed any of the following acts • lived with the child • contributed to the child's support • made any attempt to legitimate the child • provided support or medical care for the mother either during her pregnancy or during her hospitalization for the birth of the child ○ service to the Biological Father with "known identity" but not legal SHALL include a notice that he will lose all rights to the child including the right to object to the TPR & all standing in the TPR action unless within 30 days from the notice he files a legitimation or an acknowledgement of legitimation, **O.C.G.A. § 19-7-21.1, AND** notifies the Court of these legitimation actions **O.C.G.A. § 15-11-96(g) Biological Father "unknown identity" & not legal** Rebuttable presumption the biological father whose identity is unknown to petitioner is NOT entitled to notice of the TPR proceedings & whose parental rights shall be terminated when the evidence including mother's affidavit, **O.C.G.A. § 19-8-26(h),** establish this biological father has not ○ lived with the child ○ contributed to the child's support ○ made any attempt to legitimate the child ○ provided support or medical care for the mother either during her pregnancy or during her hospitalization for the birth of the child
Notice to Non Parties	**O.C.G.A. § 15-11-104** ○ Notice of hearing to foster parents of the child, pre-adoptive parents or relatives caring for the child. Notice to be consistent with form & timing of notice to parents. These persons do not become parties to the action but do have the right to be heard during the proceeding ○ Notice to given 30 days in advance of hearing

Standard of Proof	**O.C.G.A. § 15-11-99** Clear & convincing proof of the grounds for termination and that termination is in the best interest of the child
Right to Attorney	**O.C.G.A. §15-11-6 Party / Parent** o Parents/legal guardian should be advised of right to counsel on the record o If indigent, right to appointed counsel or a clear waiver on the record o If non-indigent, then did parent exercise reasonable diligence to obtain an attorney, court findings should be on the record (In the Interest of P.D.W. et al. ,children. 296 Ga. App. 189, 674 S.E.2d 338 (2009)) o Inquiry about incarcerated parents, transport to hearings? o Father, legal or putative, right to counsel? **O.C.G.A. §15-11-98(a) Child's Right to Counsel** o Child shall be appointed an attorney as the child's counsel & a separate guardian ad litem may also be appointed, the attorney & the guardian ad litem may be the same person
Grounds for TPR	**Grounds for TPR O.C.G.A. § 15-11-94** The Court first determines whether there is present clear & convincing evidence of parental misconduct or inability, then whether TPR is in the best interest of the child considering the physical, mental, emotional, & moral condition & needs of the child including the need for a secure & stable home 1. **Voluntary relinquishment** - the parent has given written consent, acknowledged before the court, to the termination of his or her parental rights with respect to the child, releases the child for adoption, voluntary surrender 2. **Failure to pay Court Ordered Child Support** – parent has wantonly & willfully failed to comply with a child support court order for 12 months or longer 3. **Parental Abandonment** - the parent has either abandoned the child, by leaving the child in a situation in which the identity of the parent cannot be determined after a diligent search and the parent has not come forward to claim the child within 3 months of finding the child 4. **Parent convicted of the murder of the other parent** – presumption that TPR is in the child's best interest 5. **Parental Misconduct or Inability** - the court makes a finding of parental misconduct or inability 1) The child is presently deprived 2) The lack of proper parental care or control by the parent in question is the cause of the child's deprivation 3) The cause of the child's deprivation is likely to continue or will not likely be remedied 4) The continued deprivation will cause or is likely to cause serious physical, mental, emotional, or moral harm to the child. Child is without proper parental care & control, Court considers o Medically verifiable deficiency of the parent's physical, mental, or emotional health that renders the parent unable to provide properly for the child's needs o Excessive use or history of chronic unrehabilitated abuse of drugs or alcohol that renders the parent incapable of providing properly for the child's needs o Conviction & incarceration of the parent on a felony which has a demonstrable negative effect on the parent-child relationship o Egregious conduct by the parent toward the child or toward another child of a physically, emotionally, or sexually cruel or abusive nature; o Neglect of the physical, mental, or emotional needs of the child or another

	child of the parent o Injury or death of a sibling where there is substantial evidence the cause was parental neglect or abuse If the child is NOT in the custody of the parent, the Court then determines "without proper parental care & control" by considering if the parent has without a justifiable cause, has failed significantly for a period of one year or longer prior to the filing of the TPR to o Develop & maintain a meaningful, supportive parental bond o Provide for the care & support of the child as required by law or judicial decree o Comply with a court ordered plan designed to reunite the child with the parent or parents
Reasonable Efforts	o To reunify or otherwise accomplish the goals of the court approved permanent plan o RE are determined relevant to the permanency goals established for the child o Parents may challenge DFCS & allege DFCS did not use RE to provide the parents or family the services necessary to achieve reunification
Decision Points	o First, is there clear & convincing evidence of parental misconduct or unfitness o Second, whether termination of parental rights is in the best interests of the child o Past deprivation alone will not be considered sufficient to prove present deprivation but can be used as evidence if child is presently deprived o **O.C.G.A. § 15-11-100** Physical or mental evaluations may be required by the Court for parent, child, stepparent or guardian o Make sure there is a court reporter & transcript, or other effective recordation of the hearing o TPR Order must be signed within 30 days of the close of the evidence o **O.C.G.A. § 15-11-103** Placement following TPR
Consent / Stipulation	o Mediation is sometimes an option to resolve a TPR o Parents may cooperate with a TPR if they are allowed some self determination & participation in the process o Negotiation of the post TPR placement may be possible, safer to continue TPR to allow DFCS to explore alternative or relative placement
Order	**O.C.G.A. § 15-11-106** o Court is required to issue TPR Order within 30 days of the close of the TPR evidence, except for a just cause exception **O.C.G.A. § 15-11-93** o TPR Order does not have any time limits or expiration date, it is permanent o TPR Order ends all parental rights & obligations to the child & all the child's rights & obligations to the parent o Once TPR is granted, any extended familial relationships flowing from the parent-child relationship are also permanently severed, the parent & extended family become "legal strangers" to the child **O.C.G.A. § 15-11-101** Testimony of the parties is NOT admissible in any other proceeding except a subsequent deprivation or TPR action involving the same parent
TPR Not Granted Alternatives	**O.C.G.A. § 15-11-94(c)** If the Court does NOT grant the TPR then alternative dispositions include all the dispositions for deprivation cases contained in **O.C.G.A. § 15-11-55** o Permit child to remain with parents with OR without conditions or limitations & supervision as directed by the Court to protect the child • includes a putative father

	• Court may order "aftercare services" to stabilize placement for a court specified length of time, DFCS Policy1009.18 1009.19 & 1009.20 & *Kenny A* Consent Order with DFCS excerpt from page 10, paragraph 6 See Chapter 31. o Transfer legal custody to specified person or entity, subject to Court imposed limitations & conditions, this includes o Retransfer back to parent, guardian or custodian o Any individual including putative father, who after study is found to be qualified to receive & care for child Court should receive written home evaluation or assessment before placement. o A licensed child care agency or private organization o Any public agency authorized to receive & care for children except Department of Juvenile Justice (DJJ) o Individual in another state, with or without supervision – should be compliant with the **Interstate Compact for the Placement of Children (ICPC)** as described in Chapter 19 • If an out of state placement is being considered, request an In Court Review **PRIOR** to the child's removal out of state to address any visitation / care issues & for the Court to receive a copy of ICPC Home evaluation o If a relative is awarded custody the custody order is for two years EXCEPT where the Court grants a Non-Reunification Petition & awards custody to a relative until the child reaches 18 years old **O.C.G.A. § 15-11-55(c)** allows the Court to make a sua sponte judicial review of the child's placement & the Court may direct DFCS to comply with the current placement plan, order DFCS to make a new placement plan or relieve DFCS of custody and place the child outside of DFCS (this custody to be back to parent, other relative or individual or entity)
Documents / Information Needed	o Is there an adoptive placement for the child, are there any barriers to completing the adoption o Relatives, have all relative options been sufficiently explored from the beginning of the case with the Diligent Search o Ask Court to make a ruling on whether the relative options have been sufficiently explored & exhausted
Placement of child following grant of TPR	**O.C.G.A. § 15-11-103** Following TPR, placement may be made only where the court finds the placement is in the best interest of the child and in accordance with the child's court approved permanency plan pursuant to §15-11-58. The court shall consider the following elements in determining which placement is in the child's best interest. The Placement with (1) the greatest degree of legal permanence and security; (2) the least disruptive alternative; (3) The child's attachment and need for continuity of relationships; and (4) Any other factors the court deems relevant to its determination.
Post TPR Reviews §15-11-103 (e)	**O.C.G.A. § 15-11-103(e)** In Court Reviews every 6 month until the child is adopted or achieves permanency through guardianship or direct third party custody o Court reviews the circumstances of the child o Court reviews what efforts have been made to finalize adoption, DFCS must continue to use reasonable efforts to finalize the permanent plan

O.C.G.A. Code Sections

15-11-93 Parental rights termination order.
An order terminating the parental rights of a parent under this article is without limit as to duration and terminates all the parent's rights and obligations with respect to the child and all rights and obligations of the child to the parent arising from the parental relationship, including rights of inheritance. The parent is not thereafter entitled to notice of proceedings for the adoption of the child by another, nor has the parent any right to object to the adoption or otherwise to participate in the proceedings.

15-11-94 Grounds for termination of parental rights.
(a) In considering the termination of parental rights, the court shall first determine whether there is present clear and convincing evidence of parental misconduct or inability as provided in subsection (b) of this Code section. If there is clear and convincing evidence of such parental misconduct or inability, the court shall then consider whether termination of parental rights is in the best interest of the child, after considering the physical, mental, emotional, and moral condition and needs of the child who is the subject of the proceeding, including the need for a secure and stable home. If the court finds clear and convincing evidence of the circumstance provided in paragraph (5) of subsection (b) of this Code section, the court shall presume that termination of parental rights is in the best interest of the child.

(b) Except as provided in subsections (e) through (h) of Code Section 15-11-96, the court by order may terminate the parental rights of a parent with respect to the parent's child if:

(1) The written consent of the parent, acknowledged before the court, has been given; provided, however, that acknowledgment before the court is not necessary where the parent or parents voluntarily surrender the child for adoption as provided by subsection (e) of Code Section 19-8-4, 19-8-5, 19-8-6, or 19-8-7;

(2) A decree has been entered by a court of competent jurisdiction of this or any other state ordering the parent, guardian, or other custodian to support the child, and the parent, guardian, or other custodian has wantonly and willfully failed to comply with the order for a period of 12 months or longer;

(3) The parent has abandoned the child or the child was left under circumstances that the identity of the parent is unknown and cannot be ascertained despite diligent searching, and the parent has not come forward to claim the child within three months following the finding of the child;

(4)(A) The court determines parental misconduct or inability by finding that:

(i) The child is a deprived child, as such term is defined in Code Section 15-11-2;

(ii) The lack of proper parental care or control by the parent in question is the cause of the child's status as deprived;

(iii) Such cause of deprivation is likely to continue or will not likely be remedied; and

(iv) The continued deprivation will cause or is likely to cause serious physical, mental, emotional, or moral harm to the child.

(B) In determining whether the child is without proper parental care and control, the court shall consider, without being limited to, the following:

(i) A medically verifiable deficiency of the parent's physical, mental, or emotional health of such duration or nature as to render the parent unable to provide adequately for the physical, mental, emotional, or moral condition and needs of the child;

(ii) Excessive use of or history of chronic unrehabilitated abuse of intoxicating liquors or narcotic or dangerous drugs or controlled substances with the effect of rendering the parent incapable of providing adequately for the physical, mental, emotional, or moral condition and needs of the child;

(iii) Conviction of the parent of a felony and imprisonment therefor which has a demonstrable negative effect on the quality of the parent-child relationship;

(iv) Egregious conduct or evidence of past egregious conduct of the parent toward the child or toward another child of a physically, emotionally, or sexually cruel or abusive nature;

(v) Physical, mental, or emotional neglect of the child or evidence of past physical, mental, or emotional neglect of the child or of another child by the parent; and

(vi) Injury or death of a sibling under circumstances which constitute substantial evidence that such injury or death resulted from parental neglect or abuse.

(C) In addition to the considerations in subparagraph (B) of this paragraph, where the child is not in the custody of the parent who is the subject of the proceedings, in determining whether the child is without proper parental care and control, the court shall consider, without being limited to, whether the parent without justifiable cause has failed significantly for a period of one year or longer prior to the filing of the petition for termination of parental rights:

(i) To develop and maintain a parental bond with the child in a meaningful, supportive manner;

(ii) To provide for the care and support of the child as required by law or judicial decree; and

(iii) To comply with a court ordered plan designed to reunite the child with the parent or parents; or

(5) The parent has been convicted of the murder of the child's other parent.

(c) If the court does not make an order of termination of parental rights, it may grant an order under Code Section 15-11-55 if the court finds from clear and convincing evidence that the child is a deprived child.

15-11-95 Petition to terminate parental rights.

(a) The petition to terminate parental rights and all subsequent court documents in the proceeding shall be entitled "In the matter of _____, a child.", except upon appeal, in which event the anonymity of the child shall be preserved by appropriate use of initials. The petition shall be in writing.

(b) The petition shall be made, verified, and endorsed by the court as provided in Article 1 of this chapter for a petition alleging deprivation.

(c) The petition shall state clearly that an order for termination of parental rights is requested and that the effect thereof will be as stated in Code Section 15-11-93, and shall set forth in ordinary and concise language the facts required by Code Section 15-11-38.1.

(d) When a petition seeks termination of the rights of a biological father who is not the legal father and who has not surrendered his rights to the child, the petition shall be amended to include a certificate from the putative father registry disclosing the name, address, and social security number of any registrant acknowledging paternity of the child pursuant to subparagraph (d)(2)(A) of Code Section 19-11-9 or indicating the possibility of paternity of a child of the child's mother pursuant to subparagraph (d)(2)(B) of Code Section 19-11-9 for a period beginning no later than two years immediately prior to the child's date of birth. Such certificate shall document a search of the registry on or after the date of the filing of the petition and shall include a statement that the registry is current as to filings of registrants as of the date of the petition or as of a date later than the date of the petition.

15-11-96 Summons - rights of biological fathers.

(a) Upon filing of the petition, summons shall be issued forthwith on the child's parents, guardian, lawful custodian, and on the person presently having physical custody of the child.

(b) A copy of the petition shall be attached to the summons in all cases other than service by publication. When served by publication, the notice shall indicate the general nature of the allegations and where a copy of the petition may be obtained by the child's parents, guardian, lawful custodian, and the person presently having physical custody of the child. Such copy shall be available from the court during business hours. A free copy shall be available to the parent or, upon request, shall be mailed to the parent. All summons shall contain a statement to the effect that the hearing is for the purpose of terminating parental rights.

(c) The summons shall require the person who has physical custody of the child to appear personally and to bring the child before the court at the time and place stated in the summons. Where, at the court's discretion, it is deemed in the interest of the child that the child need not be brought before the court, the court may so indicate. The summons shall be served at least 30 days before the time set for the hearing, and a copy of the petition shall be served together with the summons and shall be made in the manner provided in Code Section 9-11-4, relating to service in civil practice.

(d) If the paternity of a child born out of wedlock has been established in a judicial proceeding to which the father was a party prior to the filing of the petition, the father shall be served with summons as

provided by this article. Such father has the right to be heard unless he has relinquished all paternal rights with reference to the child.

(e) If there is a biological father who is not the legal father of a child and he has not executed a surrender as specified in paragraph (2) of subsection (e) of Code Section 19-8-4, 19-8-5, 19-8-6, or 19-8-7 he shall be notified of the proceedings pursuant to this Code section in the following circumstances:

(1) If his identity is known to the petitioner or the petitioner's attorney;

(2) If he is a registrant on the putative father registry who has acknowledged paternity of the child in accordance with subparagraph (d)(2)(A) of Code Section 19-11-9;

(3) If he is a registrant on the putative father registry who has indicated possible paternity of a child of the child's mother in accordance with subparagraph (d)(2)(B) of Code Section 19-11-9 during a period beginning two years immediately prior to the child's date of birth; or

(4) If the court finds from the evidence, including but not limited to the affidavit of the mother executed in compliance with the court's requirement pursuant to subsection (g) of this Code section in the form provided in subsection (h) of Code Section 19-8-26, that such biological father who is not the legal father has performed any of the following acts:

(A) Lived with the child;

(B) Contributed to the child's support;

(C) Made any attempt to legitimate the child; or

(D) Provided support or medical care for the mother either during her pregnancy or during her hospitalization for the birth of the child.

(f) Notification provided for in subsection (e) of this Code section shall be given to a biological father who is not a legal father by the following methods:

(1) Registered or certified mail or statutory overnight delivery, return receipt requested, at his last known address, which notice shall be deemed received upon the date of delivery shown on the return receipt;

(2) Personal service, which notice shall be deemed received when personal service is perfected; or

(3) Publication once a week for three weeks in the official organ of the county where the petition has been filed and of the county of his last known address, which notice shall be deemed received upon the date of the last publication.

If feasible, the methods specified in paragraph (1) or (2) of this subsection shall be used before publication.

(g) If there is a biological father who is not the legal father of the child and the identity of such biological father is not known to the petitioner or the petitioner's attorney, then the court shall be authorized to require the mother to execute an affidavit regarding such father in the form provided in subsection (h) of Code Section 19-8-26 or show cause before the court if she refuses. If the court finds from the evidence including but not limited to the affidavit of the mother that such biological father who is not the legal father has not performed any of the following acts:

(1) Lived with the child;

(2) Contributed to the child's support;

(3) Made any attempt to legitimate the child; or

(4) Provided support or medical care for the mother either during her pregnancy or during her hospitalization for the birth of the child, and the petitioner provides a certificate from the putative father registry stating that there is no entry on the putative father registry either acknowledging paternity of the child or indicating possible paternity of a child of the child's mother for a period beginning no later than two years immediately prior to the child's date of birth, then it shall be rebuttably presumed that the biological father who is not the legal father is not entitled to notice of the proceedings. Absent evidence rebutting the presumption, then no further inquiry or notice shall be required by the court and the court shall enter an order terminating the rights of such biological father to the child.

(h) When notice is given pursuant to subsection (e) of this Code section, it shall advise such biological father who is not the legal father that he loses all rights to the child and will not be entitled to object to the termination of his rights to the child unless, within 30 days of receipt of such notice, he files:

(1) A petition to legitimate the child pursuant to Code Section 19-7-22 or an acknowledgment of legitimation pursuant to Code Section 19-7-21.1; and

(2) Notice of the filing of the petition to legitimate or acknowledgment of legitimation with the court in which the action under this Code section is pending.

(i) A biological father who is not the legal father loses all rights to the child and the court shall enter an order terminating all such father's rights to the child and such father may not thereafter object to the termination of his rights to the child if within 30 days from his receipt of the notice provided for in subsection (e) of this Code section he:

(1) Does not file a legitimation petition and give notice as required in subsection (h) of this Code section;

(2) Files a legitimation petition which is subsequently dismissed for failure to prosecute; or

(3) Files a legitimation petition and the action is subsequently concluded without a court order declaring a finding that he is the legal father of the child.

15-11-97 Failure to answer summons - protective custody.
(a) If any person named in and properly served with summons shall without reasonable cause fail to appear or, when directed in the summons, to bring the child before the court, then the court may issue a rule nisi against such person, directing the person to appear before the court to show cause why such person should not be held in contempt of court.

(b) If the summons cannot be served or if the person to whom the summons is directed fails to obey it, the court may issue an order to take the child into protective custody.

15-11-98 Attorneys - guardians ad litem.
(a) In any proceeding for terminating parental rights or any rehearing or appeal thereon, the court shall appoint an attorney to represent the child as the child's counsel and may appoint a separate guardian ad litem or a guardian ad litem who may be the same person as the child's counsel.

(b) If the parent or parents of the child desire to be represented by counsel but are indigent, the court shall appoint an attorney for such parent or parents, which shall be a charge upon the funds of the county upon certification thereof by the court in the same manner as authorized for other expenses under Code Section 15-11-8.

5-11-99 Standard of proof in termination proceedings.
In all proceedings under this article, the standard of proof to be adduced to terminate parental rights shall be by clear and convincing evidence.

15-11-100 Physical and mental evaluations.
The court may require a physical or mental evaluation of any parent, stepparent, guardian, or child involved in a proceeding under this article.

15-11-101 Record inadmissible in other proceedings - exception.
The record of the testimony of the parties adduced in any proceeding under this article shall not be admissible in any civil, criminal, or any other cause or proceedings in any court against a person named as respondent for any purpose whatsoever, except in subsequent deprivation or termination proceedings involving the same child or deprivation or termination proceedings involving the same respondent under this article.

15-11-102 Applicability of section 15-11-39.2.
The court shall conduct hearings, where appropriate, in accordance with Code Section 15-11-39.2.

§ 15-11-103. Placement Of Child Following Termination Order; Custodial Authority; Review Of Placement

(a) Upon the entering of an order terminating the parental rights of a parent, a placement may be made only if the court finds that such placement is in the best interest of the child and in accordance with the child's court approved permanency plan created pursuant to Code Section 15-11-58. In determining which placement is in the child's best interest, the court shall enter findings of fact reflecting its consideration of the following:

(1) The child's need for a placement that offers the greatest degree of legal permanence and security;

(2) The least disruptive placement alternative for the child;

(3) The child's sense of attachment and need for continuity of relationships; and

(4) Any other factors the court deems relevant to its determination.

(b) A placement effected under the provisions of this Code section shall be conditional upon the person who is given permanent custody or who is granted an adoption of the child agreeing to abide by the terms and conditions of the order of the court.

(c) The court shall transmit a copy of every final order terminating the parental rights of a parent to the Office of Adoptions of the Department of Human Services within 15 days of the filing of such order.

(d) The custodian has authority to consent to the adoption of the child, the child's marriage, the child's enlistment in the armed forces of the United States, and surgical and other medical treatment for the child.

(e) In those cases in which the court has placed the child pursuant to a permanency plan of adoption, if a petition seeking the adoption of the child is not filed within six months after the date of the disposition order, the court shall then, and at least every six months thereafter as long as the child remains unadopted, review the circumstances of the child to determine what efforts have been made to assure that the child will be adopted. The court may then enter such orders as it deems necessary to further the adoption, including but not limited to another placement. In those cases where parental rights to the child were terminated without the designation of a permanent guardian or adoptive family, the court shall, at least every six months thereafter as long as the child remains subject to the jurisdiction of the court, review the circumstances of the child to determine that placement in the family home-like setting continues to be in the child's best interest.

15-11-104 Applicability of title 15, chapter 13, article 1.
In a proceeding under this article, the provisions of Article 1 of this chapter shall apply unless in conflict with this article. In advance of any hearing or other proceeding to be held with respect to a child pursuant to this article, the court shall provide written notice or shall direct that a party shall provide written notice of such hearing or other proceeding, including their right to be heard at such hearing or other proceeding, to the foster parents of the child and to any pre-adoptive parents or relatives providing care for the child, consistent with the form and timing of notice to parties; provided, however, that this provision shall not be construed to require a foster parent, pre-adoptive parent, or relative caring for the child to be made a party to the hearing solely on the basis of such notice and right to be heard.

15-11-105 Rights of parent not subject of proceedings.
Nothing in this article shall be construed as affecting the rights of a parent other than the parent who is the subject of the proceedings.

15-11-106 Expedient hearings - disposition of orders.
Provided that no just cause has been shown for delay, all hearings contemplated by this article shall be conducted within 90 days of the date a petition to terminate parental rights is filed pursuant to Code Section 15-11-95. Provided that no just cause has been shown by written finding of fact by the court for delay, an order of disposition shall be issued by the Juvenile Court no later than 30 days after the conclusion of the hearing on the petition to terminate parental rights. This Code section shall not affect the right to request a rehearing or the right to appeal the Juvenile Court's order.

19-11-9 Location of absent parents - putative father. (Putative Father Registry)

(a) The department shall attempt to locate absent parents.

(b) The department is to serve as a registry for the receipt of information which directly relates to the identity or location of absent parents, to assist any governmental agency or department in locating an absent parent, to answer interstate inquiries concerning deserting parents, to coordinate and supervise any activity on a state level in search for an absent parent, and to develop guidelines for coordinating activities of any governmental department, board, commission, bureau, or agency in providing information necessary for location of absent parents and is to process all requests received from an initiating county or an initiating state which has adopted the Uniform Interstate Family Support Act or a law substantially similar to the Uniform Interstate Family Support Act, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.

(c) In order to carry out the responsibilities imposed under this article, the department may request information and assistance from any governmental department, board, commission, bureau, or agency in locating the absent parents of children for whom the department has assignment of child support rights. The commissioner of human resources or his duly authorized representative shall be entitled to have access to all pertinent information which is within the custody of any governmental department, board, commission, bureau, or agency, including, but not limited to, income tax information contained in any report or return required under Articles 1 through 6 of Chapter 7 of Title 48 by the Department of Revenue, including information from federal income tax returns required to be included as a part of any state report or return, which information but for this Code section would not be subject to disclosure pursuant to Code Section 48-7-60 and which is relative to such parents' location, income, or property, provided that any tax information secured from the federal government by the Department of Revenue, pursuant to the express provisions of Section 6103 of the Internal Revenue Code, may not be disclosed by that department pursuant to this subsection. Any person receiving any tax information or tax returns under the authority granted in this subsection shall be considered either an officer or employee as those terms are used in subsection (a) of Code Section 48-7-60; and, as such an officer or employee, any person receiving any tax information or returns under the authority of this Code section shall be subject to Code Section 48-7-61, relating to the sanctions to be imposed for the unauthorized disclosure of confidential material.

(d)(1) There is established within the department a putative father registry. For purposes of this subsection, "biological father" and "legal father" shall have the meanings set out in Code Section 19-8-1. The putative father registry shall record the name, address, and social security number of any person who claims to be the biological father but not the legal father of a child, and the date of entry of such information. Placement on the putative father registry shall not be used as an admission of guilt to any crime under Georgia law or used as evidence in any criminal prosecution under Georgia law.

(2) The putative father registry shall include two types of registrations:

(A) Persons who acknowledge paternity of a child or children before or after birth in a signed writing; and

(B) Persons who register to indicate the possibility of paternity without acknowledging paternity.

(3) Registrants shall be informed that this registration may be used to establish an obligation to support the child or children and that this registration shall be used to provide notice of adoption proceedings or proceedings to terminate the rights of a biological father who is not a legal father but that registration without further action does not enable the registrant to prevent an adoption or termination of his rights by objecting. All registrants shall be asked to provide information regarding changes in their addresses.

(4) A voluntary acknowledgment of paternity may be rescinded pursuant to the provisions of Code Section 19-7-46.1.

(5) The department shall publicize the existence and availability of the putative father registry to the public, including but not limited to providing information disseminated in connection with certificates of live birth and through county boards of health. The department is authorized to prescribe the notices, forms, and educational materials to be used for entities that may offer voluntary paternity establishment services.

(6) The department shall keep the putative father registry as current as feasible, adding entries or information to the registry often enough that new registrations or new information regarding registrants, mothers, or children shall be added to the registry no later than two business days following receipt of the information from the registrant.

(e) The information which is obtained by the department shall only be available to:

(1) A governmental department, board, commission, bureau, agency, or political subdivision of any state for purposes of locating an absent parent or putative father to establish or to enforce his obligation of support, of enforcing a child custody determination, or of enforcing any state or federal law with respect to the unlawful taking or restraint of a child; or

(2) The department, a licensed child-placing agency, or a member in good standing of the State Bar of Georgia in response to a request for information for purposes of locating a biological father who is not the legal father to provide notice of adoption proceedings or a proceeding to terminate the rights of a biological father who is not a legal father. The request for information shall include, to the extent the information is known to the department, agency, or attorney, the name, address, and social security number of the mother of the child and of the alleged biological father who is not the legal father of the child and the child's name, sex, and date of birth. The department shall within two business days of its receipt of such a request for information issue a written certificate documenting its response.

(f) The department shall charge a fee of $10.00 for each certification regarding entries on the putative father registry or other information provided pursuant to paragraph (2) of subsection (e) of this Code section. The department shall waive the fee provided for in this subsection upon presentation of an affidavit of the petitioner's indigency. The department shall transmit the fees received pursuant to this subsection to the Office of Treasury and Fiscal Services for deposit in the treasury of the state and shall provide an annual accounting of such fees to the Governor and the General Assembly.

Rule 17.1 Method of resolution.
UNIFORM RULES OF THE SUPERIOR COURT
RULE 17. CONFLICTS STATE AND FEDERAL COURTS
Rule 17.1. Method of resolution.

(A) An attorney shall not be deemed to have a conflict unless:

(1) the attorney is lead counsel in two or more of the actions affected; and,

(2) the attorney certifies that the matters cannot be adequately handled, and the client's interest adequately protected, by other counsel for the party in the action or by other attorneys in lead counsel's firm; certifies that in spite of compliance with this rule , the attorney has been unable to resolve these conflicts; and certifies in the notice a proposed resolution by list of such cases in the order of priority specified by this rule.

(B) When an attorney is scheduled for a day certain by trial calendar, special setting or court order to appear in two or more courts (trial or appellate; state or federal), the attorney shall give prompt written notice as specified in (A) above of the conflict to opposing counsel, to the clerk of each court and to the judge before whom each action is set for hearing (or, to an appropriate judge if there has been no designation of a presiding judge). The written notice shall contain the attorney's proposed resolution of the appearance conflicts in accordance with the priorities established by this rule and shall set forth the order of cases to be tried with a listing of the date and data required by (B)(1)-(4) as to each case arranged in the order in which the cases should prevail under this rule. In the absence of objection from opposing counsel or the courts affected, the proposed order of conflict resolution shall stand as offered. Should a judge wish to change the order of cases to be tried, such notice shall be given promptly after agreement is reached between the affected judges. Attorneys confronted by such conflicts are expected to give written notice such that it will be received at least seven (7) days prior to the date of conflict. Absent agreement, conflicts shall be promptly resolved by the judge or the clerk of each affected court in accordance with the following order of priorities:

(1) Criminal (felony) actions shall prevail over civil actions. Criminal actions in which a demand for speedy trial has been timely filed pursuant to O.C.G.A. §§ 17-7-170 and/or 17-7-171 shall automatically

take precedence over all other actions unless otherwise directed by the Court in which the speedy trial demand is pending;

(2) Jury trials shall prevail over non-jury matters, including trials and administrative proceedings;

(3) Within the category of non-jury matters, the following will have priority: (a) parental terminations, (b) trials, (c) all other non-jury matters including appellate arguments, hearings and conferences;

(4) Within each of the above categories only, the action which was first filed shall take precedence.

(C) Conflict resolution shall not require the continuance of the other matter or matters not having priority. In the event any matter listed in the letter notice is disposed of prior to the scheduled time set for any other matter listed or subsequent to the scheduled time set but prior to the end of the calendar, the attorney shall immediately notify all affected parties, including the court affected, of the disposal and shall, absent good cause shown to the court, proceed with the remaining case or cases in which the conflict was resolved by the disposal in the order of priorities as set forth heretofore.

Chapter 12 Reasonable Efforts Requirement/ IV-E Eligibility

O.C.G.A § 15-11-58 (a),(b) & (c)

Recommend Reading:

Family Preservation in Georgia: A Legal and Judicial Guide to Preventing Unnecessary Removal to State Custody. This Guide addresses the laws and policy that determine our state's involvement in families where abuse or neglect has been reported and when DFCS is proposing to remove the child from the home. It is intended for judges and legal practitioners as a guide to the removal process in the State of Georgia.
This document may be downloaded from the ChildWelfare.net website
Wehttp://www.childwelfare.net/resources/Family_Preservation_In_Georgia.pdf

Making Reasonable Efforts: A Permanent Home for Every Child
An update of our earlier publication, Making Reasonable Efforts: Steps for Keeping Families Together, this handbook explains what reasonable efforts are as we move out of the 1990's. It describes both the old and new reasonable efforts requirements in detail and outlines specific actions that should be taken by attorneys, judges, and child welfare agencies to ensure that the letter and spirit of the laws are met. Funding for this publication was provided by the Edna McConnell Clark Foundation.
This document may be downloaded from the Youth Law Center Resources website at
http://www.ylc.org/resources.php

Model Questions for Defining Reasonable Efforts
A booklet in question and answer format that serves as a guide for judges in evaluating ""whether child welfare agencies have made 'reasonable efforts' to preserve or unify families in abuse/neglect cases."" The booklet may also be helpful to other participants in the juvenile court process: case workers, mental health workers, attorneys, etc.
This document may be downloaded from the Youth Law Center Resources website at
http://www.ylc.org/resources.php

REASONABLE EFFORTS must be made by DFCS to:

- prevent removal, and
- to facilitate reunification where removal was necessary to protect the health and safety of the child,
- to expeditiously move the child to permanency & finalize the permanent plan
- to place siblings together in the same placement unless DFCS documents that joint placement of siblings would be contrary to the safety or well-being of any of the siblings and when siblings are not jointly placed that there is ongoing frequent visitation or other interaction, DFCS such sibling contact would be contrary to the safety or well-being of any of the siblings.

The Adoption Assistance and Child Welfare Act of 1980 (ASFA) requires that where reunification is the permanency goal, the Case Plan for each child must include a description of services offered and provided to prevent the removal of the child from the home and to reunify the family after removal. Neither the Adoption Assistance and Child Welfare Act of 1980 nor the Adoption and Safe Families Act of 1997 provide any definition of "reasonable efforts."

Preventative and reunification services: Federal regulations require each state to submit a plan which specifies which pre-placement preventative and reunification services are available to children and families in need. The regulations provide a list of services which may be provided as part of this plan but these are merely suggestions not requirements. The following is a list of those services:

- 24-hour emergency caretakers;
- homemaker services;
- day care;

- crisis counseling;
- individual and family counseling;
- emergency shelters;
- procedures and arrangements for access to available emergency financial assistance;
- temporary child care to provide respite to the family for a brief period;
- home-based family services;
- self-help groups;
- services to unmarried parents;
- provision of or arrangements for mental health, drug and alcohol abuse counseling;
- vocational counseling or rehabilitation;
- other services the agency identifies as necessary or appropriate.
- 45 C.F.R. Ch. XIII, §1357.15(e)(2) (10-1-95 Edition).

Making Reasonable Efforts: Steps for Keeping Families Together, National Council of Juvenile and Family Court Judges, also includes a list of recommended services to facilitate meeting reasonable efforts requirements:

- family preservation services;
- generic family based/family centered services;
- cash payments to meet emergency needs and to provide ongoing financial support;
- non-cash services to meet basic needs;
- food and clothing;
- housing (emergency shelter and permanent housing);
- non-cash services to address specific problems; in home respite care;
- out of home respite care and child day care;
- treatment for substance abuse/chemical addiction;
- treatment for sexual abusers and victims;
- mental health counseling/psychotherapy;
- parental and life skills training;
- household management;
- facilitative services
- visitation (to prepare both parent and child for their eventual reunification);
- transportation (when services are geographically inaccessible)

Reunification Efforts Not Always Required

- Reasonable efforts to reunify families are not always required and the provision of reunification services is limited. ASFA .
- An initial finding may be made as early as the dispositional phase, that reasonable efforts to reunify not be required, and a "Non-Reunification " plan be submitted in lieu of a reunification plan. 15-11-58(f).
- If a child has been in foster care 15 out of the most recent 22 months, the state is directed to file a petition to terminate parental rights unless:
- the state has placed the child with a relative;
- the state has documented a compelling reason for determining that terminating parental rights would not be in the best interests of the child; or
- if the state has failed to provide appropriate reunification services where such services were warranted, the state must now provide those services & suffer a finding of no reasonable efforts in that particular case.
- A permanency hearing must be held within 12 months after a child has entered foster care.
- Under certain egregious circumstances, reasonable efforts will not be considered. Federal guidelines and Georgia law recognize the need for immediate removal, as long as DFCS adequately documents the emergency nature of the situation for the Juvenile Court judge. The safety and health of the child are to be the paramount concerns throughout the case. Federal Adoption and Safe Families Act of 1997 (Public Law 105-89), 15-11-58(a)(1).

Reasonable efforts are not required with respect to a parent of a child who has:

- subjected the child to aggravated circumstances including abandonment, torture, chronic abuse or sexual abuse,
- committed the murder or voluntary manslaughter of another child of the parent or aided or abetted, attempted, conspired or solicited to do the same, or
- who has committed a felony assault that results in serious bodily injury to the child or another child.
- Reasonable efforts are similarly not required where the parental rights of another sibling of the child have been terminated involuntarily. 15-11-58(a)(4).

O.C.G.A. Code Sections

Summary of O.C.G.A. §15-11-58 Reasonable efforts to reunify family	
Section (a)	The types of reasonable efforts required by DFCS o To preserve & reunify families prior to placement in DFCS custody o To prevent or eliminate the need for removal of the child from the home o To make it possible for the child to return to the home The circumstances when reasonable efforts are NOT required (i.e. Non-Reunification) o parent committed murder or voluntary manslaughter of another child o parent convicted of murder or voluntary manslaughter of the other parent o parent committed felony assault on the child causing serious bodily injury o involuntary termination of parental rights to a sibling Permanency Hearing requirements when Non-Reunification is pursued by DFCS hearing within 30 days, Concurrent Case Planning allowed & Reasonable Efforts to finalize permanency
Section (b)	Case Plan requirements o Case Plan required within 30 days of the child's removal o Parents to be given 5 days notice of Case Plan meeting or Citizen Panel Review
Section (c)	The required contents of a Reunification Case Plan o Why the child is in foster care, why the child cannot be protected in the home & description of services provided to the family to prevent removal o How the Case Plan achieves the least restrictive placement for the child, how the placement meets the child's best interest and special needs o Specific actions required of the parents & DFCS so that child may return home o Time frames for the above actions o DFCS person responsible for implementing the Case Plan o Visitation & meaningful contact between parent & child
RE for Sibling Joint Placement	**§ 15-11-58(c)(7)** DFCS must use RE to place siblings together in the same placement unless DFCS documents that joint placement of siblings would be contrary to the safety or well-being of any of the siblings and when siblings are not jointly placed that there is ongoing frequent visitation or other interaction, DFCS such sibling contact would be contrary to the safety or well-being of any of the siblings

IV-E Eligibility & Funding

- federal eligibility & funding requirements for children in foster care through the Social Security Act
- child become eligible through findings in the Courts' Orders at different stages of the deprivation process
- once eligible, subsequent Court orders must maintain the appropriate language & findings to maintain the child's eligibility
- funding for the child's entire episode or duration in foster care is affected if the IV-E eligibility is not addressed. This can include the adoption supplement
- when making reasonable efforts finding the child's safety & health is of paramount concern

Three Steps to IV-E Eligibility & Funding

1. First Court ruling (order) which sanctions removal of the child from the home MUST explicitly state
    a. Continuation in the home would be "contrary to the welfare of the child"
    b. Court must be presented with evidence from DFCS and must make specific findings of fact supporting "contrary to the welfare"
    c. Findings must be explicitly documented & made on a case by case basis
2. Within 60 days of the child removal from the home, Court order must make a finding that reasonable efforts have been made to preserve the family or reunify the family OR that reasonable efforts were not required because of the limited circumstances of 15-11-58(a)(4)
    a. Judicial finding must be explicitly documented
    b. 15-11-58(a)(4)
        i. parent committed murder of another child of the parent
        ii. parent has been convicted of the murder of the other parent of the child
        iii. parent has committed voluntary manslaughter of another child of the parent
        iv. parent has aided or abetted, attempted, conspired or solicited to commit murder or involuntary manslaughter of another child of the parent
        v. the parents' parental rights to a sibling of the child have been involuntarily terminated
3. Judicial finding of reasonable efforts to finalize permanency plan
    a. Must be made within 12 months from the date of removal AND every 12 month thereafter
    b. Or where court has determined reasonable efforts for reunification are NOT required (Non-Reunification Hearing) then within 30 days of the Court's determination

Chapter 13 Case Plan/Citizen Panel Review

O.C.G.A § 15-11-58 (a), (b), (c), (d), (f) & (l)

- Within thirty (30) days of the child's removal from the home and at each subsequent review of the dispositional order, DFCS must submit a written report which shall either include a Case Plan for reunification of the family or the basis for its determination that a reunification plan is not appropriate.
- Parents shall be given written notice of the meeting at least five (5) days in advance and shall be advised that the report to be discussed at this meeting will be submitted to the Judge to become an order of the Court.
- The final report will become part of the formal case record and will be made available to the parents or guardian of the child upon request. The report must contain any dissenting recommendations of the citizen review panel and any recommendations made by the parents.
- If a 30-day Case Plan is submitted to the court contains a plan for reunification services, it must also address each of the following items:
- Each reason requiring the removal of the child;
    1. The purpose for which the child was placed in foster care, including a statement of the reason why the child cannot be adequately protected at home and the harm which may occur if the child remains in the home;
    2. The services offered and provided to prevent the removal of the child from the home;
    3. A discussion of how the plan is designed to achieve a placement in the least restrictive, most family-like setting available and in close proximity to the home of the parents, consistent with the best interests and special needs of the child;
    4. A clear description of the specific actions taken by the parents and specific services provided by DFCS or other appropriate agencies in order to bring about the identified changes that must be made in order to return the child to the home. (Services and actions required of the parents not directly related to the circumstances necessitating separation cannot be made conditions for the return of the child without further court review).
    5. Specific time frames in which the goals of the plan are to be accomplished to fulfill the purpose of the reunification plan;
    6. The person within DFCS who is directly responsible for ensuring that the plan is implemented;
    7. Consideration of the advisability of reasonable visitation schedules which allow parent(s) to maintain meaningful contact with their children through personal visits, telephone calls, and letters.

Non-Reunification Plans

- Reunification services are NOT required in every case
- If the Case Plan does not contain a plan for reunification services then a **Non-Reunification Hearing** must be held within 30 days of the filing of the Case Plan
- A Case Plan with a Non-Reunification recommendation must address each of the following issues:
    - Each reason requiring the removal of the child;
    - The purpose behind placing the child in foster care, the reasons why the child cannot be adequately protected at home, and the harm which may occur if the child remains in the home;
    - A description of the services offered and provided to prevent the removal of the child from the home,
- A clear statement describing all of the reasons supporting a finding that reasonable efforts to reunify a child with the child's family will be detrimental to the child, and that reunification services therefore need not be provided, including specific findings as to whether any of the grounds for terminating parental rights exist, as set forth in **15-11-94(b) or 15-11-58(a)(4)**

Summary of O.C.G.A. §15-11-58 Reasonable efforts to reunify family	
Section (a)	The types of reasonable efforts required by DFCS o To preserve & reunify families prior to placement in DFCS custody o To prevent or eliminate the need for removal of the child from the home o To make it possible for the child to return to the home The circumstances when reasonable efforts are NOT required (i.e. Non-Reunification) o parent committed murder or voluntary manslaughter of another child o parent convicted of murder or voluntary manslaughter of the other parent o parent committed felony assault on the child causing serious bodily injury o involuntary termination of parental rights to a sibling Permanency Hearing requirements when Non-Reunification is pursued by DFCS hearing within 30 days, Concurrent Case Planning allowed & Reasonable Efforts to finalize permanency
Section (b)	Case Plan requirements o Case Plan required within 30 days of the child's removal o Parents to be given 5 days notice of Case Plan meeting or Citizen Panel Review
Section (c)	The required contents of a Reunification Case Plan o Why the child is in foster care, why the child cannot be protected in the home & description of services provided to the family to prevent removal o How the Case Plan achieves the least restrictive placement for the child, how the placement meets the child's best interest and special needs o Specific actions required of the parents & DFCS so that child may return home o Time frames for the above actions o DFCS person responsible for implementing the Case Plan o Visitation & meaningful contact between parent & child **§ 15-11-58(c)(7)** DFCS must use RE to place siblings together in the same placement unless DFCS documents that joint placement of siblings would be contrary to the safety or well-being of any of the siblings and when siblings are not jointly placed that there is ongoing frequent visitation or other interaction, DFCS such sibling contact would be contrary to the safety or well-being of any of the siblings **§ 15-11-58(c)(8)** DFCS must make an assurances: that the child placement considers the appropriateness of the current educational setting and the proximity to the school in which the child is enrolled at the time of placement; that DFCS has coordinated with appropriate local educational agencies to ensure that the child remains in the school in which the child is enrolled at the time of placement; or when remaining in the same school is not in the child's best interests the DFCS and the local educational agencies have cooperated to assure the immediate and appropriate enrollment in a new school, with all of the educational records of the child provided to the new school **§ 15-11-58(c)(9)** During the **90 period prior to the foster child reaching 18, DFCS to assist & support child in developing** a personalized transition plan to includes specific options on housing, health insurance, education, local opportunities for mentors and continuing support services, work force supports and employment services
Section (d)	How the Case Plan is to be submitted to the Court & incorporated into the Court's order

Section (f)	The contents of the Non-Reunification Case Plan o Each reason for removal o Why the child cannot be protected in the home & the harm which the child would be exposed to in the home o The services offered & provided to prevent the child's removal from the home o All the reasons why reunification services would be detrimental to the child & whether any of the grounds for termination of parental rights exist o RE for Sibling Joint Placement o Educational Stability Assurance
Section (l)	Provides that following the Case Plan review if no party requests a hearing within 5 days then the Case Plan reviewed should be submitted to the Court for incorporation into a supplemental dispositional order which should provide for one of the following: 1. Return the child to parent or guardian, with or without conditions 2. Continue the child in the current custodial placement which is deemed appropriate 3. Reject current placement as inappropriate & direct DFCS to submit a revised Case Plan. Also provides for the citizen panel to make a recommendation to the Court for the appointment of a Guardian Ad Litem (GAL) to investigate & pursue termination of parental rights as appropriate

Judicial Citizen Panel Review
Uniform Rules for the Juvenile Courts of Georgia
Rule 24

- Citizen Panel Review programs use local volunteers selected by the Juvenile Court Judge and specially trained to meet periodically on a particular case to review the progress and continued appropriateness of the Case Plan with DFCS, parents, child, family members, service providers, foster parents and others who have information on the family circumstances.
- Citizen Review Panels meet initially within 90 days of a disposition order or within 6 months from the date of removal and no later than every six months thereafter when the child is in placement.
- Citizen Panel Reviews submit for the Judge's approval a report which includes recommendations as to:
  - the necessity and appropriateness of the current placement;
  - whether reasonable efforts have been made by the local DFCS office to obtain permanency for the child;
  - the degree of compliance with the specific goals and objectives set out in the Case Plan of all appropriate parties and their level of participation:
  - whether any progress has been made in improving the conditions that caused the child's removal from the home;
  - any specific changes that need to be made in the Case Plan, including a change in the permanency goal and the projected date when permanency for the child is likely to be achieved.
- If no hearing is requested, the Juvenile Court Judge will review the proposed revised plan and enter a supplemental order incorporating the revised plan as part of its disposition of the case.

24. JUDICIAL AND CITIZEN REVIEW OF CHILDREN IN FOSTER CARE
See Chapter 13

24.1 Case Review of Children in Foster Care; Generally.
All cases of children in foster care in the custody of the Division of Family and Children Services of the Department of Human Resources (hereinafter referred to as "DFCS") shall be initially reviewed within ninety (90) days of the entering of the dispositional order but no later than six (6) months following the child's placement in temporary foster case. Such review shall be conducted by the Juvenile Court judge, or a properly designated associate judge or judge pro tempore, or by judicial citizen review panels established by the court. After the initial review, each case shall be reviewed at least every six (6) months.

24.2 Creation of Judicial Citizen Review Panels.
A chief judge of a Juvenile Court or a chief Superior Court judge in a county where a Superior Court judge has Juvenile Court jurisdiction may elect to create judicial citizen review panels. If a judge elects to create judicial citizen review panels, he or she shall file a statement of intent with the Council of Juvenile Court Judges (hereinafter referred to as the "Council"). The Council shall then determine if there are adequate staff and resources available for the creation and operation of a judicial citizen review panel program and shall notify the court in writing of its determination within a reasonable time from receiving the statement of intent. If the Council determines that there are adequate resources to establish judicial citizen review panels, the Council shall notify the court in writing of this, and such written notice shall serve as the formal creation of a judicial citizen review panel program. Such panels shall be conducted in the manner set forth in O.C.G.A. § 15-11-58 and shall employ the standards and procedures as mandated by such statute, these rules, and program guidelines approved by the Council standing committee on permanency planning (hereinafter referred to as "Program Guidelines"). Only those courts which agree to operate under such terms and conditions shall be deemed to be in compliance with O.C.G.A. § 15-11-58.

24.3 Program Guidelines.
A current copy of the Program Guidelines shall be maintained in the clerk's office of every court that has a judicial citizen review panel program in place and shall be available for review upon request during the court's normal business hours.

24.4 Appointments; Term of Service; Vacancies; and Removal from Office.
1. Appointments. The judge shall screen, select and appoint individuals to serve on local judicial citizen review panels. The judge shall seek to select persons who represent a cross-section of the community with respect to race, economic status, gender, and ethnic background. Any person employed by DFCS, any Juvenile Court except for the person designated by the judge as the local program coordinator, or any person who serves as a legal guardian or custodian of a child in temporary foster care shall not be eligible to serve on any local judicial citizen review panels; provided, however, that any person serving as a member of a local judicial citizen review panel on July 1, 1991, who would be ineligible to serve under these rules may continue to do so until the judge appoints a qualified replacement.
2. Term of Service. Judicial citizen review panel members shall serve at the pleasure of the judge for a term of one (1) year. The panel member may continue to serve as long as the panel member meets the requirements of the Program Guidelines.
3. Vacancies. In the event that a vacancy arises, the judge shall appoint a qualified individual to serve the remainder of the unexpired term.
4. Removal from Office. The judge may remove a panel member for: failure to meet the certification requirements as provided in the Program Guidelines; (2) displaying any behavior which hinders the overall effectiveness of the panel; violating the oath of confidentiality; or conviction of a crime involving moral turpitude.

24.5 Training and Certification.
Before any person may serve on a judicial citizen review panel, they shall successfully complete an initial training course provided by professional staff employed by the Council. Each year thereafter, judicial citizen review panel members are required to complete additional training as prescribed by the Program Guidelines. Council staff shall certify completion of the required training to the court and the Council standing committee on permanency planning.

24.6 Panel Composition; Quorum; and Emergency Substitution Procedure.
Panel Composition. Each judicial citizen review panel shall be set up in accordance with the Program Guidelines**.**
Quorum. A quorum shall be as defined in the Program Guidelines.
Emergency Substitution Procedure. Emergency substitution procedures shall be handled as provided in the Program Guidelines.

24.7 Duties of the Judicial Citizen Review Panels.
Each judicial citizen review panel participating in foster care reviews shall submit findings and submit recommendations to the court, which, at a minimum, shall address the following issues:
1. The necessity and appropriateness of the current placement;
2. Whether reasonable efforts have been made to obtain permanency for the child;
3. The degree of compliance with the specific goals and action steps set out in the Case Plan;
4. Whether any progress has been made in improving the conditions that caused the child's removal from the home; and
5. Any specific changes that need to be made in the Case Plan, including a change in the permanency goal and the projected date when permanency for the child is likely to be achieved.

Judicial citizen review panels, if designated by the court, may assist DFCS, in a consultant-like capacity, in the preparation of the initial thirty (30) day permanency plan. Such assistance shall be provided during a face-to-face meeting between the primary caseworker, the parents and child(ren) when available, and members of the judicial citizen review panel.
Judicial citizen review panels may also perform such other duties and functions as provided by law.

24.8 Confidentiality of Proceedings.
All information discussed during a judicial citizen review panel review related to the cases reviewed shall remain confidential. The release of any case-related information must first be approved by the court.

24.9 Conflict of Interest.
Whenever a judicial citizen review panel member has a potential conflict of interest in a case being reviewed, the panel member shall advise the other panel members and persons present of the potential conflict prior to participating in the case review. If any party to the case believes that the potential conflict may prevent the panel member from fairly and objectively reviewing the case, such panel member shall be excused from participating in the review. The potential conflict of interest shall be duly recorded in the panel's findings and recommendations.

24.10 Notice of Case Reviews.
The local DFCS office shall furnish the local program coordinator with a master calendar of foster care cases to be reviewed on a quarterly basis and a list of individuals to be invited to each review at least twenty (20) working days prior to the date of the scheduled review. Advance written notice shall be provided to all interested parties in a uniform manner as set forth in the Program Guidelines.

24.11 Workload of the Panels.
The workload of the panels at any given time may not exceed the maximum or fall below the minimum number set forth in the Program Guidelines

24.12 Access to Case Information; Time Frames.
(a) Access to Case Information. Each judicial citizen review panel, each Juvenile Court, and Council staff shall have access to all records and information of the court and the local DFCS office that is pertinent to the case being reviewed.
(b) Time Frames. DFCS shall submit progress reports and updated case information to the local program coordinator at least five (5) working days before the date of the judicial citizen review panel review. Any supplemental information requested by the judicial citizen review panels from the local DFCS office must be submitted within five (5) working days from the date the request is received. All other information requested by judicial citizen review panels from other individuals and agencies shall be submitted within the time frames set forth in the Program Guidelines.

24.13 Panel Reviews.
(a) Case Review. A judicial citizen review panel may elect to hear from any person who formally requests to be heard during a foster care case review, as long as such person has specific knowledge of the case and can assist the panel in the review process. Parents and children may be accompanied to the review by a representative of their choice and such representative may be permitted to provide information.
(b) Presence of the Child. In the case where a child is present, any panel member may request of the chairperson that the panel members, Council staff, and other persons meet privately with the child if it is determined that this would facilitate the child's ability to communicate with the panel members.
(c) Persons Who Shall Receive Notice of Reviews. The following persons shall be given written notice of the judicial citizen review panel reviews: the parents, the child, Council staff, DFCS staff, any pre-adoptive parent or relative providing care for the child, and foster parents.
(d) Persons Who May Participate in Reviews. The following persons may participate in judicial citizen review panel reviews at the invitation of the panel: family members of the child, legal counsel retained by the parent(s) or appointed by the court for the child, and professionals and other citizens having specific knowledge of the case or special expertise which would benefit the panel review process.
(e) Exclusion from the Review. The panel chairperson may remove any person from any review on his or her initiative or at the request of any participant if the panel chairperson determines that such removal is necessary for an orderly and thorough review of the case.
(f) Oath of Confidentiality. Prior to participating in a judicial citizen review panel review, each person shall affirm by oath that he or she shall keep confidential all information disclosed during the panel review and any information related to the case and that such information may be disclosed only when authorized by law. In the event that any person violates the oath of confidentiality, such person shall be subject to the contempt powers of the court the child's ability to communicate with the panel members.
24.14 Placement Agency Attendance.
Unless excused from doing so by the judicial citizen review panel, DFCS and any other agency directly responsible for the placement, care, and custody of the child whose case is under review shall require the presence of the employee designated as responsible under the Case Plan or his or her immediate supervisor. The citizen review panel may request the presence of other specific employees of the DFCS office or other agency at the panel review.

24.15 Additional Procedures and Practices.
The Council may adopt such other administrative practices and procedures not inconsistent with the provisions of law and these rules as may be necessary from time to time for the operation of judicial citizen review panels.

24.16 Maintenance of Records.
See Rule 3.10. Effective Date: July 1, 1991

Chapter 14 Court of Inquiry

Authority	**O.C.G.A. § 15-11-4** **Uniform Rules for the Juvenile Courts of Georgia, Rule 14**
Purpose	○ Juvenile Court is empowered to examine the issue of whether a crime has been committed by any adult who is brought before the Court in the course of a juvenile proceeding ○ Provides additional protections of child, family and public, where police or other law enforcement action has not begun
Actions	Whenever a person 17 years or older is before the Juvenile Court in the course of ANY proceeding instituted under Title 15, the Juvenile Court may ○ Examine or investigate the conduct or acts that may be in violation of the laws of the state AND ○ Cause the person to be apprehended & brought before the Court upon a writ of summons, a warrant duly issued, or by arrest AND ○ Conduct a Probable Cause Hearing & if the Court finds probable cause for a felony or misdemeanor, then the Court shall commit, bind over to the court of proper jurisdiction in this state, OR discharge the person OR the Court may set bond or bail ○ Issue a warrant to arrest any child for an offense based either on personal knowledge or the information of others given under oath
Jurisdiction	Within the State for violation of the laws of the State
Timing	At any stage of the juvenile proceeding
Standard of Proof	○ Reason to believe / probable cause ○ Court can commit or bind over for trial, set bond, discharge
Right to Attorney	Yes, Court should advise both adult & juvenile of right to attorney
Notice	○ Usually the suspect is before the court during the course of a hearing on deprivation of a child, when a verbal motion is made by one of the attorneys to advise the suspect that the Court sits as a "Court of Inquiry" and the consequences OR ○ The suspect may be apprehended & brought before the Juvenile Court, based on sworn testimony presented to the Court during a deprivation hearing

O.C.G.A. Code Sections
15-11-4 Juvenile Court as court of inquiry - court of record.
(a) Court of inquiry. The Juvenile Court shall have jurisdiction to act as a court of inquiry with all the powers and rights allowed courts of inquiry in this state and to examine or investigate into the circumstances or causes of any conduct or acts of any person 17 years of age or over that may be in violation of the laws of this state whenever the person is brought before the court in the course of any proceeding instituted under this article. The court shall cause the person to be apprehended and brought before it upon either a writ of summons, a warrant duly issued, or by arrest. Where, after hearing evidence, the court has reasonably ascertained that there is probable cause to believe that the person has committed a misdemeanor or felony as prescribed under the laws of this state, the court shall commit, bind over to the court of proper jurisdiction in this state, or discharge the person. When justice shall require, the court shall cause the person to make the bond or bail as the court shall deem proper under the circumstances, to cause the person to appear before the court of proper jurisdiction in this state to be acted upon as provided by law.

(b) Court of record. The Juvenile Court is a court of record, having a seal. The judge and the judge's duly appointed representatives shall each have power to administer oaths and affirmations.

(c) Issuance of warrants by Juvenile Court judge. The Juvenile Court judge and associate Juvenile Court judge shall have authority to issue a warrant for the arrest of any child for an offense committed against the laws of this state, based either on personal knowledge or the information of others given under oath.

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O.C.G.A. Title 16 Crimes & Offenses Code Sections

19-10-1 Abandonment of dependent child - penalties - continuing offense.

(a) A child abandoned by its father or mother shall be considered to be in a dependent condition when the father or mother does not furnish sufficient food, clothing, or shelter for the needs of the child.

(b) If any father or mother willfully and voluntarily abandons his or her child, either legitimate or born out of wedlock, leaving it in a dependent condition, he or she shall be guilty of a misdemeanor. Moreover, if any father or mother willfully and voluntarily abandons his or her child, either legitimate or born out of wedlock, leaving it in a dependent condition, and leaves this state or if any father or mother willfully and voluntarily abandons his or her child, either legitimate or born out of wedlock, leaving it in a dependent condition, after leaving this state, he or she shall be guilty of a felony punishable by imprisonment for not less than one nor more than three years. The felony shall be reducible to a misdemeanor. Any person, upon conviction of the third offense for violating this Code section, shall be guilty of a felony and shall be imprisoned for not less than one nor more than three years, which felony shall not be reducible to a misdemeanor. The husband and wife shall be competent witnesses in such cases to testify for or against the other.

(c) The offense of abandonment is a continuing offense. Except as provided in subsection (i) of this Code section, former acquittal or conviction of the offense shall not be a bar to further prosecution therefor

under this Code section, if it is made to appear that the child in question was in a dependent condition, as defined in this Code section, for a period of 30 days prior to the commencement of prosecution.

(d) In prosecutions under this Code section when the child is born out of wedlock, the venue of the offense shall be in the county in which the child and the mother are domiciled at the time of the swearing out of the arrest warrant; but, if the child and the mother are domiciled in different counties, venue shall be in the county in which the child is domiciled.

(e) Upon the trial of an accused father or mother under this Code section, it shall be no defense that the accused father or mother has never supported the child.

(f) In the trial of any abandonment proceeding in which the question of parentage arises, regardless of any presumptions with respect to parentage, the accused father may request a paternity blood test and agree and arrange to pay for same; and in such cases the court before which the matter is brought, upon pretrial motion of the defendant, shall order that the alleged parent, the known natural parent, and the child submit to any blood tests and comparisons which have been developed and adapted for purposes of establishing or disproving parentage and which are reasonably accessible to the alleged parent, the known natural parent, and the child. The results of those blood tests and comparisons, including the statistical likelihood of the alleged parent's parentage, if available, shall be admitted in evidence when offered by a duly qualified, licensed practicing physician, duly qualified immunologist, duly qualified geneticist, or other duly qualified person. Upon receipt of a motion and the entry of an order under this subsection, the court shall proceed as follows:

(1) Where the issue of parentage is to be decided by a jury, where the results of those blood tests and comparisons are not shown to be inconsistent with the results of any other blood tests and comparisons, and where the results of those blood tests and comparisons indicate that the alleged parent cannot be the natural parent of the child, the jury shall be instructed that if they believe that the witness presenting the results testified truthfully as to those results and if they believe that the tests and comparisons were conducted properly, then it will be their duty to decide that the alleged parent is not the natural parent;

(2) The court shall require the defendant requesting the blood tests and comparisons pursuant to this subsection to be initially responsible for any of the expenses thereof. Upon the entry of a verdict incorporating a finding of parentage or nonparentage, the court shall tax the expenses for blood tests and comparisons, in addition to any fees for expert witnesses whose testimonies supported the admissibility thereof, as costs.

(g) In prosecutions under this Code section, when the child is born out of wedlock and the accused father is convicted, the father may be required by the court to pay the reasonable medical expenses paid by or incurred on behalf of the mother due to the birth of the child.

(h) The accused father and the mother of a child born out of wedlock may enter into a written agreement providing for future support of the child by regular periodic payments to the mother until the child reaches the age of 18 years, marries, or becomes self-supporting; provided, however, that the agreement shall not be binding on either party until it has been approved by the court having jurisdiction to try the pending case.

(i) If, during the trial of any person charged with the offense of abandonment as defined in this Code section, the person contends that he or she is not the father or mother of the child alleged to have been abandoned, in a jury trial the trial judge shall charge the jury that if its verdict is for the acquittal of the person and its reason for so finding is that the person is not the father or mother of the child alleged to have been abandoned, then its verdict shall so state. In a trial before the court without the intervention of the jury, if the court renders a verdict of acquittal based on the contention of the person that he or she is not the father or mother of the child alleged to have been abandoned, the trial judge shall so state this fact in his verdict of acquittal. Where the verdict of the jury or the court is for acquittal of a person on the grounds that the person is not the father or mother of the child alleged to have been abandoned, the person cannot thereafter again be tried for the offense of abandoning the child, and the verdict of acquittal shall be a bar to all civil and criminal proceedings attempting to compel the person to support the child.

(j)(1) In a prosecution for and conviction of the offense of abandonment, the trial court may suspend the service of the sentence imposed in the case, upon such terms and conditions as it may prescribe for the support, by the defendant, of the child or children abandoned during the minority of the child or children. Service of the sentence, when so suspended, shall not begin unless and until ordered by the court having jurisdiction thereof, after a hearing as in cases of revocation or probated sentences, because of the failure or refusal of the defendant to comply with the terms and conditions upon which service of a sentence was suspended.

(2) Service of any sentence suspended in abandonment cases may be ordered by the court having jurisdiction thereof at any time before the child or children reach the age of 18 or become emancipated, after a hearing as provided in paragraph (1) of this subsection and a finding by the court that the defendant has failed or refused to comply with the terms and conditions upon which service of the sentence was suspended by the court having jurisdiction thereof.

(3) Notwithstanding any other provisions of law, in abandonment cases where the suspension of sentence has been revoked and the defendant is serving the sentence, the court may thereafter again suspend the service of sentence under the same terms and conditions as the original suspension. The sentence shall not be considered probated and the defendant shall not be on probation, but the defendant shall again be under a suspended sentence. However, the combined time of incarceration of the defendant during the periods of revocation of suspended sentences shall not exceed the maximum period of punishment for the offense.

(4) Notwithstanding any other provision of law to the contrary, the terms and conditions prescribed by the court as to support by the defendant shall be subject to review and modification by the court, upon notice and hearing to the defendant, as to the ability of the defendant to furnish support and as to the adequacy of the present support payments to the child's or children's needs. The review provided for in this paragraph as to the ability of the defendant to furnish support and as to the adequacy of the present support payments to the child's or children's needs shall not be had in less than two-year intervals and shall authorize the court to increase as well as to decrease the amount of child support to be paid as a term and condition of the suspended sentence. The review as to ability to support and adequacy of support shall not be equivalent to a hearing held in cases of revocation of probated sentences for purposes of service of the suspended sentence; nor shall a modification, if any, be deemed a change in sentence; nor shall a modification, if any, be deemed to change the suspended sentence to a probated sentence.

16-5-27 Female genital mutilation.

(a) Any person:

(1) Who knowingly circumcises, excises, or infibulates, in whole or in part, the labia majora, labia minora, or clitoris of a female under 18 years of age;

(2) Who is a parent, guardian, or has immediate custody or control of a female under 18 years of age and knowingly consents to or permits the circumcision, excision, or infibulation, in whole or in part, of the labia majora, labia minora, or clitoris of such female; or

(3) Who knowingly removes or causes or permits the removal of a female under 18 years of age from this state for the purpose of circumcising, excising, or infibulating, in whole or in part, the labia majora, labia minora, or clitoris of such female shall be guilty of female genital mutilation.

(b) A person convicted of female genital mutilation shall be punished by imprisonment for not less than five nor more than 20 years.

(c) This Code section shall not apply to procedures performed by or under the direction of a physician, a registered professional nurse, a certified nurse midwife, or a licensed practical nurse licensed pursuant to Chapter 34 or 26, respectively, of Title 43 when necessary to preserve the physical health of the female. This Code section shall also not apply to any autopsy or limited dissection as defined by Code Section 45-16-21 which is conducted in accordance with Article 2 of Chapter 16 of Title 45.

(d) Consent of the female under 18 years of age or the parent, guardian, or custodian of the female under 18 years of age shall not be a defense to the offense of female genital mutilation. Religion, ritual, custom, or standard practice shall not be a defense to the offense of female genital mutilation.

(e) The statutory privileges provided by Chapter 9 of Title 24 shall not apply to proceedings in which one of the parties to the privilege is charged with a crime against a female under 18 years of age, but such person shall be compellable to give evidence only on the specific act for which the defendant is charged.

16-5-28 Assault of an unborn child.

(a) For the purposes of this Code section, the term "unborn child" means a member of the species homo sapiens at any stage of development who is carried in the womb.

(b) A person commits the offense of assault of an unborn child when such person, without legal justification, attempts to inflict violent injury to an unborn child.

(c) Any person convicted of the offense of assault of an unborn child shall be guilty of a misdemeanor.

(d) Nothing in this Code section shall be construed to permit the prosecution of:
(1) Any person for conduct relating to an abortion for which the consent of the pregnant woman, or person authorized by law to act on her behalf, has been obtained or for which such consent is implied by law;
(2) Any person for any medical treatment of the pregnant woman or her unborn child; or
(3) Any woman with respect to her unborn child.

16-5-29 Battery of an unborn child.
(a) For the purposes of this Code section, the term "unborn child" means a member of the species homo sapiens at any stage of development who is carried in the womb.

(b) A person commits the offense of battery of an unborn child when such person, without legal justification, intentionally inflicts physical harm upon an unborn child.

(c) A person convicted of the offense of battery of an unborn child shall be guilty of a misdemeanor.

(d) Nothing in this Code section shall be construed to permit the prosecution of:
(1) Any person for conduct relating to an abortion for which the consent of the pregnant woman, or person authorized by law to act on her behalf, has been obtained or for which such consent is implied by law;
(2) Any person for any medical treatment of the pregnant woman or her unborn child; or
(3) Any woman with respect to her unborn child.

16-5-40 Kidnaping.
(a) A person commits the offense of kidnapping when he abducts or steals away any person without lawful authority or warrant and holds such person against his will.

(b) A person convicted of the offense of kidnapping shall be punished by:
(1) Imprisonment for not less than ten nor more than 20 years if the kidnapping involved a victim who was 14 years of age or older;
(2) Imprisonment for life or by a split sentence that is a term of imprisonment for not less than 25 years and not exceeding life imprisonment, followed by probation for life, if the kidnapping involved a victim who is less than 14 years of age;
(3) Life imprisonment or death if the kidnapping was for ransom; or
(4) Life imprisonment or death if the person kidnapped received bodily injury.

(c) Any person convicted under this Code section shall, in addition, be subject to the sentencing and punishment provisions of Code Sections 17-10-6.1 and 17-10-7.

16-5-42 Illegal confinement showing malice or oppression.
When the arrest, confinement, or detention of a person by warrant, mandate, or process is manifestly illegal and shows malice and oppression, an officer issuing or knowingly and maliciously executing the same shall, upon conviction thereof, be removed from office and punished by imprisonment for not less than one nor more than ten years.

16-5-43 Causing confinement of a sane person.
A person who maliciously causes the confinement of a sane person, knowing such person to be sane, in any asylum, public or private, shall, upon conviction thereof, be punished by imprisonment for not less than one nor more than ten years.

16-5-45 Interference with custody.

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

(1) "Child" means any individual who is under the age of 17 years or any individual who is under the age of 18 years who is alleged to be a deprived child as such is defined in Code Section 15-11-2, relating to juvenile proceedings.

(2) "Committed person" means any child or other person whose custody is entrusted to another individual by authority of law.

(3) "Lawful custody" means that custody inherent in the natural parents, that custody awarded by proper authority as provided in Code Section 15-11-45, or that custody awarded to a parent, guardian, or other person by a court of competent jurisdiction.

(b)(1) A person commits the offense of interference with custody when without lawful authority to do so the person:

(A) Knowingly or recklessly takes or entices any child or committed person away from the individual who has lawful custody of such child or committed person;

(B) Knowingly harbors any child or committed person who has absconded; or

(C) Intentionally and willfully retains possession within this state of the child or committed person upon the expiration of a lawful period of visitation with the child or committed person.

(2) A person convicted of the offense of interference with custody shall be punished as follows:

(A) Upon conviction of the first offense, the defendant shall be guilty of a misdemeanor and shall be fined not less than $200.00 nor more than $500.00 or shall be imprisoned for not less than one month nor more than five months, or both fined and imprisoned;

(B) Upon conviction of the second offense, the defendant shall be guilty of a misdemeanor and shall be fined not less than $400.00 nor more than $1,000.00 or shall be imprisoned for not less than three months nor more than 12 months, or both fined and imprisoned; and

(C) Upon the conviction of the third or subsequent offense, the defendant shall be guilty of a felony and shall be punished by imprisonment for not less than one nor more than five years.

(c)(1) A person commits the offense of interstate interference with custody when without lawful authority to do so the person knowingly or recklessly takes or entices any minor or committed person away from the individual who has lawful custody of such minor or committed person and in so doing brings such minor or committed person into this state or removes such minor or committed person from this state.

(2) A person also commits the offense of interstate interference with custody when the person removes a minor or committed person from this state in the lawful exercise of a visitation right and, upon the expiration of the period of lawful visitation, intentionally retains possession of the minor or committed person in another state for the purpose of keeping the minor or committed person away from the individual having lawful custody of the minor or committed person. The offense is deemed to be committed in the county to which the minor or committed person was to have been returned upon expiration of the period of lawful visitation.

(3) A person convicted of the offense of interstate interference with custody shall be guilty of a felony and shall be imprisoned for not less than one year nor more than five years.

16-5-46 Trafficking a person for labor or sexual servitude.

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

(1) "Coercion" means:

(A) Causing or threatening to cause bodily harm to any person, physically restraining or confining any person, or threatening to physically restrain or confine any person;

(B) Exposing or threatening to expose any fact or information that if revealed would tend to subject a person to criminal or immigration proceedings, hatred, contempt, or ridicule;

(C) Destroying, concealing, removing, confiscating, or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of any person; or

(D) Providing a controlled substance, as such term is defined by Code Section 16-13-21, to such person.

(2) "Deception" means:

(A) Creating or confirming another's impression of an existing fact or past event which is false and which the accused knows or believes to be false;

(B) Maintaining the status or condition of a person arising from a pledge by that person of his or her personal services as security for a debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined, or preventing a person from acquiring information pertinent to the disposition of such debt; or

(C) Promising benefits or the performance of services which the accused does not intend to deliver or perform or knows will not be delivered or performed. Evidence of failure to deliver benefits or perform services standing alone shall not be sufficient to authorize a conviction under this Code section.

(3) "Labor servitude" means work or service of economic or financial value which is performed or provided by another person and is induced or obtained by coercion or deception.

(4) "Sexual servitude" means:

(A) Any sexually explicit conduct as defined in paragraph (4) of subsection (a) of Code Section 16-12-100 for which anything of value is directly or indirectly given, promised to, or received by any person, which conduct is induced or obtained by coercion or deception or which conduct is induced or obtained from a person under the age of 18 years; or

(B) Any sexually explicit conduct as defined in paragraph (4) of subsection (a) of Code Section 16-12-100 which is performed or provided by any person, which conduct is induced or obtained by coercion or deception or which conduct is induced or obtained from a person under the age of 18 years.

(b) A person commits the offense of trafficking a person for labor servitude when that person knowingly subjects or maintains another in labor servitude or knowingly recruits, entices, harbors, transports, provides, or obtains by any means another person for the purpose of labor servitude.

(c) A person commits the offense of trafficking a person for sexual servitude when that person knowingly subjects or maintains another in sexual servitude or knowingly recruits, entices, harbors, transports, provides, or obtains by any means another person for the purpose of sexual servitude.

(d) Any person who commits the offense of trafficking a person for labor or sexual servitude shall be guilty of a felony, and upon conviction thereof, shall be punished by imprisonment for not less than one nor more than 20 years. Any person who commits the offense of trafficking a person for labor or sexual servitude against a person who is under the age of 18 years shall be guilty of a felony, and upon conviction thereof, shall be punished by imprisonment for not less than ten nor more than 20 years.

(e) Prosecuting attorneys and the Attorney General shall have concurrent authority to prosecute any criminal cases arising under the provisions of this Code section and to perform any duty that necessarily appertains thereto.

(f) Each violation of this Code section shall constitute a separate offense and shall not merge with any other offense.

(g) A corporation may be prosecuted under this Code section for an act or omission constituting a crime under this Code section only if an agent of the corporation performs the conduct which is an element of the crime while acting within the scope of his or her office or employment and on behalf of the corporation and the commission of the crime was either authorized, requested, commanded, performed, or within the scope of his or her employment on behalf of the corporation or constituted a pattern of illegal activity that an agent of the company knew or should have known was occurring.

16-5-60 Causing bodily harm or endangering bodily safety.

(a) Any term used in this Code section and defined in Code Section 31-22-9.1 shall have the meaning provided for such term in Code Section 31-22-9.1.

(b) A person who causes bodily harm to or endangers the bodily safety of another person by consciously disregarding a substantial and unjustifiable risk that his act or omission will cause harm or endanger the

safety of the other person and the disregard constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation is guilty of a misdemeanor.

(c) A person who is an HIV infected person who, after obtaining knowledge of being infected with HIV:
(1) Knowingly engages in sexual intercourse or performs or submits to any sexual act involving the sex organs of one person and the mouth or anus of another person and the HIV infected person does not disclose to the other person the fact of that infected person's being an HIV infected person prior to that intercourse or sexual act;
(2) Knowingly allows another person to use a hypodermic needle, syringe, or both for the introduction of drugs or any other substance into or for the withdrawal of body fluids from the other person's body and the needle or syringe so used had been previously used by the HIV infected person for the introduction of drugs or any other substance into or for the withdrawal of body fluids from the HIV infected person's body and where that infected person does not disclose to the other person the fact of that infected person's being an HIV infected person prior to such use;
(3) Offers or consents to perform with another person an act of sexual intercourse for money without disclosing to that other person the fact of that infected person's being an HIV infected person prior to offering or consenting to perform that act of sexual intercourse;
(4) Solicits another person to perform or submit to an act of sodomy for money without disclosing to that other person the fact of that infected person's being an HIV infected person prior to soliciting that act of sodomy; or
(5) Donates blood, blood products, other body fluids, or any body organ or body part without previously disclosing the fact of that infected person's being an HIV infected person to the person drawing the blood or blood products or the person or entity collecting or storing the other body fluids, body organ, or body part, is guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not more than ten years.

(d) A person who is an HIV infected person or hepatitis infected person and who, after obtaining knowledge of being infected with HIV or hepatitis, commits an assault with the intent to transmit HIV or hepatitis, using his or her body fluids (blood, semen, or vaginal secretions), saliva, urine, or feces upon:
(1) A peace officer while the peace officer is engaged in the performance of his or her official duties or on account of the peace officer's performance of his or her official duties; or
(2) A correctional officer while the correctional officer is engaged in the performance of his or her official duties or on account of the correctional officer's performance of his or her official duties
is guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than five nor more than 20 years.

16-5-70 Cruelty to children.
(a) A parent, guardian, or other person supervising the welfare of or having immediate charge or custody of a child under the age of 18 commits the offense of cruelty to children in the first degree when such person willfully deprives the child of necessary sustenance to the extent that the child's health or well-being is jeopardized.

(b) Any person commits the offense of cruelty to children in the first degree when such person maliciously causes a child under the age of 18 cruel or excessive physical or mental pain.

(c) Any person commits the offense of cruelty to children in the second degree when such person with criminal negligence causes a child under the age of 18 cruel or excessive physical or mental pain.

(d) Any person commits the offense of cruelty to children in the third degree when:
(1) Such person, who is the primary aggressor, intentionally allows a child under the age of 18 to witness the commission of a forcible felony, battery, or family violence battery; or
(2) Such person, who is the primary aggressor, having knowledge that a child under the age of 18 is present and sees or hears the act, commits a forcible felony, battery, or family violence battery.

(e)(1) A person convicted of the offense of cruelty to children in the first degree as provided in this Code section shall be punished by imprisonment for not less than five nor more than 20 years.

(2) A person convicted of the offense of cruelty to children in the second degree shall be punished by imprisonment for not less than one nor more than ten years.

(3) A person convicted of the offense of cruelty to children in the third degree shall be punished as for a misdemeanor upon the first or second conviction. Upon conviction of a third or subsequent offense of cruelty to children in the third degree, the defendant shall be guilty of a felony and shall be sentenced to a fine not less than $1,000.00 nor more than $5,000.00 or imprisonment for not less than one year nor more than three years or shall be sentenced to both fine and imprisonment.

16-5-71 Unlawful tattooing of person under 18.

(a) It shall be unlawful for any person to tattoo the body of any person under the age of 18, except that a physician or osteopath licensed under Chapter 34 of Title 43, or a technician acting under the direct supervision of such licensed physician or osteopath, and in compliance with Chapter 9 of Title 31 shall be authorized to mark or color the skin of any person under the age of 18 by pricking in coloring matter or by producing scars for medical or cosmetic purposes.

(b) Any person violating the provisions of subsection (a) of this Code section shall be guilty of a misdemeanor.

16-5-71.1 Unlawful piercing of person under 18.

(a) It shall be unlawful for any person to pierce the body, with the exception of the ear lobes, of any person under the age of 18 for the purpose of allowing the insertion of earrings, jewelry, or similar objects into the body, unless the prior written consent of a custodial parent or guardian of such minor is obtained; provided, however, that the prohibition contained in this subsection shall not apply if:

(1) Such person has been furnished with proper identification showing that the individual is 18 years of age or older; and

(2) The person reasonably believes such minor to be 18 years of age or older.

(b) Any person violating the provisions of subsection (a) of this Code section shall be guilty of a misdemeanor.

16-5-72 Reckless abandonment of a child.

(a) A parent, guardian, or other person supervising the welfare of or having immediate charge or custody of a child under the age of one year commits the offense of reckless abandonment of a child when the person willfully and voluntarily physically abandons such child with the intention of severing all parental or custodial duties and responsibilities to such child and leaving such child in a condition which results in the death of said child.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a felony and shall, upon conviction thereof, be punished by imprisonment for not less than ten nor more than 25 years.

16-5-73 Permitting a child to be present at manufacture of methamphetamine.

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

(1) "Chemical substance" means anhydrous ammonia, as defined in Code Section 16-11-111; ephedrine, pseudoephedrine, or phenylpropanolamine, as those terms are defined in Code Section 16-13-30.3; or any other chemical used in the manufacture of methamphetamine.

(2) "Child" means any individual who is under the age of 18 years.

(3) "Intent to manufacture" means but is not limited to the intent to manufacture methamphetamine, which may be demonstrated by a chemical substance's usage, quantity, or manner or method of storage, including but not limited to storing it in proximity to another chemical substance or equipment used to manufacture methamphetamine.

(4) "Methamphetamine" means methamphetamine, amphetamine, or any mixture containing either methamphetamine or amphetamine, as described in Code Section 16-13-26.

(5) "Serious injury" means an injury involving a broken bone, the loss of a member of the body, the loss of use of a member of the body, the substantial disfigurement of the body or of a member of the body, or an injury which is life threatening.

(b)(1) Any person who intentionally causes or permits a child to be present where any person is manufacturing methamphetamine or possessing a chemical substance with the intent to manufacture methamphetamine shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than two nor more than 15 years.

(2) Any person who violates paragraph (1) of this subsection wherein a child receives serious injury as a result of such violation shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than five nor more than 20 years.

16-6-2 Sodomy.

(a) (1) A person commits the offense of sodomy when he or she performs or submits to any sexual act involving the sex organs of one person and the mouth or anus of another.

(2) A person commits the offense of aggravated sodomy when he or she commits sodomy with force and against the will of the other person or when he or she commits sodomy with a person who is less than ten years of age. The fact that the person allegedly sodomized is the spouse of a defendant shall not be a defense to a charge of aggravated sodomy.

(b) (1) Except as provided in subsection (d) of this Code section, a person convicted of the offense of sodomy shall be punished by imprisonment for not less than one nor more than 20 years and shall be subject to the sentencing and punishment provisions of Code Section 17-10-6.2.

(2) A person convicted of the offense of aggravated sodomy shall be punished by imprisonment for life or by a split sentence that is a term of imprisonment for not less than 25 years and not exceeding life imprisonment, followed by probation for life. Any person convicted under this Code section of the offense of aggravated sodomy shall, in addition, be subject to the sentencing and punishment provisions of Code Sections 17-10-6.1 and 17-10-7.

(c) When evidence relating to an allegation of aggravated sodomy is collected in the course of a medical examination of the person who is the victim of the alleged crime, the law enforcement agency investigating the alleged crime shall be financially responsible for the cost of the medical examination to the extent that expense is incurred for the limited purpose of collecting evidence.

(d) If the victim is at least 13 but less than 16 years of age and the person convicted of sodomy is 18 years of age or younger and is no more than four years older than the victim, such person shall be guilty of a misdemeanor and shall not be subject to the sentencing and punishment provisions of Code Section 17-10-6.2.

16-6-3 Statutory rape.

(a) A person commits the offense of statutory rape when he or she engages in sexual intercourse with any person under the age of 16 years and not his or her spouse, provided that no conviction shall be had for this offense on the unsupported testimony of the victim.

(b) Except as provided in subsection (c) of this Code section, a person convicted of the offense of statutory rape shall be punished by imprisonment for not less than one nor more than 20 years; provided, however, that if the person so convicted is 21 years of age or older, such person shall be punished by imprisonment for not less than ten nor more than 20 years. Any person convicted under this subsection of the offense of statutory rape shall, in addition, be subject to the sentencing and punishment provisions of Code Section 17-10-6.2.

(c) If the victim is at least 14 but less than 16 years of age and the person convicted of statutory rape is 18 years of age or younger and is no more than four years older than the victim, such person shall be guilty of a misdemeanor.

16-6-4 Child molestation.

(a) A person commits the offense of child molestation when he or she does any immoral or indecent act to or in the presence of or with any child under the age of 16 years with the intent to arouse or satisfy the sexual desires of either the child or the person.

(b) (1) Except as provided in paragraph (2) of this subsection, a person convicted of a first offense of child molestation shall be punished by imprisonment for not less than five nor more than 20 years and shall be subject to the sentencing and punishment provisions of Code Sections 17-10-6.2 and 17-10-7. Upon a defendant being incarcerated on a conviction for a first offense, the Department of Corrections shall provide counseling to such defendant. Except as provided in paragraph (2) of this subsection, upon a second or subsequent conviction of an offense of child molestation, the defendant shall be punished by imprisonment for not less than ten years nor more than 30 years or by imprisonment for life and shall be subject to the sentencing and punishment provisions of Code Sections 17-10-6.2 and 17-10-7; provided, however, that prior to trial, a defendant shall be given notice, in writing, that the state intends to seek a punishment of life imprisonment.

(2) If the victim is at least 14 but less than 16 years of age and the person convicted of child molestation is 18 years of age or younger and is no more than four years older than the victim, such person shall be guilty of a misdemeanor and shall not be subject to the sentencing and punishment provisions of Code Section 17-10-6.2.

(c) A person commits the offense of aggravated child molestation when such person commits an offense of child molestation which act physically injures the child or involves an act of sodomy.

(d) (1) Except as provided in paragraph (2) of this subsection, a person convicted of the offense of aggravated child molestation shall be punished by imprisonment for life or by a split sentence that is a term of imprisonment for not less than 25 years and not exceeding life imprisonment, followed by probation for life, and shall be subject to the sentencing and punishment provisions of Code Sections 17-10-6.1 and 17-10-7.

(2) A person convicted of the offense of aggravated child molestation when:

(A) The victim is at least 13 but less than 16 years of age;

(B) The person convicted of aggravated child molestation is 18 years of age or younger and is no more than four years older than the victim; and

(C) The basis of the charge of aggravated child molestation involves an act of sodomy

shall be guilty of a misdemeanor and shall not be subject to the sentencing and punishment provisions of Code Section 17-10-6.1.

16-6-5 Enticing a child for indecent purposes.

(a) A person commits the offense of enticing a child for indecent purposes when he or she solicits, entices, or takes any child under the age of 16 years to any place whatsoever for the purpose of child molestation or indecent acts.

(b) Except as provided in subsection (c) of this Code section, a person convicted of the offense of enticing a child for indecent purposes shall be punished by imprisonment for not less than ten nor more than 30 years. Any person convicted under this Code section of the offense of enticing a child for indecent purposes shall, in addition, be subject to the sentencing and punishment provisions of Code Section 17-10-6.2.

(c) If the victim is at least 14 but less than 16 years of age and the person convicted of enticing a child for indecent purposes is 18 years of age or younger and is no more than four years older than the victim, such person shall be guilty of a misdemeanor and shall not be subject to the sentencing and punishment provisions of Code Section 17-10-6.2.

16-6-5.1 Sexual assault.

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

(1) "Actor" means a person accused of sexual assault.

(2) "Intimate parts" means the genital area, groin, inner thighs, buttocks, or breasts of a person.

(3) "Psychotherapy" means the professional treatment or counseling of a mental or emotional illness, symptom, or condition.

(4) "Sexual contact" means any contact between the actor and a person not married to the actor involving the intimate parts of either person for the purpose of sexual gratification of the actor.

(b) A probation or parole officer or other custodian or supervisor of another person referred to in this Code section commits sexual assault when he or she engages in sexual contact with another person who is a probationer or parolee under the supervision of said probation or parole officer or who is in the custody of law or who is enrolled in a school or who is detained in or is a patient in a hospital or other institution and such actor has supervisory or disciplinary authority over such other person. A person convicted of sexual assault shall be punished by imprisonment for not less than ten nor more than 30 years; provided, however, that any person convicted of the offense of sexual assault under this subsection of a child under the age of 14 years shall be punished by imprisonment for not less than 25 nor more than 50 years. Any person convicted under this subsection of the offense of sexual assault shall, in addition, be subject to the sentencing and punishment provisions of Code Section 17-10-6.2.

(c) (1) A person commits sexual assault when such person has supervisory or disciplinary authority over another person and such person engages in sexual contact with that other person who is:

(A) In the custody of law; or

(B) Detained in or is a patient in a hospital or other institution.

(2) A person commits sexual assault when, as an actual or purported practitioner of psychotherapy, he or she engages in sexual contact with another person who the actor knew or should have known is the subject of the actor's actual or purported treatment or counseling, or, if the treatment or counseling relationship was used to facilitate sexual contact between the actor and said person.

(3) Consent of the victim shall not be a defense to a prosecution under this subsection.

(4) A person convicted of sexual assault under this subsection shall be punished by imprisonment for not less than ten nor more than 30 years; provided, however, that any person convicted of the offense of sexual assault under this subsection of a child under the age of 14 years shall be punished by imprisonment for not less than 25 nor more than 50 years. Any person convicted under this subsection of the offense of sexual assault shall, in addition, be subject to the sentencing and punishment provisions of Code Section 17-10-6.2.

(d) A person who is an employee, agent, or volunteer at any facility licensed or required to be licensed under Code Section 31-7-3, relating to long-term care facilities, or Code Section 31-7-12, relating to personal care homes, or who is required to be licensed pursuant to Code Section 31-7-151 or 31-7-173, relating to home health care and hospices, commits sexual assault when such person engages in sexual contact with another person who has been admitted to or is receiving services from such facility, person, or entity. A person convicted of sexual assault pursuant to this subsection shall be punished by imprisonment for not less than ten nor more than 30 years, or a fine of not more than $5,000.00, or both. Any violation of this subsection shall constitute a separate offense. Any person convicted under this subsection of the offense of sexual assault shall, in addition, be subject to the sentencing and punishment provisions of Code Section 17-10-6.2.

16-6-8 Public indecency.

(a) A person commits the offense of public indecency when he or she performs any of the following acts in a public place:

(1) An act of sexual intercourse;

(2) A lewd exposure of the sexual organs;

(3) A lewd appearance in a state of partial or complete nudity; or

(4) A lewd caress or indecent fondling of the body of another person.

(b) A person convicted of the offense of public indecency as provided in subsection (a) of this Code section shall be punished as for a misdemeanor except as provided in subsection (c) of this Code section.

(c) Upon a third or subsequent conviction for public indecency for the violation of paragraph (2), (3), or (4) of subsection (a) of this Code section, a person shall be guilty of a felony and shall be punished by imprisonment for not less than one nor more than five years.

(d) For the purposes of this Code section only, "public place" shall include jails and penal and correctional institutions of the state and its political subdivisions.

(e) This Code section shall be cumulative to and shall not prohibit the enactment of any other general and local laws, rules, and regulations of state and local authorities or agencies and local ordinances prohibiting such activities which are more restrictive than this Code section.

16-6-9 Prostitution.
A person commits the offense of prostitution when he or she performs or offers or consents to perform a sexual act, including but not limited to sexual intercourse or sodomy, for money or other items of value.

16-6-10 Keeping a place of prostitution.
A person having or exercising control over the use of any place or conveyance which would offer seclusion or shelter for the practice of prostitution commits the offense of keeping a place of prostitution when he knowingly grants or permits the use of such place for the purpose of prostitution.

16-6-11 Pimping.
A person commits the offense of pimping when he or she performs any of the following acts:
(1) Offers or agrees to procure a prostitute for another;
(2) Offers or agrees to arrange a meeting of persons for the purpose of prostitution;
(3) Directs or transports another person to a place when he or she knows or should know that the direction or transportation is for the purpose of prostitution;
(4) Receives money or other thing of value from a prostitute, without lawful consideration, knowing it was earned in whole or in part from prostitution; or
(5) Aids or abets, counsels, or commands another in the commission of prostitution or aids or assists in prostitution where the proceeds or profits derived therefrom are to be divided on a pro rata basis.

16-6-12 Pandering.
A person commits the offense of pandering when he or she solicits a person to perform an act of prostitution in his or her own behalf or in behalf of a third person or when he or she knowingly assembles persons at a fixed place for the purpose of being solicited by others to perform an act of prostitution.

16-6-13.2 Forfeiture of motor vehicle used to facilitate sexual offenses.

16-6-14 Pandering by compulsion.
A person commits the offense of pandering by compulsion when he or she by duress or coercion causes a person to perform an act of prostitution and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than ten years.

16-6-15 Solicitation of sodomy.
(a) A person commits the offense of solicitation of sodomy when he solicits another to perform or submit to an act of sodomy. Except as provided in subsection (b) of this Code section, a person convicted of solicitation of sodomy shall be punished as for a misdemeanor.

(b) A person convicted of solicitation of sodomy when such offense involves the solicitation of a person or persons under the age of 18 years to perform or submit to an act of sodomy for money shall be guilty of a felony and shall be punished by imprisonment for a period of not less than five nor more than 20 years and shall be fined not less than $2,500.00 nor more than $10,000.00.

16-6-22 Incest.
(a) A person commits the offense of incest when the person engages in sexual intercourse with a person to whom he or she knows he or she is related either by blood or by marriage as follows:
(1) Father and daughter or stepdaughter;
(2) Mother and son or stepson;
(3) Brother and sister of the whole blood or of the half blood;
(4) Grandparent and grandchild;
(5) Aunt and nephew; or
(6) Uncle and niece.

(b) A person convicted of the offense of incest shall be punished by imprisonment for not less than ten nor more than 30 years; provided, however, that any person convicted of the offense of incest under this subsection with a child under the age of 14 years shall be punished by imprisonment for not less than 25 nor more than 50 years. Any person convicted under this Code section of the offense of incest shall, in addition, be subject to the sentencing and punishment provisions of Code Section 17-10-6.2.

16-6-22.1 Sexual battery.
(a) For the purposes of this Code section, the term "intimate parts" means the primary genital area, anus, groin, inner thighs, or buttocks of a male or female and the breasts of a female.

(b) A person commits the offense of sexual battery when he or she intentionally makes physical contact with the intimate parts of the body of another person without the consent of that person.

(c) Except as otherwise provided in this Code section, a person convicted of the offense of sexual battery shall be punished as for a misdemeanor of a high and aggravated nature.

(d) A person convicted of the offense of sexual battery against any child under the age of 16 years shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than five years.

(e) Upon a second or subsequent conviction under subsection (b) of this Code section, a person shall be guilty of a felony and, upon conviction thereof, shall be imprisoned for not less than one nor more than five years and, in addition, shall be subject to the sentencing and punishment provisions of Code Section 17-10-6.2.

16-6-22.2 Aggravated sexual battery.
(a) For the purposes of this Code section, the term "foreign object" means any article or instrument other than the sexual organ of a person.

(b) A person commits the offense of aggravated sexual battery when he or she intentionally penetrates with a foreign object the sexual organ or anus of another person without the consent of that person.

(c) A person convicted of the offense of aggravated sexual battery shall be punished by imprisonment for life or by a split sentence that is a term of imprisonment for not less than 25 years and not exceeding life imprisonment, followed by probation for life, and shall be subject to the sentencing and punishment provisions of Code Sections 17-10-6.1 and 17-10-7.

16-12-1 Contributing to the delinquency, unruliness, or deprivation of a minor.
(a) As used in this Code section, the term:
(1) "Delinquent act" means a delinquent act as defined in Code Section 15-11-2.
(2) "Felony" means any act which constitutes a felony under the laws of this state, the laws of any other state of the United States, or the laws of the United States.
(3) "Minor" means any individual who is under the age of 17 years or any individual under the age of 18 years who is alleged to be a deprived child as such is defined in Code Section 15-11-2, relating to juvenile proceedings.
(4) "Serious injury" means an injury involving a broken bone, the loss of a member of the body, the loss of use of a member of the body, the substantial disfigurement of the body or of a member of the body, an injury which is life threatening, or any sexual abuse of a child under 16 years of age by means of an act described in subparagraph (a)(4)(A), (a)(4)(G), or (a)(4)(I) of Code Section 16-12-100.

(b) A person commits the offense of contributing to the delinquency, unruliness, or deprivation of a minor when such person:
(1) Knowingly and willfully encourages, causes, abets, connives, or aids a minor in committing a delinquent act as such is defined in Code Section 15-11-2, relating to juvenile proceedings;

(2) Knowingly and willfully encourages, causes, abets, connives, or aids a minor in committing an act which would cause such minor to be found to be an unruly child as such is defined in Code Section 15-11-2, relating to juvenile proceedings;

(3) Willfully commits an act or acts or willfully fails to act when such act or omission would cause a minor to be found to be a deprived child as such is defined in Code Section 15-11-2, relating to juvenile proceedings;

(4) Knowingly and willfully hires, solicits, engages, contracts with, conspires with, encourages, abets, or directs any minor to commit any felony which encompasses force or violence as an element of the offense or delinquent act which would constitute a felony which encompasses force or violence as an element of the offense if committed by an adult; or

(5) Knowingly and willfully provides to a minor any weapon as defined in paragraph (2) of subsection (a) of Code Section 16-11-127.1 or any weapon as defined in Code Section 16-11-121 to commit any felony which encompasses force or violence as an element of the offense or delinquent act which would constitute a felony which encompasses force or violence as an element of the offense if committed by an adult.

(c) It shall not be a defense to the offense provided for in this Code section that the minor has not been formally adjudged to have committed a delinquent act or has not been found to be unruly or deprived.

(d) A person convicted pursuant to paragraph (1) or (2) of subsection (b) of this Code section shall be punished as follows:

(1) Upon conviction of the first or second offense, the defendant shall be guilty of a misdemeanor and shall be fined not more than $1,000.00 or shall be imprisoned for not more than 12 months, or both fined and imprisoned; and

(2) Upon the conviction of the third or subsequent offense, the defendant shall be guilty of a felony and shall be fined not less than $1,000.00 nor more than $5,000.00 or shall be imprisoned for not less than one year nor more than three years, or both fined and imprisoned.

(d.1) A person convicted pursuant to paragraph (3) of subsection (b) of this Code section shall be punished as follows:

(1) Upon conviction of an offense which resulted in the serious injury or death of a child, without regard to whether such offense was a first, second, third, or subsequent offense, the defendant shall be guilty of a felony and shall be punished as provided in subsection (e) of this Code section;

(2) Upon conviction of an offense which does not result in the serious injury or death of a child and which is the first conviction, the defendant shall be guilty of a misdemeanor and shall be fined not more than $1,000.00 or shall be imprisoned for not more than 12 months, or both fined and imprisoned;

(3) Upon conviction of an offense which does not result in the serious injury or death of a child and which is the second conviction, the defendant shall be guilty of a high and aggravated misdemeanor and shall be fined not less than $1,000.00 nor more than $5,000.00 or shall be imprisoned for not less than one year, or both fined and imprisoned; and

(4) Upon the conviction of an offense which does not result in the serious injury or death of a child and which is the third or subsequent conviction, the defendant shall be guilty of a felony and shall be fined not less than $10,000.00 or shall be imprisoned for not less than one year nor more than five years, or both fined and imprisoned.

(e) A person convicted pursuant to paragraph (4) or (5) of subsection (b) or paragraph (1) of subsection (d.1) of this Code section shall be guilty of a felony and punished as follows:

(1) Upon conviction of the first offense, the defendant shall be imprisoned for not less than one nor more than five years; and

(2) Upon conviction of the second or subsequent offense, the defendant shall be imprisoned for not less than three years nor more than 20 years.

16-12-100 Offenses involving minors engaging in explicit sexual conduct.

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

(1) "Minor" means any person under the age of 18 years.

(2) "Performance" means any play, dance, or exhibit to be shown to or viewed by an audience.

(3) "Producing" means producing, directing, manufacturing, issuing, or publishing.

(4) "Sexually explicit conduct" means actual or simulated:
(A) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;
(B) Bestiality;
(C) Masturbation;
(D) Lewd exhibition of the genitals or pubic area of any person;
(E) Flagellation or torture by or upon a person who is nude;
(F) Condition of being fettered, bound, or otherwise physically restrained on the part of a person who is nude;
(G) Physical contact in an act of apparent sexual stimulation or gratification with any person's unclothed genitals, pubic area, or buttocks or with a female's nude breasts;
(H) Defecation or urination for the purpose of sexual stimulation of the viewer; or
(I) Penetration of the vagina or rectum by any object except when done as part of a recognized medical procedure.
(5) "Visual medium" means any film, photograph, negative, slide, magazine, or other visual medium.

(b)(1) It is unlawful for any person knowingly to employ, use, persuade, induce, entice, or coerce any minor to engage in or assist any other person to engage in any sexually explicit conduct for the purpose of producing any visual medium depicting such conduct.
(2) It is unlawful for any parent, legal guardian, or person having custody or control of a minor knowingly to permit the minor to engage in or to assist any other person to engage in sexually explicit conduct for the purpose of producing any visual medium depicting such conduct.
(3) It is unlawful for any person knowingly to employ, use, persuade, induce, entice, or coerce any minor to engage in or assist any other person to engage in any sexually explicit conduct for the purpose of any performance.
(4) It is unlawful for any parent, legal guardian, or person having custody or control of a minor knowingly to permit the minor to engage in or to assist any other person to engage in sexually explicit conduct for the purpose of any performance.
(5) It is unlawful for any person knowingly to create, reproduce, publish, promote, sell, distribute, give, exhibit, or possess with intent to sell or distribute any visual medium which depicts a minor or a portion of a minor's body engaged in any sexually explicit conduct.
(6) It is unlawful for any person knowingly to advertise, sell, purchase, barter, or exchange any medium which provides information as to where any visual medium which depicts a minor or a portion of a minor's body engaged in any sexually explicit conduct can be found or purchased.
(7) It is unlawful for any person knowingly to bring or cause to be brought into this state any material which depicts a minor or a portion of a minor's body engaged in any sexually explicit conduct.
(8) It is unlawful for any person knowingly to possess or control any material which depicts a minor or a portion of a minor's body engaged in any sexually explicit conduct.

(c) A person who, in the course of processing or producing visual or printed matter either privately or commercially, has reasonable cause to believe that the visual or printed matter submitted for processing or producing depicts a minor engaged in sexually explicit conduct shall immediately report such incident, or cause a report to be made, to the Georgia Bureau of Investigation or the law enforcement agency for the county in which such matter is submitted. Any person participating in the making of a report or causing a report to be made pursuant to this subsection or participating in any judicial proceeding or any other proceeding resulting therefrom shall in so doing be immune from any civil or criminal liability that might otherwise be incurred or imposed, providing such participation pursuant to this subsection is made in good faith.

(d) The provisions of subsection (b) of this Code section shall not apply to the activities of law enforcement and prosecution agencies in the investigation and prosecution of criminal offenses or to legitimate medical, scientific, or educational activities.

(e)(1) A person who is convicted of an offense under this Code section shall forfeit to the State of Georgia such interest as the person may have in:

(A) Any property constituting or directly derived from gross profits or other proceeds obtained from such offense; and

(B) Any property used, or intended to be used, to commit such offense.

(2) In any action under this Code section, the court may enter such restraining orders or take other appropriate action, including acceptance of performance bonds, in connection with any interest that is subject to forfeiture.

(3) The court shall order forfeiture of property referred to in paragraph (1) of this subsection if the trier of fact determines, beyond a reasonable doubt, that such property is subject to forfeiture.

(4) The provisions of subsection (u) of Code Section 16-13-49 shall apply for the disposition of any property forfeited under this subsection. In any disposition of property under this subsection, a convicted person shall not be permitted to acquire property forfeited by such person.

(f)(1) The following property shall be subject to forfeiture to the State of Georgia:

(A) Any material or equipment used, or intended for use, in producing, reproducing, transporting, shipping, or receiving any visual medium in violation of this Code section;

(B) Any visual medium produced, transported, shipped, or received in violation of this Code section, or any material containing such depiction; provided, however, that any such property so forfeited shall be destroyed by the appropriate law enforcement agency after it is no longer needed in any court proceedings; or

(C) Any property constituting or directly derived from gross profits or other proceeds obtained from a violation of this Code section;

except that no property of any owner shall be forfeited under this paragraph, to the extent of the interest of such owner, by reason of an act or omission established by such owner to have been committed or omitted without knowledge or consent of such owner.

(2) The procedure for forfeiture and disposition of forfeited property under this subsection shall be as provided for forfeitures under Code Section 16-13-49.

(g)(1) Except as otherwise provided in paragraph (2) of this subsection, any person who violates a provision of this Code section shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than five nor more than 20 years and by a fine of not more than $100,000.00. In the event, however, that the person so convicted is a member of the immediate family of the victim, no fine shall be imposed.

(2) Any person who violates subsection (c) of this Code section shall be guilty of a misdemeanor.

16-12-100.1 Electronically furnishing obscene materials to minors.

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

(1) "Bulletin board system" means a computer data and file service that is accessed by telephone line to store and transmit information.

(2) "CD-ROM" means a compact disc with read only memory which has the capacity to store audio, video, and written materials and is used by computers to reveal the above-said material.

(3) "Electronically furnishes" means:

(A) To make available by electronic storage device, including floppy disks and other magnetic storage devices, or by CD-ROM; or

(B) To make available by allowing access to information stored in a computer, including making material available by operating a computer bulletin board.

(4) "Harmful to minors" means that quality of description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse, when it:

(A) Taken as a whole, predominantly appeals to the prurient, shameful, or morbid interest of minors;

(B) Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and

(C) Is, when taken as a whole, lacking in serious literary, artistic, political, or scientific value for minors.

(5) "Minor" means an unmarried person younger than 18 years of age.

16-12-100.2 Computer Pornography and Child Exploitation Prevention Act of 1999.

(a) This Code section shall be known and may be cited as the "Computer or Electronic Pornography and Child Exploitation Prevention Act of 2007."

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

(1) "Child" means any person under the age of 16 years.

(2) "Electronic device" means any device used for the purpose of communicating with a child for sexual purposes or any device used to visually depict a child engaged in sexually explicit conduct, store any image or audio of a child engaged in sexually explicit conduct, or transmit any audio or visual image of a child for sexual purposes. Such term may include, but shall not be limited to, a computer, cellular phone, thumb drive, video game system, or any other electronic device that can be used in furtherance of exploiting a child for sexual purposes;

(3) "Identifiable child" means a person:

(A) Who was a child at the time the visual depiction was created, adapted, or modified or whose image as a child was used in creating, adapting, or modifying the visual depiction; and

(B) Who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature or by electronic or scientific means as may be available.

The term shall not be construed to require proof of the actual identity of the child.

(4) "Sadomasochistic abuse" has the same meaning as provided in Code Section 16-12-100.1.

(5) "Sexual conduct" has the same meaning as provided in Code Section 16-12-100.1.

(6) "Sexual excitement" has the same meaning as provided in Code Section 16-12-100.1.

(7) "Sexually explicit nudity" has the same meaning as provided in Code Section 16-12-102.

(8) "Visual depiction" means any image and includes undeveloped film and video tape and data stored on computer disk or by electronic means which is capable of conversion into a visual image or which has been created, adapted, or modified to show an identifiable child engaged in sexually explicit conduct.

(c) (1) A person commits the offense of computer or electronic pornography if such person intentionally or willfully:

(A) Compiles, enters into, or transmits by computer or other electronic device;

(B) Makes, prints, publishes, or reproduces by other computer or other electronic device;

(C) Causes or allows to be entered into or transmitted by computer or other electronic device; or

(D) Buys, sells, receives, exchanges, or disseminates

any notice, statement, or advertisement, or any child's name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information for the purpose of offering or soliciting sexual conduct of or with an identifiable child or the visual depiction of such conduct.

(2) Any person convicted of violating paragraph (1) of this subsection shall be punished by a fine of not more than $10,000.00 and by imprisonment for not less than one nor more than 20 years.

(d) (1) It shall be unlawful for any person intentionally or willfully to utilize a computer on-line service or Internet service, including but not limited to a local bulletin board service, Internet chat room, e-mail, on-line messaging service, or other electronic device, to seduce, solicit, lure, or entice, or attempt to seduce, solicit, lure, or entice a child or another person believed by such person to be a child to commit any illegal act described in Code Section 16-6-2, relating to the offense of sodomy or aggravated sodomy; Code Section 16-6-4, relating to the offense of child molestation or aggravated child molestation; Code Section 16-6-5, relating to the offense of enticing a child for indecent purposes; or Code Section 16-6-8, relating to the offense of public indecency or to engage in any conduct that by its nature is an unlawful sexual offense against a child.

(2) Any person who violates paragraph (1) of this subsection shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than 20 years and by a fine of not more than $25,000.00; provided, however, that, if at the time of the offense the victim was 14 or 15 years of age and the defendant was no more than three years older than the victim, then the defendant shall be guilty of a misdemeanor of a high and aggravated nature.

(e) (1) A person commits the offense of obscene Internet contact with a child if he or she has contact with someone he or she knows to be a child or with someone he or she believes to be a child via a computer on-line service or Internet service, including but not limited to a local bulletin board service, Internet chat room, e-mail, or on-line messaging service, and the contact involves any matter containing explicit verbal descriptions or narrative accounts of sexually explicit nudity, sexual conduct, sexual excitement, or

sadomasochistic abuse that is intended to arouse or satisfy the sexual desire of either the child or the person, provided that no conviction shall be had for a violation of this subsection on the unsupported testimony of a child.

(2) Any person who violates paragraph (1) of this subsection shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than ten years or by a fine of not more than $10,000.00; provided, however, that, if at the time of the offense the victim was 14 or 15 years of age and the defendant was no more than three years older than the victim, then the defendant shall be guilty of a misdemeanor of a high and aggravated nature.

(f) (1) It shall be unlawful for any owner or operator of a computer on-line service, Internet service, local bulletin board service, or other electronic device that is in the business of providing a service that may be used to sexually exploit a child to intentionally or willfully to permit a subscriber to utilize the service to commit a violation of this Code section, knowing that such person intended to utilize such service to violate this Code section. No owner or operator of a public computer on-line service, Internet service, local bulletin board service, or other electronic device that is in the business of providing a service that may be used to sexually exploit a child shall be held liable on account of any action taken in good faith in providing the aforementioned services.

(2) Any person who violates paragraph (1) of this subsection shall be guilty of a misdemeanor of a high and aggravated nature.

(g) The sole fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense under this Code section shall not constitute a defense to prosecution under this Code section.

(h) A person is subject to prosecution in this state pursuant to Code Section 17-2-1, relating to jurisdiction over crimes and persons charged with commission of crimes generally, for any conduct made unlawful by this Code section which the person engages in while:

(1) Either within or outside of this state if, by such conduct, the person commits a violation of this Code section which involves a child who resides in this state or another person believed by such person to be a child residing in this state; or

(2) Within this state if, by such conduct, the person commits a violation of this Code section which involves a child who resides within or outside this state or another person believed by such person to be a child residing within or outside this state.

(i) Any violation of this Code section shall constitute a separate offense.

16-12-100.3 Obscene telephone contact with a child.

(a) As used in this Code section, the terms "sexual conduct," "sexual excitement," and "sadomasochistic abuse" have the same meanings as provided for those terms in Code Section 16-12-100.1, relating to electronically furnishing obscene materials to minors; the term "sexually explicit nudity" has the same meaning as provided for that term in Code Section 16-12-102, relating to distributing harmful materials to minors; and the term "child" means a person under 14 years of age.

(b) A person 17 years of age or over commits the offense of obscene telephone contact with a child if that person has telephone contact with an individual whom that person knows or should have known is a child, and that contact involves any aural matter containing explicit verbal descriptions or narrative accounts of sexually explicit nudity, sexual conduct, sexual excitement, or sadomasochistic abuse which is intended to arouse or satisfy the sexual desire of either the child or the person, provided that no conviction shall be had for this offense on the unsupported testimony of the victim.

(c)(1) Except as otherwise provided in other paragraphs of this subsection, a person convicted of the offense of obscene telephone contact with a child shall be guilty of a misdemeanor of a high and aggravated nature.

(2) Upon the first conviction of the offense of obscene telephone contact with a child:

(A) If the person convicted is less than 21 years of age, such person shall be guilty of a misdemeanor; or

(B) The judge may probate the sentence without regard to the age of the convicted person, and such probation may be upon the special condition that the defendant undergo a mandatory period of counseling administered by a licensed psychiatrist or a licensed psychologist. However, if the judge finds that such probation should not be imposed, the judge shall sentence the defendant to imprisonment; provided, further, that upon a defendant's being incarcerated on a conviction for such first offense, the place of incarceration shall provide counseling to such defendant.

(3) Upon a second or subsequent conviction of such offense, the defendant shall be guilty of a felony and punished by imprisonment for not less than one nor more than five years.

16-12-102 Definitions.

As used in this part, the term:

(1) "Harmful to minors" means that quality of description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse, when it:

(A) Taken as a whole, predominantly appeals to the prurient, shameful, or morbid interest of minors;

(B) Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and

(C) Is, when taken as a whole, lacking in serious literary, artistic, political, or scientific value for minors.

(2) "Knowingly" means having a general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry of both:

(A) The character and content of any material described in this part which is reasonably susceptible to examination by the defendant; and

(B) The age of the minor; provided, however, that an honest mistake shall constitute an excuse from liability in this part if the defendant made a reasonable, bona fide attempt to ascertain the true age of such minor.

(3) "Minor" means a person less than 18 years of age.

(4) "Sadomasochistic abuse" means actual or simulated flagellation or torture by or upon a person who is nude, clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound, or otherwise physically restrained by one so clothed or nude.

(5) "Sexual conduct" means actual or simulated acts of masturbation, homosexuality, sexual intercourse, or physical contact in an act of apparent sexual stimulation or gratification with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is female, breasts.

(6) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(7) "Sexually explicit nudity" means a state of undress so as to expose the human male or female genitals, pubic area, or buttocks with less than a full opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple, or the depiction of covered or uncovered male genitals in a discernibly turgid state.

16-12-103 Selling material harmful to minors.

(a) It shall be unlawful for any person knowingly to sell or loan for monetary consideration or otherwise furnish or disseminate to a minor:

(1) Any picture, photograph, drawing, sculpture, motion picture film, or similar visual representation or image of a person or portion of the human body which depicts sexually explicit nudity, sexual conduct, or sadomasochistic abuse and which is harmful to minors; or

(2) Any book, pamphlet, magazine, printed matter however reproduced, or sound recording which contains any matter enumerated in paragraph (1) of this subsection, or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct, or sadomasochistic abuse and which, taken as a whole, is harmful to minors.

(b)(1) It shall be unlawful for any person knowingly to sell or furnish to a minor an admission ticket or pass or knowingly to admit a minor to premises whereon there is exhibited a motion picture, show, or other presentation which, in whole or in part, depicts sexually explicit nudity, sexual conduct, or sadomasochistic abuse and which is harmful to minors or exhibit any such motion picture at any such premises which are not designed to prevent viewing from any public way of such motion picture by minors not admitted to any such premises.

(2) It shall be unlawful for any person knowingly to sell or to furnish to a person under the age of 21 an admission ticket or pass or knowingly to admit a person under the age of 21 to premises whereon there is exhibited a show or performance which is harmful to minors and which, in whole or in part, consists of sexually explicit nudity on the part of one or more live performers; sexual conduct on the part of one or more live performers; or sadomasochistic abuse on the part of one or more live performers.

(c) It shall be unlawful for any person to falsely represent his or her age to any person mentioned in subsection (a) or subsection (b) of this Code section or to his or her agent with the intent to unlawfully procure any material set forth in subsection (a) of this Code section or with the intent to unlawfully procure such person's admission to any motion picture, show, or other presentation, as set forth in subsection (b) of this Code section.

(d) It shall be unlawful for any person knowingly to make a false representation to any person mentioned in subsection (a) or subsection (b) of this Code section or to his or her agent that he or she is the parent or guardian of any minor or knowingly to make a false representation with respect to the age of another person with the intent to unlawfully procure for such other person any material set forth in subsection (a) of this Code section or with the intent to unlawfully procure such other person's admission to any motion picture, show, or other presentation, as set forth in subsection (b) of this Code section.

(e) It shall be unlawful for any person knowingly to exhibit, expose, or display in public at newsstands or any other business or commercial establishment or at any other public place frequented by minors or where minors are or may be invited as part of the general public:

(1) Any picture, photograph, drawing, sculpture, motion picture film, or similar visual representation or image of a person or portion of the human body which depicts sexually explicit nudity, sexual conduct, or sadomasochistic abuse and which is harmful to minors; or

(2) Any book, pamphlet, magazine, printed matter however reproduced, or sound recording which contains any matter enumerated in paragraph (1) of this subsection, or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct, or sadomasochistic abuse and which, taken as a whole, is harmful to minors.

(f)(1) As used in this subsection, the term:

(A) "Video game" means an object or device that stores recorded data or instructions, receives data or instructions generated by a person who uses it, and, by processing the data or instructions, creates an interactive game capable of being played, viewed, or experienced on or through a computer, gaming system, console, or other technology.

(B) "Video game retailer" means a person who sells or rents video games to the public.

(2) Every video game retailer shall post a sign providing information to consumers about any video game rating system which appears on a video game offered by such retailer. The sign shall be posted in a conspicuous place within the portion of the establishment dedicated to the display or advertisement of video games. Each video game retailer shall make available to consumers, upon request, written information explaining each such rating system.

(3) A person violating the provisions of this subsection shall be punished with a civil fine in an amount not less than $250.00 and not more than $500.00 for each violation. Each day in violation of this subsection shall constitute a separate offense.

Uniform Rules for the Juvenile Courts of Georgia
Rule 14.
COURT OF INQUIRY
See O.C.G.A. §15-11-4

Chapter 15 Guardianship Issues
Permanent, Temporary & Transfers From Probate Court

Authority	**O.C.G.A. § 15-11-30.1, § 29-1-1, § 29-2-1 to § 29-2-77**
Purpose	○ **Guardianship** Juvenile Court has concurrent jurisdiction with Probate Court to grant guardianship of person & property of a minor of any child ○ **Temporary Guardianship O.C.G.A. § 15-11-30.1(a)(1)** ○ **Permanent Guardianships O.C.G.A. § 15-11-30.1(a)(2)**
Transfer from Probate Court	Temporary Guardianship & Permanent Guardianship may be transferred from Probate Court when objections to the establishment or selection of the guardian are filed; and if objections are filed to the termination of the guardianship
Pleading	Both Temporary Guardianship and Permanent Guardianship have statutory requirements for the Petition for Guardianship which are outline below **O.C.G.A. § 29-2-1 Types of guardians for minors** (1) Natural guardians (2) Testamentary guardians (3) Temporary guardians (4) Standby guardians (5) Permanent guardians
Jurisdiction	**O.C.G.A. § 15-11-30.1(a)(1)** Temporary Guardianships - Juvenile Court has jurisdiction to consider a temporary guardianship for any child whose custody is in controversy **O.C.G.A. § 15-11-30.1(a)(2)** Permanent Guardianships – Juvenile Court has jurisdiction to consider a permanent guardianship ONLY when there is an adjudication of deprivation & additional specified findings as to Non-Reunification & that TPR / Adoption are not in the child's best interest **O.C.G.A. § 15-11-30.1(a)(2)(D)** Juvenile Court granting guardianship RETAINS jurisdiction to modify, vacate or revoke the guardianship & appoint a new guardian
Venue	Temporary Guardianship – domicile of the guardian if in state or domicile of the child if proposed guardian has out of state domicile Permanent Guardianship – county where deprivation & Non-Reunification adjudications pending or held
Timing	Temporary Guardianship - anytime Permanent Guardianship – following a deprivation adjudication & the Court's grant of Non-Reunification
Parties	Parent, Proposed Guardian, Child Attorney, DFCS, SAAGs, attorney for parties
Service / Notice	Both Temporary Guardianship and Permanent Guardianship have statutory requirements for the Petition for Guardianship which are outlined below
Standard of Proof	clear and convincing evidence of child's best interest
Right to Attorney	Parties probably would not be appointed attorneys in Probate Court & different Juvenile Courts have different interpretations of the whether the Juvenile Code mandates attorney appointment in guardianship cases

Documents / Information Needed	○ Petition, Consent to Guardianship ○ Proof of Service or Notice ○ confirm proposed guardian understands they cannot just return the child to the parents without first coming back to the Court which granted the guardianship, they have discretion to allow visits ○ confirm proposed guardian understands they must keep Court advised of changes in address ○ confirm proposed guardian understands DFCS may close case & may not provide any services or benefits except if guardianship subsidies are in place ○ confirm proposed guardian understands, parent may file to revoke guardianship & the guardian is responsible for filing objections if necessary ○ Oath – proposed guardian takes oath on record ○ Determine whether proposed guardian is eligible for subsidized guardianship (SG) or enhanced subsidized guardianship payments from DFCS
Caveat	**Temporary Guardianship in lieu of Deprivation** ○ If temporary guardianship is proposed as an alternative to proceeding with a deprivation petition, then may DFCS close case, no help for offending parent to correct deficits, no record of what parent should correct prior to resuming parental role, no monitoring of child's care ○ if temporary guardianship is granted in lieu of proceeding w/ deprivation petition then ask Court to include in Dismissal Order of the deprivation action all corrections the parent needs to make prior to revoking the guardianship & regaining custody, include any documentation of the parent deficits in the court record as attachments of exhibits to the Temporary Guardianship
Decision Points **Consent / Objection**	Both Temporary Guardianship and Permanent Guardianship have statutory requirements for the Petition for Guardianship which are outline below
Order	○ Child Support ○ Visitation ○ Both Temporary Guardianship and Permanent Guardianship have statutory requirements for the Petition for Guardianship which are outline below
Child Support & Visitation	**O.C.G.A. § 15-11-30.1(a)(2)(B)** Juvenile Court <u>may</u> enter an order of child support against the parents in accordance with **O.C.G.A. § 15-11-28(c)(2)** **O.C.G.A. § 15-11-30.1(a)(2)(C)(iii)** Juvenile Court <u>shall</u> establish a reasonable visitation schedule allowing the child meaningful contact with parent(s) including personal visits, telephone, letters **<u>OR</u>** Juvenile Court <u>shall specifically include</u> any restrictions on the parent's right to visit or otherwise communicate with the child **O.C.G.A. § 15-11-30.1(a)(2)(D)** Concurrent jurisdiction with Superior Court to modify or enforce visitation or child support orders granted in conjunction with either temporary or permanent Juvenile Court guardianships

TEMPORARY GUARDIANSHIP PROCEDURES	
Authority	**O.C.G.A. § 29-2-5 through 24**
Consent & Objection	○ Requires parental CONSENT & provides for notice to any un-consenting parent who may then object or provide consent ○ Consent & Objection may be to either the establishment of the guardianship OR to the selection of the individual to be the guardian ○ If a parent objects to the establishment of the guardianship then court SHALL DISMISS the petition for guardianship ○ If a parent objects to the selection of the individual to be the guardian then court shall conduct a hearing or may refer the case to the Juvenile Court for hearing
Petition requirements for Temporary Guardianship	○ Name, address & date of birth of the minor ○ Name & address of the petitioner & petitioner's relationship to the minor ○ Statement that the petitioner has physical custody of the minor ○ Petitioners domicile ○ Name, address & county of domicile of any living parent of the minor & a statement of whether one or both of the parents is the minor's natural guardian ○ Statement whether one or both of the parents have made a notorized consent to the guardianship & if the consents are attached to the petition ○ If the parents have not consented to the temporary guardianship, then a statement of why the appointment of a temporary guardianship is needed
Notice to Non-Consenting Parent **Time Limits for Objections Written & Filed with Court**	○ Personal service if in state at a known address, objections within 10 days from personal service ○ 1st Class mail out of state at a known address, objections within 14 days from mailing of notice ○ Publication for 2 weeks if address unknown, objections with 10 days of second publication notice ○ If non-consenting parent does not file objections after notice, then guardianship granted ○ If objection to establishment of guardianship then dismissal ○ If objection to selection of guardian, then hearing to determine who should serve as guardian using best interest standard
Standard of Proof	○ Best Interest standard for all guardianship hearings ○ Child's preference as to the selection of a guardian may be heard at hearings
Jurisdiction Venue Transfer to Juvenile Court	○ Guardianships may be referred to Juvenile Court for notice & hearing to determine whether the guardianship is in the child's best interest ○ May be filed by an individual who has physical custody of minor ○ Shall be filed in the county of the petitioner's domicile, if petitioner has in state domicile, if petitioner has out of state domicile then the county of residence of child
Guardianship Oath	**O.C.G.A. § 29-2-24** ○ Required if the Court grants the Letter of Temporary Guardianship ○ For the purposes of health insurance eligibility, the temporary guardianship is considered permanent
Termination of Temporary Guardianship	○ the minor reaches age 18, is adopted, is emancipated or dies ○ the temporary guardian dies, letters of guardianship are issued to a permanent or testamentary guardian or a court order terminating the temporary guardianship is entered ○ Parent may file at any time to terminate the temporary guardianship ○ Termination of the temporary guardianship will be Granted if the Temporary Guardian does NOT file written objections with the Court within 10 days of receiving notice of the Petition to Terminate the Temporary Guardianship ○ Objections filed by the temporary guardian – The Probate Court may hear the objections OR transfer the case to the Juvenile Court for determination whether it is in the child's best interest to continue the guardianship or terminate the guardianship

TEMPORARY GUARDIANSHIP PROCEDURES
O.C.G.A. § 29-2-5 through 24

- Requires parental CONSENT & provides for notice to any un-consenting parent who may then object or provide consent
- Consent & Objection may be to either the establishment of the guardianship OR to the selection of the individual to be the guardian
- If a parent objects to the establishment of the guardianship then court SHALL DISMISS the petition for guardianship
- If a parent objects to the selection of the individual to be the guardian then court shall conduct a hearing or may refer the case to the Juvenile Court for hearing
- Guardianships may be referred to Juvenile Court for notice & hearing to determine whether the guardianship is in the child's best interest
- May be filed by an individual who has physical custody of minor
- Shall be filed in the county of the petitioner's domicile, if petitioner has in state domicile, if petitioner has out of state domicile then the county of residence of the child
- Best Interest standard for all guardianship hearings
- Child's preference as to the selection of a guardian may be heard at hearings
- **Petition requirements for Temporary Guardianship**
  - Name, address & date of birth of the minor
  - Name & address of the petitioner & petitioner's relationship to the minor
  - Statement that the petitioner has physical custody of the minor
  - Petitioners domicile
  - Name, address & county of domicile of any living parent of the minor & a statement of whether one or both of the parents is the minor's natural guardian
  - Statement whether one or both of the parents have made a notorized consent to the guardianship & if the consents are attached to the petition
  - If the parents have not consented to the temporary guardianship, then a statement of why the appointment of a temporary guardianship is needed
- **Notice to Non-Consenting Parent, Time Limits for Objections Written & Filed with Court**
  - Personal service if in state at a known address, objections within 10 days from personal service
  - 1st Class mail out of state at a known address, objections within 14 days from mailing of notice
  - Publication for 2 weeks if address unknown, objections with 10 days of second publication notice
- If non-consenting parent does not file objections after notice, then guardianship granted
- If objection to establishment of guardianship then dismissal
- If objection to selection of guardian, then hearing to determine who should serve as guardian using best interest standard
- **O.C.G.A. § 29-2-24 Guardianship Oath** required if the Court grants the Letter of Temporary Guardianship
- For the purposes of health insurance eligibility, the temporary guardianship is considered permanent
- **Termination of Temporary Guardianship**
  - the minor reaches age 18, is adopted, is emancipated or dies
  - the temporary guardian dies, letters of guardianship are issued to a permanent or testamentary guardian or a court order terminating the temporary guardianship is entered
  - Parent may file at any time to terminate the temporary guardianship
    - Termination of the temporary guardianship will be Granted if the Temporary Guardian does NOT file written objections with the Court within 10 days of receiving notice of the Petition to Terminate the Temporary Guardianship
    - Objections filed by the temporary guardian – The Probate Court may hear the objections OR transfer the case to the Juvenile Court for determination whether it is in the child's best interest to continue the guardianship or terminate the guardianship

PERMANENT GUARDIANSHIP IN JUVENILE COURT	
Authority	**O.C.G.A. § 15-11-30.1 (a)(2)**
Jurisdiction	Juvenile Court has jurisdiction to appoint a Permanent Guardian for a child whose custody is in controversy before the court as a result of a deprivation adjudication
Venue	County in which the deprivation & Non-Reunification actions were adjudicated
Petition Requirements for Temporary Guardianship	○ Statement of the Juvenile Court's jurisdiction ○ Name, address & date of birth of the minor ○ Name & address of the petitioner & petitioner's relationship to the minor ○ Statement that • Non-Reunification granted pursuant to **O.C.G.A. § 15-11-58,** reasonable efforts to reunify the child with his or her parent would be detrimental to the child OR • The parents have consented to the permanent guardianship • Termination of parental rights & adoption is not in the child's best interest • Placement with a fit and willing relative, is not in the best interest of the child, if the proposed guardian is not a relative of the child • The proposed permanent guardian can provide a safe & permanent home for the child • Appointment of a permanent guardian for a child under 14 years old is in the child's best interest & the proposed permanent guardian is the most appropriate individual to be the permanent guardian using the best interest of the child standard • Appointment of a permanent guardian for a child 14 years old & older is in the child's best interest & the proposed permanent guardian chosen by the child is the most appropriate individual to be the permanent guardian using the best interest of the child standard • Whether the child was born out of wedlock, name & address of the biological father • Whether the petitioner knows of any notarized or witnessed document made by a parent of the child that deals with the guardianship of the child and the name and address of any designee named in the document • If the parents have not consented to the permanent guardianship, the names & addresses of the child's relatives: he adult siblings, if there is no adult sibling then the grandparents, if there is no grandparent then any three of the nearest adult relatives of the child

Notice to Non-Consenting Parent	○ Notice shall state the individual is entitled to object to either the establishment of the permanent guardianship or the selection of the gaurdian ○ Personal service if in state at a known address, objections within 10 days from personal service ○ 1st Class mail out of state at a known address, objections within 14 days from mailing of notice ○ Publication for 2 weeks if address unknown, objections with 10 days of second publication notice ○ Notice to Biological Father (not legal father) • Meaning a father of a child born out of wedlock who is NOT entitled to have custody or exercise parental power over the child according to **O.C.G.A. § 19-7-25** • Biological Father shall be given Notice IF his • Identity is known to the petitioner OR • He is a registrant on the putative father registry acknowledging paternity of the child according to **O.C.G.A. § 19-11-9(d)(2)(A)** OR • He is a registrant on the putative father registry indicating possible paternity of a child of the minor's mother during a period beginning two years immediately prior to the child's birth according to **O.C.G.A. § 19-11-9(d)(2)(B)** OR • He has lived with the child; contributed to the child's support, attempted to legitimate the child, or provided support or medical care for the mother either during her pregnancy or during her hospitalization for the birth of the child • Biological Father's notice shall state he will lose all rights to object to the appointment of a permanent guardian for the child if he does not file an objection with the court within 14 days of the notice **&** file a petition to legitimate the child, within 30 days of the hearing on his objection & shall include the name of the individual who is the proposed permanent guardian • If the biological father files a timely objection, the court shall hear the objection & grant his request for a continuance to file a legitimation; if the legitimation is granted then the Petition for Permanent Guardianship will be dismissed based on his objection • If the biological father does not file a petition for legitimation within 30 days or his legitimation petition is dismissed or otherwise concludes without establishing him as the legal father then the biological father shall have no further rights to receive notice of or object to the appointment of a permanent guardian for the child
Time Limits for Objections Written & Filed with Court	○ If non-consenting parent does not file objections after notice, then guardianship granted ○ If objection to establishment of guardianship is filed then dismissal ○ If objection to selection of guardian, then hearing to determine who should serve as permanent guardian using best interest standard
Mandatory Findings Prior to Granting a Permanent Guardianship	• Non-Reunification granted pursuant to O.C.G.A. § 15-11-58, reasonable efforts to reunify the child with his or her parent would be detrimental to the child OR • The parents have consented to the permanent guardianship • Termination of parental rights & adoption is not in the child's best interest • Placement with a fit and willing relative, is not in the best interest of the child, if the proposed guardian is not a relative of the child • The proposed permanent guardian can provide a safe & permanent home for the child • Appointment of a permanent guardian for a child under 14 years old is in the child's best interest & the proposed permanent guardian is the most appropriate individual to be the permanent guardian using the best interest of the child standard • Appointment of a permanent guardian for a child 14 years old & older is in the child's best interest & the proposed permanent guardian chosen by the child is

	the most appropriate individual to be the permanent guardian using the best interest of the child standard
Standard of Proof	O.C.G.A. § 29-2-18 Hearing on appointment shall use best interest of minor standard to determine matters at issue. Hearing on appointment shall use best interest of minor standard to determine matters at issue Upon the filing of a petition for the appointment of a permanent guardian of a minor and the giving of notice, the court shall hold a hearing and the standard for determination for all matters at issue shall be the best interest of the minor
Order for Permanent Guardianship	○ May order child support against the parent ○ Shall remain in effect until the child is 18 years old or becomes emancipated ○ Shall establish a reasonable visitation schedule which allows meaningful contact between the child & parent unless the Juvenile Court imposes specific restrictions ○ Shall NOT be subject for review by the Juvenile Court except the Juvenile Court retains jurisdiction to modify, vacate or revoke the permanent guardianship & to appoint a new guardian based upon clear and convincing evidence that there has been a material change in the circumstances of the child or the guardian & that modification, vacation, or revocation of the permanent guardianship order & appointment of a new guardian is in the child's best interest
List of individuals, in order of preference	List of individuals, in order of preference, the court shall appoint as permanent guardian - best interest of minor not preference may determine selection of guardian The court shall appoint as permanent guardian the individual who will serve the best interest of the child, considering the following order of preferences: (1) The adult who is the preference of the 14 years or older child (2) The nearest adult relative of the child (3) Other adult relatives of the child; (4) Other adults who are related by marriage; (5) An adult who was designated in writing by either of the child's natural guardians in a notarized document or document witnessed by two or more persons; or (6) An adult who has provided care or support for the child or with whom the child has lived OR The court may also disregard the above preference in determining the best interest of the child

PERMANENT GUARDIANSHIP IN JUVENILE COURT
O.C.G.A. § 15-11-30.1 (a)(2)

- **Jurisdiction for Permanent Guardianship**
  - Juvenile Court has jurisdiction to appoint a Permanent Guardian for a child whose custody is in controversy before the court as a result of a deprivation adjudication
- **Venue for Permanent Guardianships**
  - County in which the deprivation & Non-Reunification actions were adjudicated
- **Petition requirements for Temporary Guardianship**
  - Statement of the Juvenile Court's jurisdiction
  - Name, address & date of birth of the minor
  - Name & address of the petitioner & petitioner's relationship to the minor
  - Statement that
    - Non-Reunification granted pursuant to **O.C.G.A. § 15-11-58,** reasonable efforts to reunify the child with his or her parent would be detrimental to the child OR
    - The parents have consented to the permanent guardianship
    - Termination of parental rights & adoption is not in the child's best interest
    - Placement with a fit and willing relative, is not in the best interest of the child, if the proposed guardian is not a relative of the child
    - The proposed permanent guardian can provide a safe & permanent home for the child
    - Appointment of a permanent guardian for a child under 14 years old is in the child's best interest & the proposed permanent guardian is the most appropriate individual to be the permanent guardian using the best interest of the child standard

- Appointment of a permanent guardian for a child 14 years old & older is in the child's best interest & the proposed permanent guardian chosen by the child is the most appropriate individual to be the permanent guardian using the best interest of the child standard
- Whether the child was born out of wedlock, name & address of the biological father
- Whether the petitioner knows of any notarized or witnessed document made by a parent of the child that deals with the guardianship of the child and the name and address of any designee named in the document
- If the parents have not consented to the permanent guardianship, the names & addresses of the child's relatives: he adult siblings, if there is no adult sibling then the grandparents, if there is no grandparent then any three of the nearest adult relatives of the child

- **Notice to Non-Consenting Parent, Time Limits for Objections Written & Filed with Court**
  - Notice shall state the individual is entitled to object to either the establishment of the permanent guardianship or the selection of the gaurdian
  - Personal service if in state at a known address, objections within 10 days from personal service
  - 1st Class mail out of state at a known address, objections within 14 days from mailing of notice
  - Publication for 2 weeks if address unknown, objections with 10 days of second publication notice
  - Notice to Biological Father (not legal father)
    - Meaning a father of a child born out of wedlock who is NOT entitled to have custody or exercise parental power over the child according to **O.C.G.A. § 19-7-25**
    - Biological Father shall be given Notice IF his
      - Identity is known to the petitioner OR
      - He is a registrant on the putative father registry acknowledging paternity of the child according to **O.C.G.A. § 19-11-9(d)(2)(A)** OR
      - He is a registrant on the putative father registry indicating possible paternity of a child of the minor's mother during a period beginning two years immediately prior to the child's birth according to **O.C.G.A. § 19-11-9(d)(2)(B)** OR
      - He has lived with the child; contributed to the child's support, attempted to legitimate the child, or provided support or medical care for the mother either during her pregnancy or during her hospitalization for the birth of the child
    - Biological Father's notice shall state he will lose all rights to object to the appointment of a permanent guardian for the child if he does not file an objection with the court within 14 days of the notice **&** file a petition to legitimate the child, within 30 days of the hearing on his objection & shall include the name of the individual who is the proposed permanent guardian
    - If the biological father files a timely objection, the court shall hear the objection & grant his request for a continuance to file a legitimation; if the legitimation is granted then the Petition for Permanent Guardianship will be dismissed based on his objection
    - If the biological father does not file a petition for legitimation within 30 days or his legitimation petition is dismissed or otherwise concludes without establishing him as the legal father then the biological father shall have no further rights to receive notice of or object to the appointment of a permanent guardian for the child
- If non-consenting parent does not file objections after notice, then guardianship granted
- If objection to establishment of guardianship is filed then dismissal
- If objection to selection of guardian, then hearing to determine who should serve as permanent guardian using best interest standard
- **Mandatory findings prior to granting a Permanent Guardianship**
  - Non-Reunification granted pursuant to **O.C.G.A. § 15-11-58,** reasonable efforts to reunify the child with his or her parent would be detrimental to the child OR
  - The parents have consented to the permanent guardianship
  - Termination of parental rights & adoption is not in the child's best interest
  - Placement with a fit and willing relative, is not in the best interest of the child, if the proposed guardian is not a relative of the child
  - The proposed permanent guardian can provide a safe & permanent home for the child
  - Appointment of a permanent guardian for a child under 14 years old is in the child's best interest & the proposed permanent guardian is the most appropriate individual to be the permanent guardian using the best interest of the child standard

- Appointment of a permanent guardian for a child 14 years old & older is in the child's best interest & the proposed permanent guardian chosen by the child is the most appropriate individual to be the permanent guardian using the best interest of the child standard

- **Order for Permanent Guardianship**
  - May order child support against the parent
  - Shall remain in effect until the child is 18 years old or becomes emancipated
  - Shall establish a reasonable visitation schedule which allows meaningful contact between the child & parent unless the Juvenile Court imposes specific restrictions
  - Shall NOT be subject for review by the Juvenile Court except the Juvenile Court retains jurisdiction to modify, vacate or revoke the permanent guardianship & to appoint a new guardian based upon clear and convincing evidence that there has been a material change in the circumstances of the child or the guardian & that modification, vacation, or revocation of the permanent guardianship order & appointment of a new guardian is in the child's best interest
- **O.C.G.A. § 29-2-18 Hearing on appointment shall use best interest of minor standard to determine matters at issue.**
  Upon the filing of a petition for the appointment of a permanent guardian of a minor and the giving of notice, the court shall hold a hearing and the standard for determination for all matters at issue shall be the best interest of the minor
- **O.C.G.A. § 29-2-16 List of individuals, in order of preference, the court shall appoint as permanent guardian - best interest of minor not preference may determine selection of guardian**
  The court shall appoint as permanent guardian the individual who will serve the best interest of the child, considering the following order of preferences:
  (1) The adult who is the preference of the 14 years or older child
  (2) The nearest adult relative of the child
  (3) Other adult relatives of the child;
  (4) Other adults who are related by marriage;
  (5) An adult who was designated in writing by either of the child's natural guardians in a notarized document or document witnessed by two or more persons; or
  (6) An adult who has provided care or support for the child or with whom the child has lived OR
  The court may also disregard the above preference in determining the best interest of the child

Kinship Navigator Program
to assist kinship caregivers in learning about, finding, and using programs and services to meet the needs of the children they are raising and their own needs, and to promote effective partnerships among public and private agencies to ensure kinship caregiver families

Fostering Connection to Success and Increasing Adoptions Act (H.R. 6893) **Title I,** Section 101, **Connecting and Supporting Relative Caregivers** provides for Kinship Agreements as follows:

Kinship Guardianship Assistance Payments for Children

- Allows states the option of using Title IV-E funds to pay for kinship guardianship. These funds are available where the child is in relative foster care with the relative for at least six months consecutive months, the child has a strong attachment to the relative, the relative has committed to permanently caring for the child and neither adoption nor returning to the parents' home is an option for the child.
- Directs the state to make a written, binding kinship agreement to include the amount of the kinship payments, how to apply for modifications of the kinship payments in the future and any services available the child and family under the kinship agreement.
- Makes siblings of the child eligible for kinship care payments
- Mandates that the Case Plans for children receiving kinship guardianship payments include six additional statements. A description of:
  1. the steps taken by the state to determine it is not appropriate for the child to be adopted or returned home;
  2. the reasons why any siblings are separated during placement;
  3. the reasons why kinship guardianship as a permanent plan is in the child's best interest;

4. how the child meets the kinship guardianship requirements;
5. the efforts made by the state to discuss adoption with the relative foster parent including documentation of the reasons why the relative is not pursuing; and
6. the efforts made to discuss kinship guardianship with the parents.

- Makes Medicaid automatic for kinship care children and children receiving adoption assistance.
- Independent living services and education or training vouchers are also federally required for children moving into kinship guardianships after age 16.

Guardianship Subsidy

DFCS has two types of optional subsidy payments available to relative caregivers who obtain legal guardianship through Juvenile Court of a relative child in foster care

1. **Subsidized Guardianship (SG)** $10.00 per diem and
2. **Enhanced Subsidized Guardianship (ESG)** :household income less than 150K; 80% of current foster care per diem

- The child must have been in DFCS foster care for a minimum of 12 months
- Relative has received a favorable **Relative Care Assessment (RCA)** (home evaluation)
- Proposed guardian is related by blood, marriage or adoption
- Form 45SG, application and agreement completed prior to the grant of guardianship
- subsidy is $10.00 per day for regular RCS or 80% of the current foster care per diem for enhanced; there is a waiver available through DFCS so that the guardian may be eligible for 100% of the foster care per diem
- renewed by DFCS annually
- other support services available through DFCS to Relative Caregivers include: wraparound, PUP funds, initial & annual clothing allowance, Medicaid, physical or emotional therapy, training & educational support to relative

Termination of Juvenile Court Guardianship (Dissolution of Guardianshp)

- **for guardianship granted prior to 2000**, then guardianship is revocable at will of parent, Child Attorney or Court may request referral to DFCS
- **for guardianship granted after 2000, guardian may file objections,** the guardian may file objections to the dissolution of the guardianship, then notice to parties & evidentiary hearing, Child Attorney is often appointed to investigate and advocate for child's best interest, may ask for evaluation (psych or parenting assessment, CASA)
- the Court determines if the dissolution or continuation of the guardianship is in the best interest of the child
- While the Child Attorney does not have statutory standing to object to a dissolution of guardianship, filing objections by the Child Attorney may alert the DFCS & the Court of potential risks if the dissolution is granted

Transfer from Probate Court occurs when

- guardianship granted in Probate Court,
- parent files to revoke the guardianship,
- if the guardian files objections to the revocation then Probate Court may transfer the case to Juvenile Court for notice and evidentiary hearing,
- Child Attorney appointed to investigate and advocate for child's best interest, may ask for evaluation (psych or parenting assessment, CASA)
- the Court determines if the dissolution or continuation of the guardianship is in the best interest of the child
- Following Juvenile Court determination, case must be transferred back to Probate Court

O.C.G.A. Code Sections

15-11-30.1 Appointment of guardian - transfer from other courts.

(a) (1) The court is vested with jurisdiction to appoint a guardian of the person or property of any child and with jurisdiction over proceedings involving any child whose custody is the subject of controversy. Any such appointment shall be made pursuant to the same requirements of notice and hearing as are provided for appointments of guardians of the persons and properties of minors by the judge of the probate court.

(2) (A) In addition to the jurisdiction to appoint guardians pursuant to paragraph (1) of this subsection, the Juvenile Court shall be vested with jurisdiction to appoint a permanent guardian for a child whose custody is a subject of controversy before the court as a result of an adjudication that the child is deprived in accordance with Part 6 of this article. Prior to the entry of such an order, the court shall:

(i) Find that reasonable efforts to reunify the child with his or her parent would be detrimental to the child in accordance with subsection (h) of Code Section 15-11-58 or find that the living parents or parent of the child have consented to the permanent guardianship;

(ii) Find that termination of parental rights and adoption and, if the proposed guardian is not a relative of the child, that placement with a fit and willing relative, is not in the best interest of the child;

(iii) Find that the proposed permanent guardian can provide a safe and permanent home for the child;

(iv) Find that the appointment of a permanent guardian for the child is in the best interest of the child and that the individual chosen as the child's permanent guardian is the individual most appropriate to be the child's permanent guardian taking into consideration the best interest of the child; and

(v) If the child is 14 years of age or older, find that the appointment of a permanent guardian for the child is in the best interest of the child and that the individual chosen by such child as the child's permanent guardian is the individual most appropriate to be the child's permanent guardian taking into consideration the best interest of the child.

(B) The court may enter an order of support on behalf of the child against the parents of the child in accordance with paragraph (2) of subsection (c) of Code Section 15-11-28.

(C) Orders under subparagraph (A) of this paragraph shall:

(i) Remain in effect until the child reaches the age of 18 or becomes emancipated;

(ii) Not be subject to review by the court except as provided in subparagraph (D) of this paragraph; and

(iii) Establish a reasonable visitation schedule which allows the child to maintain meaningful contact with his or her parents through personal visits, telephone calls, letters, or other forms of communication or specifically include any restriction on a parent's right to visitation.

(D) The court shall retain jurisdiction over a guardianship action under this paragraph for the sole purpose of entering an order following the filing of a petition to modify, vacate, or revoke the guardianship and to appoint a new guardian. The Superior Courts shall have concurrent jurisdiction for enforcement or modification of any child support or visitation order entered pursuant to this Code section. The guardianship shall be modified, vacated, or revoked based upon a finding, by clear and convincing evidence, that there has been a material change in the circumstances of the child or the guardian and that such modification, vacation, or revocation of the guardianship order and the appointment of a new guardian is in the best interest of the child. Appointment of a new guardian shall be subject to the provisions of this paragraph.

(E) Notice of a guardianship petition pursuant to this paragraph shall be given in accordance with subsection (c) of Code Section 29-2-17 except that, if the parents have consented to the guardianship, notice of the petition shall not be required to be given to the individuals listed in division (vii) of subparagraph (F) of this paragraph. The hearing shall be conducted in accordance with Code Section 29-2-18, to determine the best interest of the child, and in reaching its determination the court shall consider subparagraph (A) of this paragraph.

(F) The petition for the appointment of a permanent guardian pursuant to this paragraph shall set forth:

(i) A statement of the facts upon which the court's jurisdiction is based;

(ii) The name and date of birth of the child;

(iii) The name, address, and county of domicile of the petitioner and the petitioner's relationship to the child, if any, and, if different from the petitioner, the name, address, and county of domicile of the individual nominated by the petitioner to serve as guardian and that individual's relationship to the child, if any;

(iv) A statement that:

(I) Reasonable efforts to reunify the child with his or her parent would be detrimental to the child in accordance with subsection (h) of Code Section 15-11-58 or that the living parents or parent of the child have consented to the permanent guardianship;

(II) Termination of parental rights and adoption and, if the proposed guardian is not a relative of the child, that placement with a fit and willing relative is not in the best interest of the child;

(III) The proposed guardian can provide a safe and permanent home for the child;

(IV) The appointment of a permanent guardian for the child is in the best interest of the child and that the individual chosen as the child's guardian is the individual most appropriate to be the child's permanent guardian taking into consideration the best interest of the child; and

(V) If the child is 14 years of age or older, that the appointment of a permanent guardian for the child is in the best interest of the child and that the individual chosen by such child as the child's permanent guardian is the individual most appropriate to be the child's permanent guardian taking into consideration the best interest of the child;

(v) A statement of whether the child was born out of wedlock and, if so, the name and address of the biological father, if known;

(vi) Whether, to the petitioner's knowledge, there exists any notarized or witnessed document made by a parent of the child that deals with the guardianship of the child and the name and address of any designee named in the document;

(vii) In addition to the petitioner and the nominated guardian and, if the parents have not consented to the permanent guardianship, the names and addresses of the following relatives of the child whose whereabouts are known:

(I) The adult siblings of the child; provided, however, that not more than three adult siblings need to be listed;

(II) If there is no adult sibling of the child, the grandparents of the child; provided, however, that not more than three grandparents need to be listed; or

(III) If there is no grandparent of the child, any three of the nearest adult relatives of the child determined according to Code Section 53-2-1 of the "Revised Probate Code of 1998";

(viii) Whether a temporary guardian has been appointed for the child or a petition for the appointment of a temporary guardian has been filed or is being filed; and

(ix) The reason for any omission in the petition for appointment of a permanent guardian for the child in the event full particulars are lacking.

(G) A guardian of the person of a child appointed under this paragraph shall have the rights and duties of a permanent guardian as are provided in Code Sections 29-2-21, 29-2-22, and 29-2-23 and shall take the oath required of a guardian as provided in Code Section 29-2-24.

(b) Other courts, in handling divorce, alimony, habeas corpus, or other cases involving the custody of a child or children, may transfer the question of the determination of custody, support, or custody and support to the Juvenile Court for investigation and a report back to the Superior Court or for investigation and determination. If the referral is for investigation and determination, then the Juvenile Court shall proceed to handle the matter in the same manner as though the action originated under this article in compliance with the order of the Superior Court. At any time prior to the determination of any such question, the Juvenile Court may transfer the jurisdiction of the question back to the referring Superior Court.

29-1-1 Definitions.

Except as otherwise provided, as used in this title, the term:

(1) "Adult" means an individual who is either 18 years of age or older or an emancipated minor.

(2) "Conservator" includes a guardian of the property appointed prior to July 1, 2005, but shall not include a conservator of the estate of an individual who is missing or believed to be dead, as defined in Article 2 of Chapter 9 of Title 53 or a foreign conservator as defined in Part 4 of Article 10 of Chapter 3 and Part 4 of Article 13 of Chapter 5 of this title.

(7) "Guardian" means an individual appointed pursuant to the provisions of this title and includes a guardian of the person appointed prior to July 1, 2005, but shall not include a guardian ad litem.

(9) "Interested person" means any person who has an interest in the welfare of a minor, ward, or proposed ward, or in the management of that individual's assets and may include a governmental agency paying or planning to pay benefits to that individual.

(11) "Minor" means an individual who is under 18 years of age and who is not emancipated.
(12) "Natural guardian" means an individual defined by the provisions of Code Section 29-2-3.
(13) "Parent" means a biological or adoptive father or mother whose parental rights have not been surrendered or terminated and, in the case of a child born out of wedlock, the individual or individuals who are entitled to have custody of and exercise parental power over the child pursuant to Code Section 19-7-25.
(14) "Permanent guardian" means an individual appointed as guardian of a minor pursuant to Part 5 of Article 1 of Chapter 2 of this title.
(21) "Temporary guardian" means an individual who is appointed as a guardian for a minor in accordance with the provisions of Part 3 of Article 1 of Chapter 2 of this title.
(23) "Temporary substitute guardian" means an individual who has been appointed as guardian pursuant to Code Section 29-2-50 or 29-4-60.
(25) "Testamentary guardian" means a person who has been issued letters of guardianship pursuant to Code Section 29-2-4.

29-2-1 List of categories for guardians of minors.

29-2-2 Individual who may not serve as guardian of minor.
(a) Only an individual may serve as guardian of a minor.
(b) No individual may be appointed as guardian of a minor who:
(1) Is a minor, a ward, or a protected person; or
(2) Has a conflict of interest with the minor unless the court determines that the conflict of interest is insubstantial or that the appointment would be in the minor's best interest.

29-2-3 Determination of guardianship of minor child if parents are divorced or if one parent dies.

29-2-4 Testamentary guardian may be nominated in will of the parent.

29-2-5 Procedure for filing petition for appointment as temporary guardian - contents of petition.
(a) A petition to be appointed the temporary guardian of a minor may be filed by an individual who has physical custody of the minor.
(b) The petition shall be filed in the probate court of the county of domicile of the petitioner; however, if the petitioner is not a domiciliary of this state, the petition may be filed in the probate court of the county where the minor is found.
(c) A petition for the appointment of a temporary guardian shall include the following:
(1) The name, address, and date of birth of the minor;
(2) The name and address of the petitioner and the petitioner's relationship to the minor, if any;
(3) A statement that the petitioner has physical custody of the minor and:
(A) Is domiciled in the county in which the petition is being filed; or
(B) Is not a domiciliary of this state and the petition is being filed in the county where the minor is found;
(4) The name, address, and county of domicile of any living parent of the minor and a statement of whether one or both of the parents is the minor's natural guardian;
(5) A statement of whether one or both of the parents have consented in a notarized writing to the appointment of the petitioner as temporary guardian and, if so, that the consents are attached to the petition;
(6) If the sole parent or both parents have not consented to the appointment of the temporary guardian, a statement of the circumstances that give rise to the need for the appointment of a temporary guardian; and
(7) The reason for any omission in the petition for temporary guardianship in the event full particulars are lacking.

29-2-6 Appointment of temporary guardian requires parental consent - procedure when consent not given - others who may object to appointment - preference of minor child.
(a) Except as otherwise provided in subsection (f) of this Code section, if the sole parent or both parents of the minor have consented to the appointment of the temporary guardian, as evidenced by notarized

written consents attached to the petition, the court shall grant the petition without further notice or hearing and shall issue letters of guardianship to the petitioner.
(b)(1) If one or both of the parents of the minor have not consented to the appointment of the temporary guardian, notice of the petition shall be given to any parent who has not consented.
(2) The notice shall be by personal service if the parent resides in this state at a known address; by first-class mail if the parent resides outside this state at a known address; or by publication for two weeks in the official county legal organ for the county in which the petition is filed if no address is known.
(3) The notice shall state that the parent is entitled to object either to the establishment of a temporary guardianship or to the selection of the petitioner as temporary guardian, or both.
(4) The notice shall require that any objection be filed in writing with the court within ten days of the personal service, within 14 days of the mailing of the notice, or within ten days of the date of the second publication of the notice.
(c) Except as otherwise provided in subsection (f) of this Code section, if no parent who is entitled to notice under subsection (b) of this Code section files a timely objection to the petition, the court shall grant the petition without further notice or hearing and shall issue letters of guardianship to the petitioner.
(d) If a natural guardian of the minor files a timely objection to the establishment of the temporary guardianship, the court shall dismiss the petition. If a natural guardian files a timely objection to the selection of the petitioner as temporary guardian, the court shall hold a hearing to determine who shall serve as temporary guardian.
(e) If a parent who is not a natural guardian files a timely objection to the establishment of the temporary guardianship or to the selection of the petitioner as temporary guardian, the court shall hold a hearing to determine all matters at issue.
(f) In all hearings held pursuant to this Code section, the standard for determination for all matters at issue shall be the best interest of the minor. As to the selection of the temporary guardian, the preference of the minor may be heard. In all proceedings under this Code section, the court has the option to refer the petition to the Juvenile Court which shall, after notice and hearing, determine whether the temporary guardianship is in the best interest of the minor.

29-2-7 Temporary guardian has same powers as natural guardian.
(a) Except as otherwise provided by law, a temporary guardian shall be entitled to exercise any of the powers of a natural guardian. The court in its discretion may waive the requirement that a temporary guardian file the personal status reports that are required by paragraph (8) of subsection (b) of Code Section 29-2-21.
(b) If a temporary guardian, in writing, assumes the obligation to support the minor while the temporary guardianship is in effect, to the extent that no other sources of support are available, then for purposes of obtaining medical insurance coverage for the minor the temporary guardianship shall be deemed to be a permanent guardianship.

29-2-8 Date of termination of temporary guardianship - natural guardian may petition for termination.
(a) A temporary guardianship shall terminate on the date upon which the earliest of the following occurs: the minor reaches age 18, the minor is adopted, the minor is emancipated, the minor dies, the temporary guardian dies, letters of guardianship are issued to a permanent or testamentary guardian, or a court order terminating the temporary guardianship is entered. Proof of adoption, death, or emancipation shall be filed with the court and the court may order a hearing in an appropriate case.
(b) Either natural guardian of the minor may at any time petition the court to terminate a temporary guardianship; provided, however, that notice of such petition shall be provided to the temporary guardian. If no objection to the termination is filed by the temporary guardian within ten days of the notice, the court shall order the termination of the temporary guardianship. If the temporary guardian objects to the termination of the temporary guardianship within ten days of the notice, the court shall have the option to hear the objection or transfer the records relating to the temporary guardianship to the Juvenile Court, which shall determine, after notice and hearing, whether a continuation or termination of the temporary guardianship is in the best interest of the minor.

29-2-14 Permanent guardian may be appointed by county probate court - transfer of case from one county to another.

The probate court of the county in which a minor is found or in which the proposed permanent guardian is domiciled shall have the power to appoint a permanent guardian for a minor who has no natural guardian, testamentary guardian, or permanent guardian. In its discretion, the probate court of the county in which the petition for appointment of a permanent guardian is filed may transfer the case to the probate court of any other county in this state if such transfer would serve the best interest of the minor.

29-2-15 Circumstances when biological father shall receive notice of petition for appointment of permanent guardian - petition for legitimation of minor.

(a) For purposes of this part, the term "biological father" means a father of a minor born out of wedlock whose rights regarding the minor have not been surrendered or terminated but who is not entitled to have custody of and exercise parental power over the child pursuant to Code Section 19-7-25.

(b)(1) Notice of a petition for appointment of a permanent guardian of a minor shall be given to the minor's biological father, if any, in the following circumstances:

(A) If the identity of the biological father is known to the petitioner;

(B) If the biological father is a registrant on the putative father registry who has acknowledged paternity of the minor in accordance with subparagraph (d)(2)(A) of Code Section 19-11-9;

(C) If the biological father is a registrant on the putative father registry who has indicated possible paternity of a child of the minor's mother during a period beginning two years immediately prior to the minor's date of birth in accordance with subparagraph (d)(2)(B) of Code Section 19-11-9; or

(D) If the biological father has lived with the minor; contributed to the minor's support; made any attempt to legitimate the minor; or provided support or medical care for the mother either during her pregnancy or during her hospitalization for the birth of the minor.

(2) The notice shall advise the biological father that he will lose all rights to object to the appointment of a permanent guardian for the minor if he does not file an objection with the court within 14 days of the notice and file a petition to legitimate the minor within 30 days of the hearing on his objection. The notice shall include the name of the individual who will be the minor's permanent guardian if the petition is granted.

(c) If the biological father files a timely objection to the petition, the court shall hear the objection and, if the biological father makes a request, shall continue the hearing for 30 days to allow the father to file a petition to legitimate the minor pursuant to Code Section 19-7-22. If the biological father's petition for legitimation of the minor is granted, the petition for the appointment of a permanent guardian for the minor shall be dismissed.

(d) If the biological father does not file a petition for legitimation within 30 days or files a petition that is subsequently dismissed for failure to prosecute or files a petition and the action is subsequently concluded without a court order declaring that he is the father of the minor, the biological father shall have no further rights to receive notice of or object to the appointment of a permanent guardian for the minor.

29-2-16 List of individuals, in order of preference, the court shall appoint as permanent guardian - best interest of minor not preference may determine selection of guardian.

(a) The court shall appoint as permanent guardian that individual who will serve the best interest of the minor, considering the following order of preferences:

(1) The adult who is the preference of the minor if the minor is 14 years of age or older;

(2) The nearest adult relative of the minor determined according to Code Section 53-2-1 of the Revised Probate Code of 1998;

(3) Other adult relatives of the minor;

(4) Other adults who are related to the minor by marriage;

(5) An adult who was designated in writing by either of the minor's natural guardians in a notarized document or document witnessed by two or more persons; or

(6) An adult who has provided care or support for the minor or with whom the minor has lived.

(b) The court may disregard an individual who has preference and appoint an individual who has a lower preference or no preference. In determining what is in the best interest of the minor, the court may take into account any facts and circumstances presented to it, including the statement of a minor who is under 14 years of age.

29-2-17 Information to be contained in petition for appointment of permanent guardian - service of notice of petition to certain designees.

(a) Any interested person may file a petition for the appointment of a permanent guardian of a minor.
(b) The petition for appointment of a permanent guardian shall set forth:
(1) A statement of the facts upon which the court's jurisdiction is based;
(2) The name, address, and date of birth of the minor;
(3) The name, address, and county of domicile of the petitioner and the petitioner's relationship to the minor, if any, and, if different from the petitioner, the name, address, and county of domicile of the individual nominated by the petitioner to serve as guardian and that individual's relationship to the minor, if any;
(4) A statement that the minor has no natural guardian, testamentary guardian, or permanent guardian;
(5) A statement of whether the child was born out of wedlock and, if so, the name and address of the biological father, if known;
(6) Whether, to the petitioner's knowledge, there exists any notarized or witnessed document made by a parent of the minor that deals with the guardianship of the minor and the name and address of any designee named in the document;
(7) In addition to the petitioner and the nominated guardian, the names and addresses of the following relatives of the minor whose whereabouts are known:
(A) The adult siblings of the minor; provided, however, that not more than three adult siblings need to be listed;
(B) If there is no adult sibling of the minor, the grandparents of the minor; provided, however, that not more than three grandparents need to be listed; or
(C) If there is no grandparent of the minor, any three of the nearest adult relatives of the minor determined according to Code Section 53-2-1 of the Revised Probate Code of 1998;
(8) Whether a temporary guardian has been appointed for the minor or a petition for the appointment of a temporary guardian has been filed or is being filed; and
(9) The reason for any omission in the petition for appointment of a permanent guardian for a minor in the event full particulars are lacking.
(c) In addition to the notice required by Code Section 29-2-15, notice of the petition for appointment of a permanent guardian for a minor shall be given to any designee named in paragraph (6) of subsection (b) of this Code section and the individuals named in paragraph (7) of subsection (b) of this Code section. The notice shall be by personal service if the individual resides in this state at a known address; by first-class mail if the individual resides outside this state at a known address; or by publication for two weeks in the official county legal organ for the county in which the petition is filed if no address is known. The notice shall state that the individual is entitled to object either to the establishment of a permanent guardianship or to the selection of the petitioner as permanent guardian, or both. The notice shall require that any objection be filed in writing with the court within ten days of the personal service, within 14 days of the mailing of the notice, or within ten days of the date of the second publication of the notice.
(d) If the judge deems it necessary, a temporary guardian may be appointed under the same rules that apply to the appointment of a temporary administrator.

29-2-18 Hearing on appointment shall use best interest of minor standard to determine matters at issue.
Upon the filing of a petition for the appointment of a permanent guardian of a minor and the giving of notice, the court shall hold a hearing and the standard for determination for all matters at issue shall be the best interest of the minor.

29-2-19 What order granting permanent guardianship shall specify.
An order granting permanent guardianship shall specify:
(1) The name of the permanent guardian and the basis for the selection of the guardian;
(2) A specific listing of any of the additional powers which are granted to the permanent guardian as provided in subsection (b) of Code Section 29-2-22;
(3) If only a guardian is appointed or if the guardian and the conservator appointed are not the same person, the reasonable sums of property to be provided the guardian to provide adequately for the minor's support, care, education, health, and welfare are subject to modification by subsequent order of the court; and
(4) Such other and further provisions of the guardianship as the court shall determine to be in the best interest of the minor.

29-2-20 What minor has right to in guardianship - testamentary capacity of minor 14 years of age or older.

(a) In every guardianship, the minor has the right to:

(1) A qualified guardian who acts in the best interest of the minor;

(2) A guardian who is reasonably accessible to the minor;

(3) Have his or her property utilized as necessary for his or her support, care, education, health, and welfare; and

(4) Individually or through the minor's representative or legal counsel, bring an action relating to the guardianship.

(b) The appointment of a guardian is not a determination that a minor who is 14 years of age or older lacks testamentary capacity.

29-2-21 Power of guardian over minor same as that of parent - duties of guardian - limitation of personal liability of guardian.

(a) The power of a guardian over the minor shall be the same as that of a parent over a child; the guardian standing in place of the parent. A guardian shall at all times act as a fiduciary in the minor's best interest and exercise reasonable care, diligence, and prudence.

(b) A guardian shall:

(1) Respect the rights and dignity of the minor;

(2) Arrange for the support, care, education, health, and welfare of the minor considering the minor's available resources;

(3) Take reasonable care of the minor's personal effects;

(4) Expend money of the minor that has been received by the guardian for the minor's current needs for support, care, education, health, and welfare;

(5) Conserve for the minor's future needs any excess money of the minor received by the guardian; provided, however, that if a conservator has been appointed for the minor, the guardian shall pay to the conservator, at least quarterly, money to be conserved for the minor's future needs;

(6) If necessary, petition to have a conservator appointed;

(7) Endeavor to cooperate with the conservator, if any;

(8) Within 60 days after appointment and within 60 days after each anniversary date of appointment, file with the court and provide to the conservator, if any, a personal status report concerning the minor, which shall include:

(A) A description of the minor's general condition, changes since the last report, and the minor's needs;

(B) All addresses of the minor during the reporting period and the living arrangements of the minor for all addresses; and

(C) Recommendations for any alteration in the guardianship order;

(9) Promptly notify the court of any conflict of interest between the minor and the guardian when the conflict arises or becomes known to the guardian and take such action as is required by Code Section 29-2-23;

(10) Keep the court informed of the guardian's current address; and

(11) Act promptly to terminate the guardianship when the minor dies, reaches age 18, is adopted, or is emancipated.

(c) A guardian, solely by reason of the guardian-minor relationship, is not personally liable for:

(1) The minor's expenses;

(2) Contracts entered into in the guardian's fiduciary capacity;

(3) The acts or omissions of the minor;

(4) Obligations arising from ownership or control of property of the minor; or

(5) Other acts or omissions occurring in the course of the guardianship.

29-2-22 Exclusive powers of guardian without court order - powers granted by court - court appointment of guardian ad litem.

29-2-23 Court to be notified of conflict of interest between guardian and minor.

The guardian must disclose promptly any conflict of interest between the guardian and the minor when it arises or becomes known to the guardian and seek the court's determination as to whether the conflict is insubstantial or if it is in the best interest of the minor for the guardian to continue to serve.

29-2-24 Guardian required to take oath or make affirmation before court.
Before entering upon the duties of the appointment, every guardian appointed pursuant to the terms of this chapter shall take an oath or affirmation before the court to perform well and truly the duties required of a guardian and to account faithfully for the estate. The oath or affirmation of a guardian may be subscribed before the judge or clerk of any probate court of this state. The judge of the probate court who appoints the guardian shall have the authority to grant a commission to a judge or clerk of any court of record of any other state to administer the oath or affirmation.

29-2-30 Termination of guardianship - return of money or property by guardian.
(a) The guardianship of a minor shall terminate on the date upon which the earliest of the following occurs: the minor reaches age 18, the minor is adopted, the minor is emancipated, the minor dies, or a court order terminating the guardianship is entered. Proof of adoption, death, or emancipation shall be filed with the court and the court in its discretion may order a hearing.
(b) Within six months prior to the date the minor reaches 18 years of age, the guardian or any other interested person may file a petition for the appointment of a guardian for the minor when that minor becomes an adult, in accordance with the provisions of Article 2 of Chapter 4 of this title, to take effect on or after the date the minor reaches 18 years of age.
(c) The death of the minor automatically terminates the guardianship, except as otherwise provided in Code Section 29-2-31.
(d) Upon termination of the guardianship, the guardian shall deliver any money or property to the former minor or, if a guardian or conservator has been appointed for the former minor, to that guardian or conservator or, if the minor is deceased, to the minor's personal representative.

29-2-31 Procedure for petition for court order to dismiss guardian.
(a) Upon the termination of the guardianship or the resignation of the guardian, the guardian may petition the court for an order dismissing the guardian from office. The petition shall include a final status report to the court which covers the period of time from the latest annual status report filed by the guardian. The final status report shall contain the information required for annual status reports and shall otherwise comply with the provisions of paragraph (8) of subsection (b) of Code Section 29-2-21. Notice shall be published one time in the newspaper in which sheriff's advertisements are published in the county in which the petition is filed and shall state that any objection must be made in writing and shall designate the date on or before which objections must be filed in the court, which shall not be less than 30 days from the date of publication. The court shall examine any objections filed.
(b) If no objection is filed or if, upon hearing any objection, the court is satisfied that the order dismissing the guardian from office is appropriate, the court shall enter an order dismissing the guardian from office. Such order shall not bar an action against the guardian.

29-2-40 Contents of petition to resign guardianship - appointment of successor guardian.
(a) A guardian or the duly authorized guardian, conservator, or attorney in fact of a guardian, acting on behalf of the guardian, may resign upon petition to the court, showing to the satisfaction of the court that:
(1) The guardian is unable to continue to serve due to age, illness, infirmity, or other good cause;
(2) Greater burdens have devolved upon the office of guardian than those that were originally contemplated or should have been contemplated when the guardian was qualified and the additional burdens work a hardship upon the guardian;
(3) Disagreement exists between the minor and the guardian or between the guardian and the conservator in respect of the guardian's care of the minor, which disagreement and conflict appear to be detrimental to the minor;
(4) The resignation of the guardian will result in or permit substantial financial benefit to the minor; or
(5) The resignation would not be disadvantageous to the minor.
(b) The petition for resignation shall include the name of a suitable person who is willing to accept the guardianship.

(c) Personal service of the petition for resignation shall be made upon the minor and a guardian ad litem appointed by the court for the minor. Service shall be made by first-class mail to the parents of the minor in the event of the resignation of a temporary guardian, to the conservator of the minor, if any, and, in the following order of preference, to the following relatives of the minor whose whereabouts are known and who must be persons other than the resigning guardian or the proposed successor guardian:

(1) The adult siblings of the minor; provided, however, that not more than three adult siblings need be served;

(2) If there is no adult sibling of the minor, the grandparents of the minor; provided, however, that not more than three grandparents need be served; or

(3) If there is no grandparent of the minor, any three of the nearest adult relatives of the minor determined according to Code Section 53-2-1 of the Revised Probate Code of 1998.

(d) If after such hearing as the court deems appropriate, the court is satisfied that the petition for the resignation of the guardian and the appointment of the successor guardian should be granted, the court shall enter an order appointing the successor guardian in accordance with the provisions of Code Section 29-2-51 and accept the resignation, subject to the resigning guardian turning over to the successor guardian or conservator all property of the minor held by the guardian.

29-2-41 Death of guardian - appointment of successor by court - persons to be notified.

29-2-42 Authority of court to investigate allegations of misconduct by guardian - revocation or suspension of guardianship or other action by court - successor guardian party to pending actions.

(a) Upon the petition of any interested person or whenever it appears to the court that good cause may exist to revoke or suspend the letters of guardianship or to impose sanctions, the court shall cite the guardian to answer the charge. The court shall investigate the allegations and may require such accounting as the court deems appropriate. The court may appoint a temporary substitute guardian for the minor during the investigation.

(b) Upon investigation the court may in its discretion:

(1) Revoke or suspend the letters of guardianship;

(2) Require additional security;

(3) Reduce or deny compensation to the guardian or impose such other sanction or sanctions as the court deems appropriate; and

(4) Issue any other order as in the court's judgment is appropriate under the circumstances of the case.

(c) The revocation or suspension of letters of guardianship shall not abate any action pending for or against the guardian. The successor guardian shall be made a party to the action in the manner provided in Code Section 9-11-25.

29-2-43 Remedies for breach or threat of breach of fiduciary duties.
29-2-44 Time limits for actions against guardian - exceptions.
29-2-50 Temporary substitute guardian.
29-2-51 Court appointment of successor guardian.
29-2-52 Disposition of minor's property upon appointment of successor guardian - submission of final status report by former guardian or a representative.
29-2-60 Procedure for removal of guardianship to another county in the state - retention of jurisdiction by court appointing guardian.
29-2-65 Petition to transfer guardianship from foreign court to county in this state.
29-2-66 Minor and foreign court to be served notice and copy of petition - others to receive notice and copy - when court may wave notice requirements.

Chapter 16 Legitimation

*If a putative father is served with a summons & Petition for Termination of Parental Rights, a Petition for Legitimation MUST be filed within 30 days AND the Juvenile Court Must receive notice of the legitimation or the father will lose all rights & standing to contest the termination.

Authority	**O.C.G.A. § 15-11-28 (e), § 19-7-20 to § 19-7-46.1, § 31-10-13.1**
Purpose	Create legal relationship between child and birth father Expands paternal resources for child Change child's name
Jurisdiction	"Pending" deprivation in Juvenile Court, open case Concurrent jurisdiction with Superior Court
Venue	County of residence of mother, venue can be waived OR County of residence of the person having legal custody or guardianship of the child Legitimation in Juvenile Court should be in the same county in which the deprivation is pending
Pleading	Petition to Legitimate Administrative Legitimation Forms Annulment of Legitimation
Parties	Mother, Father, Child, DFCS
Service	○ To mother pursuant to the Civil Practice Act **O.C.G.A. § 15-11-39.1, § 9-11-4 & § 9-11-5** ○ Formal service required – summons & copy of petition ○ Party may waive if on record & by appearance at hearing, party must make objections to service on the record ○ **Personal service** to parent / legal custodian - whereabouts known within state, then service must be perfected at least 24 hours prior to the hearing ○ **Certified/registered mail, overnight delivery** to parent / legal guardian – if within the State but cannot be found but address is known or can with diligence be ascertained then service must be perfected at least 5 days prior to the hearing ○ **Personal, certified/registered mail, overnight delivery** to parent / legal guardian – if outside the State where address is known or can with diligence be ascertained, then service must be perfected at least 5 days prior to the hearing ○ **Publication** if after reasonable efforts to locate the parent, the whereabouts continue to be unknown, then service must be perfected by publication once a week for 30 days with the hearing set no sooner than 5 days after the last publication date ○ Pending deprivation so argument may be made for child attorney & DFCS to also be entitled to notice & an opportunity to be heard, most juvenile courts allow the child attorney & DFCS to be part of the legitimation hearing as being in the child's best interest See Chapter 17 for **O.C.G.A. § 9-11-4 & § 9-11-5**
Right to Attorney	**O.C.G.A. §15-11-6 Party / Parent** Despite his request, the father " was not entitled to have an attorney appointed to represent him at public expense in the legitimation proceedings." Ernst v. Snow, 305 Ga. App. 194, 699 S.E.2d 401 (Ga. App., 2010) ○ Some juvenile courts will appoint an attorney for putative fathers ○ Inquiry about incarcerated parents, transport to hearings? ○ Father, legal or putative, right to counsel?

	O.C.G.A. §15-11-6(b) Child's Right to Counsel Counsel must be provided for a child not represented by the child's parent, guardian, or custodian. ○ Courts & Judges vary on the interpretation of the child's right to representation in deprivation cases; this issue is being addressed on a statewide basis, contact Georgia Association of Counsel for Children found at www.gaccchildlaw.org for further information ○ Attorneys appointed to represent the child in a deprivation case should obtain an Order of Appointment from the Judge which outlines and clarifies the role and duties the Judge is appointing the attorney to fulfill ○ See also the child's right to effective attorney representation in the February 7, 2005 order entered by Federal District Judge Marvin Shoob in the *Kenny A. v. Perdue* case, *Kenny A. v. Perdue et. al*., 356 F.Supp.2d 1353 (N.D. Ga. 2005)
Standard of Proof	• Has father abandoned his "opportunity interest" to develop a familial relationship with child? • **If No**, father has NOT abandoned his opportunity interest & father has established a familial bond then Court should apply the "parental fitness" test in determining whether to grant the legitimation, the father would have to be shown to be unfit by clear & convincing evidence in order to deny his petition for legitimation • **If Yes**, father has abandoned his opportunity interest & father has NOT established a familial bond then the Court should apply the "best interest" of child standard in determining whether to deny the legitimation • *In Re: Baby Girl Eason*, 257 Ga 292 (1987), Lebrect v. Davis, 243 Ga App 307 (2000) • *Binns v. Fairnot*, 665 S.E.2d (2008) • In considering a legitimation petition, the court must initially determine whether the father has abandoned his opportunity interest to develop a relationship with the child. Then, depending on the nature of the putative father's relationship with the child and other surrounding circumstances, the standard for evaluating whether legitimation is appropriate is either a test of his fitness as a parent or the best interest of the child. In re M. K., 288 Ga.App. 71, 653 S.E.2d 354, (2007) • "In making this determination, the court must examine the benefits that might flow to the child if she were legitimated and to consider the legal consequences of the grant of the petition." Adamavage v. Holloway, 206 Ga.App. 156, (424 S.E.2d 837) (1992) • "a man has no absolute right to the grant of his petition to legitimate a child simply because he is the biological father"; OCGA § 19-7-20 (b) "Where possibility of access exists, the strong presumption is in favor of legitimacy and the proof must be clear to establish the contrary.". Davis v. Labrec, 274 Ga. 5, 549 S.E.2d 76 (2001); Ghrist v. Fricks, 219 Ga. App. 415,465 S.E.2d 501 (1995) • " In ruling on a legitimation petition presented by a putative biological father, the juvenile court must initially determine whether the father has abandoned his opportunity interest to develop a relationship with the child." In the Interest of J.L.E., 281 Ga.App. 637 S.E.2d 446 (2006). • " If the juvenile court concludes that the father has abandoned his opportunity interest, that finding is sufficient to end the court's inquiry and justifies the denial of the legitimation petition." In the Interest of L.S.T., 286 Ga.App. 638, 649 S.E.2d 841 (2007), Smith v. Soligon, 254 Ga.App. 172, 173(2), 561 S.E.2d 850 (2002).

Order	• Must explicitly state which standard was used & contain findings of fact & conclusions of law to support the legitimation decision, Jones v. Smith, 250 Ga. App. 486 (2001) • Case will be remanded by Court of appeals for failure of Juvenile Court to make explicit findings of which test was applied & the basis for application of the test
Objections	Mother Child Attorney – maybe DFCS? Maybe if DFCS is the legal custodian at the time of the Legitimation Petition
Decision Points	• Has father abandoned opportunity interest? What are the elements of the father's abandonment of his opportunity interest? • Is legitimation in child's best interest? Is the father "unfit" • If older child, discuss name change issue • DNA test, always a good idea
Annulment of Legitimation	**§ 31-10-13.1. Certified Copy Of Order Of Legitimation** (a) For each legitimation, annulment of legitimation, and amendment of an order of legitimation decreed by a court of competent jurisdiction in this state, the clerk of the court shall not later than the fifteenth day of each calendar month or more frequently, as directed by the state registrar, forward to the state registrar a certified copy of each order of legitimation, annulment of legitimation, and amendment of an order of legitimation which was entered in the preceding month. Each order of legitimation, annulment of legitimation, and amendment of an order of legitimation shall comply with paragraph (2) of subsection (c) of Code Section 31-10-23. (b) When the state registrar receives a certified copy of the order of legitimation, annulment of legitimation, or amendment of an order of legitimation of a person born outside this state, the state registrar shall forward such certified copy of the order to the state registrar in the indicated state of birth.

Practice Points

- Legitimation may be unnecessary if there is a prior paternity determination in a child support court order or an administrative legitimation, but name change, custody, visitation & parenting time may still be an issue which legitimation can address
- following legitimation father must go to Vital Statistics & get new birth certificate with name change & his name added
- legitimation does not change child custody
- DFCS may have information if mother has ever named someone else as the father

Administrative Legitimation - Voluntary acknowledgment of legitimation
OCGA 19-7-21.1

Provides for a father to legitimate through a voluntary acknowledgement of legitimation under specified circumstances:

- Prior to the child's first birthday
- Both the mother & father have freely agreed, consented, and signed a **voluntary acknowledgment of paternity & an acknowledgment of legitimation** which have not been rescinded
- **Voluntary acknowledgment of paternity & an acknowledgment of legitimation** will NOT be recognized if:
  (1) The mother was married to another man when the child was born
  (2) The mother was married to another man at any time within the usual period of gestation
  (3) There is another legal father
  (4) The mother has voluntarily and in writing surrendered all of her parental rights pursuant to the provisions of subsection (a) of any of Code Section 19-8-4, 19-8-5, 19-8-6, or 19-8-7 and has not withdrawn her surrender as permitted by the provisions of subsection (b) of Code Section 19-8-9

or the mother's parental rights have been judicially terminated by a court of competent jurisdiction or an action to terminate such rights has been initiated and is pending

(5) The mother has signed a voluntary acknowledgment of legitimation with another man

(6) The child is one year of age or older

- If any of the above are applicable then the father's only method to establish his legal relationship with the child would be through the Petition to Legitimate, O.C.G.A.§ 19-7-22
- Unlike a Legitimation , under the voluntary acknowledgment procedure, the father does NOT establish custody or visitation through this action and he must still seek a judicial determination for visits or custody.

O.C.G.A. Code Sections

15-11-28 (e) Jurisdiction of Juvenile Court.

(e) Concurrent jurisdiction as to legitimation petitions.

(1) The juvenile court shall have concurrent jurisdiction to hear any legitimation petition transferred to the juvenile court by proper order of the superior court.

(2) The juvenile court shall have jurisdiction to hear any legitimation petition filed pursuant to Code Section 19-7-22 as to a child with respect to whom a deprivation proceeding is pending in the juvenile court at the time the legitimation petition is filed.

(3) Notwithstanding the provisions of paragraphs (1) and (2) of this subsection, after a petition for legitimation is granted, if a demand for a jury trial as to support has been properly filed by either parent, then the case shall be transferred to superior court for such jury trial.

19-7-20 Legitimacy defined - disproof - legitimation by marriage.

(a) All children born in wedlock or within the usual period of gestation thereafter are legitimate.

(b) The legitimacy of a child born as described in subsection (a) of this Code section may be disputed. Where possibility of access exists, the strong presumption is in favor of legitimacy and the proof must be clear to establish the contrary. If pregnancy existed at the time of the marriage and a divorce is sought and obtained on that ground, the child, although born in wedlock, will not be legitimate.

(c) The marriage of the mother and reputed father of a child born out of wedlock and the recognition by the father of the child as his shall render the child legitimate; in such case the child shall immediately take the surname of his father.

19-7-21 Legitimacy of child conceived by artificial insemination.

All children born within wedlock or within the usual period of gestation thereafter who have been conceived by means of artificial insemination are irrebuttably presumed legitimate if both spouses have consented in writing to the use and administration of artificial insemination.

19-7-21.1 Voluntary acknowledgment of legitimation.

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

(1) "Acknowledgment of legitimation" means a written statement contained in a voluntary acknowledgment of paternity form indicating that a mother and father of a child born out of wedlock have freely agreed and consented that the child may be legitimated.

(2) "Legal father" means a male who:

(A) Has legally adopted a child;

(B) Was married to the biological mother of that child at the time the child was conceived or was born, unless such paternity was disproved by a final order pursuant to Article 3 of this chapter;

(C) Married the legal mother of the child after the child was born and recognized the child as his own, unless such paternity was disproved by a final order pursuant to Article 3 of this chapter;

(D) Has been determined to be the father by a final paternity order pursuant to Article 3 of this chapter;

(E) Has legitimated the child by a final order pursuant to Code Section 19-7-22; or

(F) Has legitimated a child pursuant to this Code section

and who has not surrendered or had terminated his rights to the child.

(b) Prior to the child's first birthday, a father of a child born out of wedlock may render his relationship with the child legitimate when both the mother and father have freely agreed, consented, and signed a voluntary acknowledgment of paternity and an acknowledgment of legitimation which have been made and

have not been rescinded pursuant to Code Section 19-7-46.1. The State Office of Vital Records shall provide notice, in writing, of the alternatives to, legal consequences of, and the rights and responsibilities of signing a voluntary acknowledgment of legitimation.
(c) Voluntary acknowledgment of legitimation shall not be recognized if:
(1) The mother was married to another man when the child was born;
(2) The mother was married to another man at any time within the usual period of gestation;
(3) There is another legal father;
(4) The mother has voluntarily and in writing surrendered all of her parental rights pursuant to the provisions of subsection (a) of any of Code Section 19-8-4, 19-8-5, 19-8-6, or 19-8-7 and has not withdrawn her surrender as permitted by the provisions of subsection (b) of Code Section 19-8-9 or the mother's parental rights have been judicially terminated by a court of competent jurisdiction or an action to terminate such rights has been initiated and is pending;
(5) The mother has signed a voluntary acknowledgment of legitimation with another man; or
(6) The child is one year of age or older.
(d) If any of the circumstances described in subsection (c) of this Code section exists, the provisions of Code Section 19-7-22 shall be the only method of legitimation.
(e) Voluntary acknowledgment of legitimation shall not authorize the father to receive custody or visitation until there is a judicial determination of custody or visitation.
(f) It shall be unlawful to make a false statement on a voluntary acknowledgment of legitimation, and the making of a false statement shall be punishable as an act of false statements and writings under Code Section 16-10-20.
(g) Where a voluntary acknowledgment of paternity is timely rescinded and includes a voluntary acknowledgment of legitimation, the legitimation shall also be deemed rescinded.

19-7-22 Petition for legitimation of child.
(a) A father of a child born out of wedlock may render his relationship with the child legitimate by petitioning the superior court of the county of the residence of the child's mother or other party having legal custody or guardianship of the child; provided, however, that if the mother or other party having legal custody or guardianship of the child resides outside the state or cannot, after due diligence, be found within the state, the petition may be filed in the county of the father's residence or the county of the child's residence. If a petition for the adoption of the child is pending, the father shall file the petition for legitimation in the county in which the adoption petition is filed.
(b) The petition shall set forth the name, age, and sex of the child, the name of the mother, and, if the father desires the name of the child to be changed, the new name. If the mother is alive, she shall be named as a party and shall be served and provided an opportunity to be heard as in other civil actions under Chapter 11 of Title 9, the "Georgia Civil Practice Act."
(c) Upon the presentation and filing of the petition, the court may pass an order declaring the father's relationship with the child to be legitimate, and that the father and child shall be capable of inheriting from each other in the same manner as if born in lawful wedlock and specifying the name by which the child shall be known.
(d) A legitimation petition may be filed, pursuant to paragraph (2) of subsection (e) of Code Section 15-11-28, in the juvenile court of the county in which a deprivation proceeding regarding the child is pending.
(e) Except as provided by subsection (f) of this Code section, the court shall upon notice to the mother further establish such duty as the father may have to support the child, considering the facts and circumstances of the mother's obligation of support and the needs of the child as provided under Code Section 19-6-15.
(f) After a petition for legitimation is granted, if a demand for a jury trial as to support has been properly filed by either parent, then the case shall be transferred from juvenile court to superior court for such jury trial.
(f.1) The petition for legitimation may also include claims for visitation, parenting time, or custody. If such claims are raised in the legitimation action, the court may order, in addition to legitimation, visitation, parenting time, or custody based on the best interests of the child standard. In a case involving allegations of family violence, the provisions of paragraph (4) of subsection (a) of Code Section 19-9-3 shall also apply.
(g)(1) In any petition to establish paternity pursuant to paragraph (4) of subsection (a) of Code Section 19-7-43, the alleged father's response may assert a third-party action for the legitimation of the child born out

of wedlock. Upon the determination of paternity or if a voluntary acknowledgment of paternity has been made and has not been rescinded pursuant to Code Section 19-7-46.1, the court or trier of fact as a matter of law and pursuant to the provisions of Code Section 19-7-51 may enter an order or decree legitimating a child born out of wedlock, provided that such is in the best interest of the child. Whenever a petition to establish the paternity of a child is brought by the Department of Human Resources, issues of name change, visitation, and custody shall not be determined by the court until such time as a separate petition is filed by one of the parents or by the legal guardian of the child, in accordance with Code Section 19-11-8; if the petition is brought by a party other than the Department of Human Resources or if the alleged father seeks legitimation, the court may determine issues of name change, visitation, and custody in accordance with subsections (b) and (f.1) of this Code section. Custody of the child shall remain in the mother unless or until a court order is entered addressing the issue of custody.
(2) In any voluntary acknowledgment of paternity which has been made and has not been rescinded pursuant to Code Section 19-7-46.1, when both the mother and father freely agree and consent, the child may be legitimated by the inclusion of a statement indicating a voluntary acknowledgment of legitimation.

19-7-23 Child born out of wedlock defined.
The term "child born out of wedlock" means:
(1) A child whose parents are not married when that child is born or who do not subsequently intermarry;
(2) A child who is the issue of adulterous intercourse of the wife during wedlock; or
(3) A child who is not legitimate within the meaning of Code Section 19-7-20.

19-7-24 Parental obligation to out-of-wedlock child.
It is the joint and several duty of each parent of a child born out of wedlock to provide for the maintenance, protection, and education of the child until the child reaches the age of 18 or becomes emancipated, except to the extent that the duty of one parent is otherwise or further defined by court order.

19-7-25 Parental power over out-of-wedlock child.
Only the mother of a child born out of wedlock is entitled to custody of the child, unless the father legitimates the child as provided in Code Section 19-7-21.1 or 19-7-22. Otherwise, the mother may exercise all parental power over the child.

19-7-27 Hospital program to establish paternity.
Upon the birth of a child to an unmarried woman in a public or private hospital, the hospital that provides perinatal services shall:
(1) Provide the child's mother and alleged father if he is present at the hospital the opportunity to acknowledge paternity consistent with the requirements of Code Section 19-7-46.1; and
(2) Provide to the mother and alleged father:
(A) Written materials about paternity establishment;
(B) The forms necessary to voluntarily acknowledge paternity;
(C) A written description of the rights and responsibilities of acknowledging paternity; and
(D) The opportunity, prior to discharge from the hospital, to speak with staff, either by telephone or in person, who are trained to clarify information and answer questions about paternity establishment.

19-7-46.1 Birth certificate as evidence of paternity.
(a) The appearance of the name or social security account number of the father, entered with his written consent, on the certificate of birth or a certified copy of such certificate or records on which the name of the alleged father was entered with his written consent from the vital records department of another state or the registration of the father, entered with his written consent, in the putative father registry of this state, pursuant to subsection (d) of Code Section 19-11-9, shall constitute a prima-facie case of establishment of paternity and the burden of proof shall shift to the putative father to rebut such in a proceeding for the determination of paternity.
(b) When both the mother and father have signed a voluntary acknowledgment of paternity and the acknowledgment is recorded in the putative father registry established by subsection (d) of Code Section 19-11-9, the acknowledgment shall constitute a legal determination of paternity, subject to the right of any signatory to rescind the acknowledgment prior to the date of the support order, any other order

adjudicating paternity, or 60 days from the signing of the agreement, whichever is earlier. Recording such information in the putative father registry shall constitute a legal determination of paternity for purposes of establishing a future order for support, visitation privileges, and other matters under Code Section 19-7-51. Acknowledgment of paternity shall not constitute a legal determination of legitimation pursuant to Code Section 19-7-21.1 or 19-7-22.
(c) After the 60 day rescission period specified in subsection (b) of this Code section, the signed voluntary acknowledgment of paternity may be challenged in court only on the basis of fraud, duress, or material mistake of fact, with the burden of proof on the person challenging the acknowledgment. The legal responsibilities of any signatory, including child support obligations, arising from the acknowledgment may not be suspended during the challenge, except for good cause shown.

Chapter 17 Civil Practice Act & Discovery

Authority	**Uniform Rules For The Juvenile Courts Of Georgia, Rules 7.1 through 7.9** **O.C.G.A. § 9-11-26 through 9-11-37 – Discovery** **O.C.G.A. § 9-11-4 & § 9-11-5 - Service**
Purpose	At discretion of Juvenile Court Judge, allows for discovery in cases alleging deprivation, termination of parental rights & transfers from Superior Court
Timing	Request for discovery MUST be filed within 48 hours of petition filing when child is detained OR within 15 days if child not detained Time requirements may be modified upon showing of good cause
Requirements	• Any request for discovery must be in writing • State type & scope of discovery requested, timeframe for completion • Include rule nisi served not later than 3 days before nisi serve parents, attorneys, child or legal guardian, child advocate
Types	• Written interrogatories • Deposition • Request for admissions • Request for production of documents • Request for physical or mental exam of a parent, guardian, custodian or child & why necessary
Discovery Order	• Whether discovery allowed • Outline discovery allowed • Time for completion of discovery • Date & time for adjudication
Trial	To be heard within 7 days of discovery completion
Motion to Compel Discovery	Must be made prior to adjudication

Uniform Rules for The Juvenile Courts Of Georgia, Rule 7
7. DISCOVERY AND MOTIONS

7.1 When Discovery is Permitted. Discovery may be allowed in all cases where deprivation is alleged, or where the termination of parental rights is requested or in cases where matters of custody have been referred to the Juvenile Court by a Superior Court. Any discovery so permitted shall be at the discretion of the judge to whom the case is assigned, and any such discovery allowed shall be made in conformance with Article V of the Civil Practice Act, O.C.G.A. §§ 9-11-26 through 9-11-37, except as modified by these rules. Discovery in any case in which delinquency is alleged shall be as provided by O.C.G.A. § 15-11-75.

7.2 How Discovery May Be Made. Any request for discovery shall be made in writing and shall state with particularity the type of discovery requested.
If the request is for answers to written interrogatories, such request shall include the questions to be answered and include the name of the person or persons who are to respond to those interrogatories.
If the request is for the taking of a deposition, such request should name the person or persons who are to be deposed and their addresses, and such request should also include the subject matter areas which the deposition would embrace.
If the request is for admissions of a party to a proceeding, such request should include the exact admissions requested and the party to whom directed.
If the request is for production of documents, such request shall state the documents requested and the name of the individual from whom the documents are sought.

If the request is for physical or mental examination of a parent, guardian, custodian or child, such request shall state the name of the person or persons to be examined and the reason why such examination is necessary.
Rule Nisi. All written requests for discovery shall include a Rule Nisi order setting down a time and place for a hearing for the entry of an order by the court as to the scope of discov**ery to be allowed and the time for the completion of such discovery.**

Objections. Any and all objections to any of the requests for discovery so made shall be made at such hearing or all objections are waived unless otherwise allowed by discretion of the court.

Notice and Service. The written motion and notice of the hearing thereof shall be served not later than three (3) days, excluding weekends and holidays, before the time specified for the hearing, unless specifically ordered otherwise by the court on ex parte application for good cause shown. All requests for discovery shall be served as required by these rules upon all parties, including parents, child or legal custodian and any other person to whom the court directs, or their legal counsel, if so represented.

7.3 Time Periods. Any request for discovery must be filed within forty-eight (48) hours of the filing of the petition where the child is in detention. Otherwise, the request must be filed within fifteen (15) days of the filing of the petition. The court may modify these requirements upon a showing of good cause for the lack of filing within these time periods.
Any such discovery permitted shall be completed within fifteen (15) days of the date of the order permitting such discovery where the child is in detention. In all other cases, such discovery shall be completed within thirty (30) days from the date of the order permitting such discovery. These time periods may be either extended or abbreviated at the discretion of the court for legal cause shown. If the child is in detention and a request for discovery is made by any party, such request shall simultaneously act as request for a continuance as pertains to the time provisions of O.C.G.A. § 15-11-39(a) regarding time period for adjudicatory hearings. The adjudicatory hearing shall then be reset to be heard within seven (7) days, excluding weekends and holidays, of the date that such discovery is ordered to be completed by the court.

7.4 Hearing on the Motion. At the hearing set to determine whether discovery is to be allowed, the court shall enter an order outlining the discovery to be allowed and time for completion of such discovery and setting the date for the adjudicatory hearing.
Any motions for orders to compel discovery, requests for sanctions or request for expenses as a result thereof, shall be made to the judge issuing the original order allowing discovery. Any such motion shall be made prior to the adjudicatory hearing and in conformance with the procedures set out herein for filing motions.

7.5 Pretrial Procedure. Upon the motion of any party, or upon its own motion, the court shall direct the attorneys for the parties to appear before it for a conference to consider:
1. The simplification of the issues;
2. The necessity or desirability of amendments to the pleadings;
3. The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;
4. The limitation of the number of expert witnesses; and
5. Such other matters as may aid in the disposition of the action.

The court shall make an order which recites the action taken at the conference and the agreements made by the parties as to any of the matters considered and which limits the issue for trial to those not disposed of by admissions or agreements of counsel. The order, when entered, controls the subsequent course of the action unless modified at the trial to prevent manifest injustice.

7.6 Responsive Pleadings. Responsive pleadings in all proceedings before the Juvenile Court are permissible and encouraged. However, they are not mandatory. If filed, such responsive pleadings must be in writing and served upon all parties. Responsive pleadings may be filed any time prior to the adjudicatory hearing.

7.7 Continuances. Except as provided for in Rules 7.3 and 8.6, any request for continuance shall be made in conformance with O.C.G.A. § 9-10-150 et seq. through or on stipulation of counsel alone. Permission of the court is required for all continuances

7.8 Filing. All pleadings made pursuant to any proceeding of the Juvenile Court shall be filed with the clerk of Juvenile Court and stamped with the date and time of filing along with a certificate of service showing to whom copies have been served.

7.9 Other Motions. All other pretrial motions must be made in writing and filed not later than three (3) days, excluding weekends and holidays, before the adjudicatory hearing unless otherwise permitted by the court. If any such motions necessitate an evidentiary hearing, the procedures in Rule 7.2(c) concerning notice and service must be followed.

O.C.G.A. Code Sections

9-11-4 Process.
(a) Summons -- Issuance. Upon the filing of the complaint, the clerk shall forthwith issue a summons and deliver it for service. Upon request of the plaintiff, separate or additional summons shall issue against any defendants.
(b) Summons -- Form. The summons shall be signed by the clerk; contain the name of the court and county and the names of the parties; be directed to the defendant; state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address; and state the time within which this chapter requires the defendant to appear and file appropriate defensive pleadings with the clerk of the court, and shall notify the defendant that in case of the defendant's failure to do so judgment by default will be rendered against him or her for the relief demanded in the complaint.
(c) Summons -- By whom served. Process shall be served by the sheriff of the county where the action is brought or where the defendant is found, or by such sheriff's deputy, or by the marshal or sheriff of the court, or by such official's deputy, or by any citizen of the United States specially appointed by the court for that purpose, or by someone who is not a party and is not younger than 18 years of age and has been appointed as a permanent process server by the court in which the action is brought. Where the service of process is made outside of the United States, after an order of publication, it may be served either by any citizen of the United States or by any resident of the country, territory, colony, or province who is specially appointed by the court for that purpose. When service is to be made within this state, the person making such service shall make the service within five days from the time of receiving the summons and complaint; but failure to make service within the five-day period will not invalidate a later service.
(d) Waiver of service.
(1) A defendant who waives service of a summons does not thereby waive any objection to the venue or to the jurisdiction of the court over the person of the defendant.
(2) Upon receipt of notice of an action in the manner provided in this subsection, the following defendants have a duty to avoid unnecessary costs of serving the summons:
(A) A corporation or association that:
(i) Is subject to service under paragraph (1) or (2) of subsection (e) of this Code section; and
(ii) Receives notice of such action by an agent other than the Secretary of State; and
(B) A natural person who:
(i) Is not a minor; and
(ii) Has not been judicially declared to be of unsound mind or incapable of conducting his or her own affairs.
(3) To avoid costs, the plaintiff may notify such a defendant of the commencement of the action and request that the defendant waive service of a summons. The notice and request shall:
(A) Be in writing and shall be addressed directly to the defendant, if an individual, or else to an officer or managing or general agent or other agent authorized by appointment to receive service of process for a defendant subject to service under paragraph (1) or (2) of subsection (e) of this Code section;
(B) Be dispatched through first-class mail or other reliable means;

(C) Be accompanied by a copy of the complaint and shall identify the court in which it has been filed;

(D) Make reference to this Code section and shall inform the defendant, by means of the text prescribed in subsection (l) of this Code section, of the consequences of compliance and of failure to comply with the request;

(E) Set forth the date on which the request is sent;

(F) Allow the defendant a reasonable time to return the waiver, which shall be at least 30 days from the date on which the request is sent, or 60 days from that date if the defendant is addressed outside any judicial district of the United States; and

(G) Provide the defendant with an extra copy of the notice and request, as well as a prepaid means of compliance in writing.

(4) If a defendant located within the United States that is subject to service inside or outside the state under this Code section fails to comply with a request for a waiver made by a plaintiff located within the United States, the court shall impose the costs subsequently incurred in effecting service on the defendant unless good cause for the failure is shown.

(5) A defendant that, before being served with process, returns a waiver so requested in a timely manner is not required to serve an answer to the complaint until 60 days after the date on which the request for waiver of service was sent, or 90 days after that date if the defendant was addressed outside any judicial district of the United States.

(6) When the plaintiff files a waiver of service with the court, the action shall proceed, except as provided in paragraph (5) of this subsection, as if a summons and complaint had been served at the time of filing the waiver, and no proof of service shall be required.

(7) The costs to be imposed on a defendant under paragraph (4) of this subsection for failure to comply with a request to waive service of summons shall include the costs subsequently incurred in effecting service, together with the costs, including a reasonable attorney's fee, of any motion required to collect the costs of service.

(e) Summons -- Personal service. Except for cases in which the defendant has waived service, the summons and complaint shall be served together. The plaintiff shall furnish the clerk of the court with such copies as are necessary. Service shall be made by delivering a copy of the summons attached to a copy of the complaint as follows:

(1) If the action is against a corporation incorporated or domesticated under the laws of this state or a foreign corporation authorized to transact business in this state, to the president or other officer of the corporation, secretary, cashier, managing agent, or other agent thereof, provided that when for any reason service cannot be had in such manner, the Secretary of State shall be an agent of such corporation upon whom any process, notice, or demand may be served. Service on the Secretary of State of any such process, notice, or demand shall be made by delivering to and leaving with him or her or with any other person or persons designated by the Secretary of State to receive such service a copy of such process, notice, or demand, along with a copy of the affidavit to be submitted to the court pursuant to this Code section. The plaintiff or the plaintiff's attorney shall certify in writing to the Secretary of State that he or she has forwarded by registered mail or statutory overnight delivery such process, service, or demand to the last registered office or agent listed on the records of the Secretary of State, that service cannot be effected at such office, and that it therefore appears that the corporation has failed either to maintain a registered office or to appoint a registered agent in this state. Further, if it shall appear from such certification that there is a last known address of a known officer of the corporation outside the state, the plaintiff shall, in addition to and after such service upon the Secretary of State, mail or cause to be mailed to the known officer at the address by registered or certified mail or statutory overnight delivery a copy of the summons and a copy of the complaint. Any such service by certification to the Secretary of State shall be answerable not more than 30 days from the date the Secretary of State receives such certification;

(2) If the action is against a foreign corporation or a nonresident individual, partnership, joint-stock company, or association, doing business and having a managing or other agent, cashier, or secretary within this state, to such agent, cashier, or secretary or to an agent designated for service of process;

(3) If against a minor, to the minor, personally, and also to such minor's father, mother, guardian, or duly appointed guardian ad litem unless the minor is married, in which case service shall not be made on the minor's father, mother, or guardian;

(4) If against a person residing within this state who has been judicially declared to be of unsound mind or incapable of conducting his or her own affairs and for whom a guardian has been appointed, to the

person and also to such person's guardian and, if there is no guardian appointed, then to his or her duly appointed guardian ad litem;

(5) If against a county, municipality, city, or town, to the chairman of the board of commissioners, president of the council of trustees, mayor or city manager of the city or to an agent authorized by appointment to receive service of process. If against any other public body or organization subject to an action, to the chief executive officer or clerk thereof;

(6) If the principal sum involved is less than $200.00 and if reasonable efforts have been made to obtain personal service by attempting to find some person residing at the most notorious place of abode of the defendant, then by securely attaching the service copy of the complaint in a conspicuously marked and waterproof packet to the upper part of the door of the abode and on the same day mailing by certified or registered mail or statutory overnight delivery an additional copy to the defendant at his or her last known address, if any, and making an entry of this action on the return of service; or

(7) In all other cases to the defendant personally, or by leaving copies thereof at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, or by delivering a copy of the summons and complaint to an agent authorized by appointment or by law to receive service of process.

(f) Summons -- Other service.

(1) Service by publication.

(A) General. When the person on whom service is to be made resides outside the state, or has departed from the state, or cannot, after due diligence, be found within the state, or conceals himself or herself to avoid the service of the summons, and the fact shall appear, by affidavit, to the satisfaction of the judge or clerk of the court, and it shall appear, either by affidavit or by a verified complaint on file, that a claim exists against the defendant in respect to whom the service is to be made, and that he or she is a necessary or proper party to the action, the judge or clerk may grant an order that the service be made by the publication of summons, provided that when the affidavit is based on the fact that the party on whom service is to be made resides outside the state, and the present address of the party is unknown, it shall be a sufficient showing of such fact if the affiant shall state generally in the affidavit that at a previous time such person resided outside this state in a certain place (naming the place and stating the latest date known to affiant when the party so resided there); that such place is the last place in which the party resided to the knowledge of affiant; that the party no longer resides at the place; that affiant does not know the present place of residence of the party or where the party can be found; and that affiant does not know and has never been informed and has no reason to believe that the party now resides in this state; and, in such case, it shall be presumed that the party still resides and remains outside the state, and the affidavit shall be deemed to be a sufficient showing of due diligence to find the defendant. This Code section shall apply to all manner of civil actions, including those for divorce.

(B) Property. In any action which relates to, or the subject of which is, real or personal property in this state in which any defendant, corporate or otherwise, has or claims a lien or interest, actual or contingent, or in which the relief demanded consists wholly or in part of excluding such defendant from any interest therein, where the defendant resides outside the state or has departed from the state, or cannot, after due diligence, be found within the state, or conceals himself or herself to avoid the service of summons, the judge or clerk may make an order that the service be made by publication of summons. The service by publication shall be made in the same manner as provided in all cases of service by publication.

(C) Publication. When the court orders service by publication, the clerk shall cause the publication to be made in the paper in which sheriff's advertisements are printed, four times within the ensuing 60 days, publications to be at least seven days apart. The party obtaining the order shall, at the time of filing, deposit the cost of publication. The published notice shall contain the name of the parties plaintiff and defendant, with a caption setting forth the court, the character of the action, the date the action was filed, the date of the order for service by publication, and a notice directed and addressed to the party to be thus served, commanding him or her to file with the clerk and serve upon the plaintiff's attorney an answer within 60 days of the date of the order for service by publication and shall bear teste in the name of the judge and shall be signed by the clerk of the court. Where the residence or abiding place of the absent or nonresident party is known, the party obtaining the order shall advise the clerk thereof; and it shall be the duty of the clerk, within 15 days after filing of the order for service by publication, to enclose, direct, stamp, and mail a copy of the notice, together with a copy of the order for service by publication and complaint, if any, to the party named in the order at his or her last known address, if any, and make an entry of this action on the complaint or other pleadings filed in the case. The copy of the notice to be mailed to the

nonresident shall be a duplicate of the one published in the newspaper but need not necessarily be a copy of the newspaper itself. When service by publication is ordered, personal service of a copy of the summons, complaint, and order of publication outside the state in lieu of publication shall be equivalent to serving notice by publication and to mailing when proved to the satisfaction of the judge or otherwise. The defendant shall have 30 days from the date of such personal service outside the state in which to file defensive pleadings.

(2) Personal service outside the state. Personal service outside the state upon a natural person may be made: (A) in any action where the person served is a resident of this state, and (B) in any action affecting specific real property or status, or in any other proceeding in rem without regard to the residence of the person served. When such facts shall appear, by affidavit, to the satisfaction of the court and it shall appear, either by affidavit or by a verified complaint on file, that a claim is asserted against the person in respect to whom the service is to be made, and that he or she is a necessary or proper party to the action, the court may grant an order that the service be made by personal service outside the state. Such service shall be made by delivering a copy of the process together with a copy of the complaint in person to the persons served.

(3) Service upon persons in a foreign country. Unless otherwise provided by law, service upon a person from whom a waiver has not been obtained and filed, other than an infant or an incompetent person, may be effected in a place not within the United States:

(A) By any internationally agreed means reasonably calculated to give notice, such as those means authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;

(B) If there is no internationally agreed means of service or the applicable international agreement allows other means of service, provided that service is reasonably calculated to give notice:

(i) In the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction;

(ii) As directed by the foreign authority in response to a letter rogatory or letter of request; or

(iii) Unless prohibited by the law of the foreign country, by:

(I) Delivery to the person of a copy of the summons and the complaint; or

(II) Any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the party to be served; or

(C) By other means not prohibited by international agreement as may be directed by the court.

(g) Territorial limits of effective service. All process may be served anywhere within the territorial limits of the state and, when a statute so provides, beyond the territorial limits of the state.

(h) Return. The person serving the process shall make proof of service thereof to the court promptly and, in any event, within the time during which the person served must respond to the process. Proof of service shall be as follows:

(1) If served by a sheriff or marshal, or such official's deputy, the affidavit or certificate of the sheriff, marshal, or deputy;

(2) If by any other proper person, such person's affidavit;

(3) In case of publication, the certificate of the clerk of court certifying to the publication and mailing; or

(4) The written admission or acknowledgment of service by the defendant.

In the case of service otherwise than by publication, the certificate or affidavit shall state the date, place, and manner of service. Failure to make proof of service shall not affect the validity of the service.

(i) Amendment. At any time in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

(j) Alternative service. The methods of service provided in this Code section are cumulative and may be utilized with, after, or independently of other methods of service. Whenever a statute provides for another method of service, service may be made under the circumstances and in the manner prescribed by the statute or under any other methods prescribed in this Code section. The provisions for service by publication provided in this Code section shall apply in any action or proceeding in which service by publication may be authorized by law; and, where by law special provision is made for service by publication, the procedure for such service by publication provided in this Code section may be utilized in lieu thereof. In all cases or special proceedings where the requirements or procedure for service, or both, are not prescribed by law and in any situation where the provisions therefor are not clear or certain, the court may prescribe service according to the exigencies of each case, consistent with the Constitution.

(k) Service in probate courts and special statutory proceedings. The methods of service provided in this Code section may be used as alternative methods of service in proceedings in the probate courts and in any other special statutory proceedings and may be used with, after, or independently of the method of service specifically provided for in any such proceeding; and, in any such proceeding, service shall be sufficient when made in accordance with the statutes relating particularly to the proceeding or in accordance with this Code section.

(l) Forms.

NOTICE OF LAWSUIT AND REQUEST FOR WAIVER OF SERVICE OF SUMMONS

TO: (Name of individual defendant or name of officer or agent of corporate defendant) as (title, or other relationship of individual to corporate defendant) of (name of corporate defendant to be served, if any)

A lawsuit has been commenced against you (or the entity on whose behalf you are addressed). A copy of the complaint is attached to this notice. The complaint has been filed in the (court named on the complaint) for the State of Georgia in and for the County of (county) and has been assigned (case number of action).

This is not a formal summons or notification from the court, but rather my request pursuant to Code Section 9-11-4 of the Official Code of Georgia Annotated that you sign and return the enclosed Waiver of Service in order to save the cost of serving you with a judicial summons and an additional copy of the complaint. The cost of service will be avoided if I receive a signed copy of the waiver within 30 days (or 60 days if located outside any judicial district of the United States) after the date designated below as the date on which this Notice of Lawsuit and Request for Waiver of Service of Summons is sent. I enclose a stamped and addressed envelope (or other means of cost-free return) for your use. An extra copy of the Waiver of Service is also attached for your records. YOU ARE ENTITLED TO CONSULT WITH YOUR ATTORNEY REGARDING THIS MATTER.

If you comply with this request and return the signed Waiver of Service, the waiver will be filed with the court and no summons will be served on you. The action will then proceed as if you had been served on the date the waiver is filed except that you will not be obligated to answer or otherwise respond to the complaint within 60 days from the date designated below as the date on which this notice is sent (or within 90 days from that date if your address is not in any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Georgia Rules of Civil Procedure and then, to the extent authorized by those rules, I will ask the court to require you (or the party on whose behalf you are addressed) to pay the full cost of such service. In that connection, please read the statement concerning the duty of parties to avoid unnecessary costs of service of summons, which is set forth on the Notice of Duty to Avoid Unnecessary Costs of Service of Summons enclosed herein.

I affirm that this Notice of Lawsuit and Request for Waiver of Service of Summons is being sent to you on behalf of the Plaintiff on this _____ day of _____ _____.

Signature of plaintiff's attorney

or

Unrepresented plaintiff

WAIVER OF SERVICE OF SUMMONS

To: (Name of plaintiff's attorney or unrepresented plaintiff)

I acknowledge receipt of your request that I waive service of a summons in the action of (caption of action), which is case number (docket number) in the (name of court) of the State of Georgia in and for the County of (county). I have also received a copy of the complaint in the action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me. I understand that I am entitled to consult with my own attorney regarding the consequences of my signing this waiver.

I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by the Georgia Rules of Civil Procedure.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me (or the entity on whose behalf I am acting) if an answer is not served upon you within 60 days after the date this waiver was sent, or within 90 days after that date if the request for the waiver was sent outside the United States.

This _____ day of _____, _____.

(Signed)
(Printed or typed name of defendant)
as (title)
of (name of corporate defendant, if any)
NOTICE OF DUTY TO AVOID UNNECESSARY COSTS OF SERVICE OF SUMMONS

Subsection (d) of Code Section 9-11-4 of the Official Code of Georgia Annotated requires certain parties to cooperate in saving unnecessary costs of service of the summons and the pleading. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of a summons, fails to do so will be required to bear the cost of such service unless good cause be shown for such defendant's failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of the summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must, within the time specified on the waiver form, serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and also must file a signed copy of the response with the court. If the answer is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer than if the summons had been actually served when the request for waiver of service was received.

9-11-5 Service and filing after filing original complaint.

(a) Service -- When required. Except as otherwise provided in this chapter, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, and similar paper shall be served upon each of the parties. However, the failure of a party to file pleadings in an action shall be deemed to be a waiver by him or her of all notices, including notices of time and place of trial and entry of judgment, and all service in the action, except service of pleadings asserting new or additional claims for relief, which shall be served as provided by subsection (b) of this Code section.

(b) Same -- How made. Whenever under this chapter service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party himself is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by leaving it with the clerk of the court. As used in this Code section, the term "delivery of a copy" means handing it to the attorney or to the party, or leaving it at his office with his clerk or other person in charge thereof or, if the office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing. Proof of service may be made by certificate of an attorney or of his employee, by written admission, by affidavit, or by other proof satisfactory to the court. Failure to make proof of service shall not affect the validity of service.

(c) Same -- Numerous defendants. In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants, and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties, and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

(d) Filing. All papers after the complaint required to be served upon a party shall be filed with the court within the time allowed for service.

(e) "Filing with the court" defined. The filing of pleadings and other papers with the court as required by this chapter shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk.

9-11-26

(a) *Discovery methods.* Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property for inspection and other purposes; physical and mental examinations; and requests for admission. Unless the court orders otherwise under subsection (c) of this Code section, the frequency of use of these methods is not limited.
(b) *Scope of discovery.* Unless otherwise limited by order of the court in accordance with this chapter, the scope of discovery is as follows:
(1) IN GENERAL. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence;
(2) INSURANCE AGREEMENTS. A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this paragraph, an application for insurance shall not be treated as part of an insurance agreement;
(3) TRIAL PREPARATION; MATERIALS. Subject to paragraph (4) of this subsection, a party may obtain discovery of documents and tangible things otherwise discoverable under paragraph (1) of this subsection and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including his attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation. A party may obtain, without the required showing, a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain, without the required showing, a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. Paragraph (4) of subsection (a) of Code Section 9-11-37 applies to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a 'statement previously made' is (A) a written statement signed or otherwise adopted or approved by the person making it, or (B) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded; and
(4) TRIAL PREPARATION; EXPERTS. Discovery of facts known and opinions held by experts, otherwise discoverable under paragraph (1) of this subsection and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:
A)(i) A party may, through interrogatories, require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.
(ii) A party may obtain discovery under Code Section 9-11-30, 9-11-31, or 9-11-34 from any expert described in this paragraph, the same as any other witness, but the party obtaining discovery of an expert hereunder must pay a reasonable fee for the time spent in responding to discovery by that expert, subject to the right of the expert or any party to obtain a determination by the court as to the reasonableness of the fee so incurred;
(B) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in subsection (b) of Code Section 9-11-

35 or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means; and
(C) Unless manifest injustice would result:
(i) The court shall require the party seeking discovery to pay the expert a reasonable fee for time spent in responding to discovery under subparagraph (B) of this paragraph; and
(ii) With respect to discovery obtained under division (ii) of subparagraph (A) of this paragraph, the court may require, and with respect to discovery obtained under subparagraph (B) of this paragraph the court shall require, the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.
(c) *Protective orders.* Upon motion by a party or by the person from whom discovery is sought and for good cause shown, the court in which the action is pending or, alternatively, on matters relating to a deposition, the court in the county where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:
(1) That the discovery not be had;
(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;
(3) That the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;
(4) That certain matters not be inquired into or that the scope of the discovery be limited to certain matters;
(5) That discovery be conducted with no one present except persons designated by the court;
(6) That a deposition, after being sealed, be opened only by order of the court;
(7) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; or
(8) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court. If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. Paragraph (4) of subsection (a) of Code Section 9-11-37 applies to the award of expenses incurred in relation to the motion.

(d) *Sequence and timing of discovery.* Unless the court, upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence; and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(e) *Supplementation of responses.* A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his response to include information thereafter acquired, except as follows:

(1) A party is under a duty seasonably to supplement his response with respect to any question directly addressed to:

(A) The identity and location of persons having knowledge of discoverable matters; and

(B) The identity of each person expected to be called as an expert witness at trial, the subject matter on which he is expected to testify, and the substance of his testimony.

(2) A party is under a duty seasonably to amend a prior response if he obtains information upon the basis of which:

(A) He knows that the response was incorrect when made; or

(B) He knows that the response, though correct when made, is no longer true and the circumstances are such that a failure to amend the response is, in substance, a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

9-11-27

(a) *Before action.*

(1) PETITION. A person who desires to perpetuate such person's own testimony or that of another person regarding any matter that may be cognizable in any court may file a verified petition in the Superior Court of the county where the witness resides. The petition shall be entitled in the

name of the petitioner and shall show that the petitioner expects to be a party to litigation but is presently unable to bring it or cause it to be brought, the subject matter of the expected action and the petitioner's interest therein, the facts which the petitioner desires to establish by the proposed testimony and the petitioner's reasons for desiring to perpetuate it, the names or a description of the persons the petitioner expects will be adverse parties and their addresses so far as known, and the names and addresses of the persons to be examined and the substance of the testimony which the petitioner expects to elicit from each, and shall ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition, for the purpose of perpetuating their testimony.

(2) NOTICE AND SERVICE. The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the court at a time and place named therein for the order described in the petition. At least 20 days before the date of hearing the notice shall be served either within or outside the county in the manner provided for service of summons; but, if such service cannot with due diligence be made upon any expected adverse party named in the petition, the court may make such order as is just for service by publication or otherwise and shall appoint, for persons not served, an attorney who shall represent them and, in case they are not otherwise represented, shall cross-examine the deponent. The court may make such order as is just requiring the petitioner to pay a reasonable fee to an attorney so appointed. If any expected adverse party is a minor or an incompetent person and does not have a general guardian, the court shall appoint a guardian ad litem.

(3) ORDER AND EXAMINATION. If the court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written interrogatories. The depositions may then be taken by a certified court reporter, or as otherwise provided by the rules of the Board of Court Reporting, in accordance with this chapter; and the court may make orders of the character provided for by Code Sections 9-11-34 and 9-11-35. For the purpose of applying this chapter to depositions for perpetuating testimony, each reference therein to the court in which the action is pending shall be deemed to refer to the court in which the petition for such deposition was filed.

(4) USE OF DEPOSITION. If a deposition to perpetuate testimony is taken under this Code section or if, although not so taken, it would be otherwise admissible under the laws of this state, it may be used in any action involving the same parties and the same subject matter subsequently brought.

(b) *Pending appeal.* If an appeal has been taken from a judgment of a trial court or before the taking of an appeal if the time therefore has not expired, the court in which the judgment was rendered may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in the trial court. In such case the party who desires to perpetuate the testimony may make a motion in the trial court for leave to take the depositions, upon the same notice and service thereof as if the action were pending in the court. The motion shall show the names and addresses of persons to be examined, the substance of the testimony which the movant expects to elicit from each, and the reasons for perpetuating their testimony. If the court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may make an order allowing the depositions to be taken and may make orders of the character provided for by Code Sections 9-11-34 and 9- 11-35; and thereupon the depositions may be taken before a certified court reporter, or as otherwise provided by the rules of the Board of Court Reporting, and used in the same manner and under the same conditions as are prescribed in this chapter for depositions taken in actions pending in court.

(c) *Perpetuation by action.* This Code section does not limit the power of a court to entertain an action to perpetuate testimony.

9-11-28 (a) *Within the United States and its possessions.* Within the United States or within a territory or insular possession subject to the dominion of the United States, depositions shall be taken before an officer authorized to administer oaths by the laws of the United States or by the laws of the place where the examination is held or before a court reporter appointed by the court in which the action is pending or, if within this state, before a certified court reporter or as otherwise provided

by the rules of the Board of Court Reporting. A person so appointed has power to administer oaths and take testimony.

(b) *In foreign countries.* In a foreign state or country depositions shall be taken on notice before a secretary of embassy or legation, consul general, consul, vice-consul, or consular agent of the United States, or before such person or officer as may be appointed by commission or under letters rogatory. A commission or letters rogatory shall be issued only when necessary or convenient, on application and notice, and on such terms and with such directions as are just and appropriate. Officers may be designated in notices or commissions either by name or by descriptive title and letters rogatory may be addressed 'To the Appropriate Judicial Authority in (here name the country).'

(c) *Disqualification for interest.* No deposition shall be taken before a court reporter who is a relative, employee, attorney, or counsel of any of the parties, or who is a relative or employee of such attorney or counsel, or who is financially interested in the action, excepting that a deposition may be taken before a court reporter who is a relative of a party or of an attorney or counsel of a party if all parties represented at the deposition enter their explicit consent to the same upon the record of the deposition.

9-11-29

Unless the court orders otherwise, the parties may, by written stipulation:

(1) Provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and, when so taken, may be used like other depositions; and

(2) Modify the procedures provided by this chapter for other methods of discovery.

9-11-29.1

(a) Depositions and other discovery material otherwise required to be filed with the court under this chapter shall not be required to be so filed unless:

(1) Required by local rule of court;

(2) Ordered by the court;

(3) Requested by any party to the action;

(4) Relief relating to discovery material is sought under this chapter and said material has not previously been filed under some other provision of this chapter, in which event copies of the material in dispute shall be filed by the movant contemporaneously with the motion for relief; or

(5) Such material is to be used at trial or is necessary to a pretrial or post-trial motion and said material has not previously been filed under some other provision of this chapter, in which event the portions to be used shall be filed with the clerk of the court at the outset of the trial or at the filing of the motion, insofar as their use can be reasonably anticipated by the parties having custody thereof, but a party attempting to file and use such material which was not filed with the clerk at the outset of the trial or at the filing of the motion shall show to the satisfaction of the court, before the court may authorize such filing and use, that sufficient reasons exist to justify that late filing and use and that the late filing and use will not constitute surprise or manifest injustice to any other party in the proceedings.

(b) Until such time as discovery material is filed under paragraphs (1) through (5) of subsection (a) of this Code section, the original of all depositions shall be retained by the party taking the deposition and the original of all other discovery material shall be retained by the party requesting such material, and the person thus retaining the deposition or other discovery material shall be the custodian thereof.

9-11-30

(a) *When depositions may be taken.* After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of court, granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition prior to the expiration of 30 days after service of the summons and complaint upon any defendant or service made under subsection (f) of Code Section 9-11-4, except that leave is not required if a defendant has served a notice of taking deposition or otherwise sought discovery or if special notice is given as provided in paragraph (2) of subsection (b) of this Code section. The attendance of witnesses may be compelled by subpoena as provided in Code Section 9-11-45. The deposition of a person

confined in a penal institution may be taken only by leave of court on such terms as the court prescribes.

(b) *Notice of examination.*

(1) GENERAL REQUIREMENTS. A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition, the means by which the testimony shall be recorded, and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person to be examined or the particular class or group to which he or she belongs. If a subpoena for the production of documentary and tangible evidence is to be served on the person to be examined, the designation of the materials to be produced, as set forth in the subpoena, shall be attached to, or included in, the notice.

(2) SPECIAL NOTICE. Leave of court is not required for the taking of a deposition by plaintiff if the notice:

(A) States that the person to be examined is about to go out of the county where the action is pending and more than 150 miles from the place of trial, or is about to go out of the United States, or is bound on a voyage to sea, and will be unavailable for examination unless the deposition is taken before expiration of the 30 day period; and

(B) Sets forth facts to support the statement. The plaintiff's attorney shall sign the notice, and said attorney's signature constitutes a certification by him or her that, to the best of his or her knowledge, information, and belief, the statement and supporting facts are true. If a party shows that, when he or she was served with notice under this paragraph, he or she was unable through the exercise of diligence to obtain counsel to represent him or her at the taking of the deposition, the deposition may not be used against such party.

(3) TIME REQUIREMENTS. The court may, for cause shown, enlarge or shorten the time for taking the deposition.

(4) RECORDING OF DEPOSITION. Unless the court orders otherwise, the testimony at a deposition must be recorded by stenographic means, and may also be recorded by sound or sound and visual means in addition to stenographic means, and the party taking the deposition shall bear the costs of the recording. A deposition shall be conducted before an officer appointed or designated under Code Section 9-11-28. Upon motion of a party or upon its own motion, the court may issue an order designating the manner of recording, preserving, and filing of a deposition taken by nonstenographic means, which order may include other provisions to assure that the recorded testimony will be accurate and trustworthy.

Any party may arrange for a transcription to be made from the recording of a deposition taken by nonstenographic means. With prior notice to the deponent and other parties, any party may designate another method to record the deponent's testimony in addition to the methods specified by the person taking the deposition. The additional record or transcript shall be made at that party's expense unless the court otherwise orders. The appearance or demeanor of deponents or attorneys shall not be distorted through camera or sound-recording techniques. Notwithstanding the foregoing provisions of this paragraph, a deposition may be taken by telephone or other remote electronic means only upon the stipulation of the parties or by order of the court. For purposes of the requirements of this chapter, a deposition taken by telephone or other remote electronic means is taken in the state and at the place where the deponent is to answer questions.

(5) PRODUCTION OF DOCUMENTS AND THINGS. The notice to a party deponent may be accompanied by a request made in compliance with Code Section 9-11-34 for the production of documents and tangible things at the taking of the deposition. The procedure of Code Section 9-11-34 shall apply to the request.

(6) Deposition of organization. A party may, in his or her notice, name as the deponent a public or private corporation or a partnership or association or a governmental agency and designate with reasonable particularity the matters on which examination is requested. The organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which he or she will testify. The persons so designated shall testify as to matters known or reasonably available to the organization. This paragraph does not preclude taking a deposition by any other procedure authorized in this chapter.

(c) *Examination and cross-examination; record of examination; oath; objections.*

(1) Examination and cross-examination of witnesses may proceed as permitted at the trial under the rules of evidence. The authorized officer or court reporter before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under the direction and in the presence of the authorized officer or court reporter, record the testimony of the witness.

(2) All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition, and said party shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

(3) Unless otherwise ordered by the court or agreed by the parties, the officer shall retain the record of each deposition until the later of (A) five years after the date on which the deposition was taken, or (B) two years after the date of final disposition of the action for which the deposition was taken and any appeals of such action. The officer may preserve the record through storage of the original paper, notes, or recordings or an electronic copy of the notes, recordings, or the transcript on computer disks, cassettes, backup tape systems, optical or laser disk systems, or other retrieval systems.

(d) *Motion to terminate or limit examination.* At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or the court in the county where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition or may limit the scope and manner of the taking of the deposition as provided in subsection (c) of Code Section 9-11-26. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. Paragraph (4) of subsection (a) of Code Section 9-11-37 applies to the award of expenses incurred in relation to the motion.

(e) *Review by witness; changes; signing.* If requested by the deponent or a party before completion of the deposition, the deponent shall have 30 days after being notified by the officer that the transcript or recording is available in which to review the transcript or recording and, if there are changes in form or substance, to sign a statement reciting such changes and the reasons given by the deponent for making them. The officer shall indicate in the certificate prescribed by paragraph (1) of subsection (f) of this Code section whether any review was requested and, if so, shall append any changes made by the deponent during the period allowed. If the deposition is not reviewed and signed by the witness within 30 days of its submission to him or her, the officer shall sign it and state on the record that the deposition was not reviewed and signed by the deponent within 30 days. The deposition may then be used as fully as though signed unless, on a motion to suppress under paragraph (4) of subsection (d) of Code Section 9-11-32, the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(f) *Certification and filing by officer; inspection and copying of exhibits; copy of deposition.*

(1)(A) The officer shall certify that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness. This certificate shall be in writing and accompany the record of the deposition. The officer shall then securely seal the deposition in an envelope marked with the title of the action, the court reporter certification number, and 'Deposition of (here insert name of witness)' and shall promptly file it with the court in which the action is pending or deliver it to the party taking the deposition, as the case may be, in accordance with Code Section 9-11-29.1.

(B) Documents and things produced for inspection during the examination of the witness shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition and may be inspected and copied by any party, except that the person producing the materials may substitute copies to be marked for identification, if he or she affords to all parties fair opportunity to verify the copies by comparison with the originals; and, if the person producing the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used

in the same manner as if annexed to and returned with the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

(2) Upon payment of reasonable charges therefore, the officer shall furnish a copy of the deposition to any party or to the deponent.

(g) *Failure to attend or to serve subpoena; expenses.*

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon him and the witness, because of such failure, does not attend and if another party attends in person or by attorney because he expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees.

(h) *Form of presentation.* Except as otherwise directed by the court, a party offering deposition testimony may offer it in stenographic or non-stenographic form, but if in non-stenographic form, the party shall also provide the court with a transcript of the portions so offered. On request of any party in a case tried before a jury, deposition testimony offered other than for impeachment purposes shall be presented in non-stenographic form, if available, unless the court for good cause orders otherwise.

9-11-31

(a) *Serving questions; notice.*

(1) After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon written questions. The attendance of witnesses may be compelled by the use of subpoena as provided in Code Section 9-11-45. The deposition of a person confined in a penal institution may be taken only by leave of court on such terms as the court prescribes.

(2) A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating the name and address of the person who is to answer them, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs and the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with paragraph (6) of subsection (b) of Code Section 9-11-30.

(3) Within 30 days after the notice and written questions are served, a party may serve cross-questions upon all other parties. Within ten days after being served with cross-questions, a party may serve redirect questions upon all other parties. Within ten days after being served with redirect questions, a party may serve recross-questions upon all other parties. The court may, for cause shown, enlarge or shorten the time.

(b) *Officer to take responses and prepare record.* A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by subsections (c), (e), and (f) of Code Section 9-11-30, to take the testimony of the witness in response to the questions and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the questions received by him.

9-11-32

(a) *Use of depositions.* At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness;

(2) The deposition of a party or of anyone who, at the time of taking the deposition, was an officer, director, or managing agent or a person designated under paragraph (6) of subsection (b) of Code Section 9-11-30 or subsection (a) of Code Section 9-11-31 to testify on behalf of a public or private corporation, a partnership or association, or a governmental agency which is a party may be used by an adverse party for any purpose;

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds:

(A) That the witness is dead;

(B) That the witness is out of the county, unless it appears that the absence of the witness was procured by a party offering the deposition;

(C) That the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment;

(D) That the party offering the deposition has been unable to procure the attendance of the witness by subpoena;

(E) That because of the nature of the business or occupation of the witness it is not possible to secure his personal attendance without manifest inconvenience to the public or third persons; or

(F) That the witness will be a member of the General Assembly and that the session of the General Assembly will conflict with the session of the court in which the case is to be tried;

(4) The deposition of a witness, whether or not a party, taken upon oral examination, may be used in the discretion of the trial judge, even though the witness is available to testify in person at the trial. The use of the deposition shall not be a ground for excluding the witness from testifying orally in open court; or

(5) If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce all of it which is relevant to the part introduced, and any party may introduce any other parts. Substitution of parties does not affect the right to use depositions previously taken; and, when an action in any court of the United States or of any state has been dismissed and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor.

(b) *Objections to admissibility.* Subject to paragraph (3) of subsection (d) of this Code section, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(c) *Effect of taking or using depositions.* A party does not make a person his own witness for any purpose by taking his deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition; but this shall not apply to the use by an adverse party of a deposition under paragraph (2) of subsection (a) of this Code section.

At the trial or hearing any party may rebut any relevant evidence contained in a deposition whether introduced by him or by any other party.

(d) *Effect of errors and irregularities in depositions.*

(1) AS TO NOTICE. All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(2) AS TO DISQUALIFICATION OF OFFICER. Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(3) AS TO TAKING OF DEPOSITION.

(A) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(B) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented are waived unless seasonable objection thereto is made at the taking of the deposition.

(C) Objections to the form of written questions submitted under Code Section 9-11-31 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within five days after service of the last questions authorized.

(4) AS TO COMPLETION AND RETURN OF DEPOSITION. Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the officer under Code Sections 9-11-30 and 9-11-31 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

9-11-33

(a) *Availability; procedures for use.*

(1) Any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or a governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party; provided, however, that no party may serve interrogatories containing more than 50 interrogatories, including subparts, upon any other party without leave of court upon a showing of complex litigation or undue hardship incurred if such additional interrogatories are not permitted.

(2) Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after the service of the interrogatories, except that a defendant may serve answers or objections within 45 days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. The party submitting the interrogatories may move for an order under subsection (a) of Code Section 9-11-37 with respect to any objection to or other failure to answer an interrogatory.

(b) *Scope; use at trial.*

(1) Interrogatories may relate to any matters which can be inquired into under subsection (b) of Code Section 9-11-26, and the answers may be used to the extent permitted by the rules of evidence.

(2) An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or to the application of law to fact; but the court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pretrial conference or other later time.

(c) *Option to produce business records.* Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit, or inspection of such business records, or from a compilation, abstract, or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to the interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit, or inspect such records and to make copies, compilations, abstracts, or summaries.

9-11-34

(a) *Scope.* Any party may serve on any other party a request:

(1) To produce and permit the party making the request, or someone acting on his behalf, to inspect and copy any designated documents (including writings, drawings, graphs, charts, photographs,
phono-records, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of subsection (b) of Code Section 9-11-26 and which are in the possession, custody, or control of the party upon whom the request is served; or

(2) To permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of subsection (b) of Code Section 9-11-26.

(b) *Procedure.*

(1) The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. The request shall set forth the items to be inspected, either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

(2) The party upon whom the request is served shall serve a written response within 30 days after the service of the request, except that a defendant may serve a response within 45 days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order under subsection (a) of Code Section 9-11-37 with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

(c) *Applicability to nonparties.*

(1) This Code section shall also be applicable with respect to discovery against persons, firms, or corporations who are not parties, in which event a copy of the request shall be served upon all parties of record; or, upon notice, the party desiring such discovery may proceed by taking the deposition of the person, firm, or corporation on oral examination or upon written questions under Code Section 9-11-30 or 9-11-31. The nonparty or any party may file an objection as provided in subsection (b) of this Code section. If the party desiring such discovery moves for an order under subsection (a) of Code Section 9-11-37 to compel discovery, he or she shall make a showing of good cause to support his or her motion.

(2) This Code section shall also be applicable with respect to discovery against a nonparty who is a practitioner of the healing arts or a hospital or health care facility, including those operated by an agency or bureau of the state or other governmental unit. Where such a request is directed to such a nonparty, a copy of the request shall be served upon all parties of record, and where such a request to such a nonparty seeks the records of a person who is not a party, a copy of the request shall be served upon all parties of record, the person whose records are sought, and, if known, that person's counsel; or, upon notice, the party desiring such discovery may proceed by taking the deposition of the person, firm, or corporation on oral examination or upon written questions under Code Section 9-11-30 or 9-11-31. The nonparty, any party, or the person whose records are sought may file an objection with the court in which the action is pending and shall serve a copy of such objection on the nonparty to whom the request is directed, who shall not furnish the requested materials until further order of the court, and on all other parties to the action. Upon the filing of such objection, the party desiring such discovery may move for an order under subsection (a) of Code Section 9-11-37 to compel discovery and, if he or she shall make a showing of good cause to support his or her motion, discovery shall be allowed. If no objection is filed within ten days of the request, the nonparty to whom the request is directed shall promptly comply therewith.

(d) *Confidentiality.* The provisions of this Code section shall not be deemed to repeal the confidentiality provided by Code Sections 37-3-166 concerning mental illness, 37-4-125 concerning mental retardation, and 37-7-166 concerning alcohol and drug treatment.

9-11-35

(a) *Order for examination.* When the mental or physical condition (including the blood group) of a party, or of a person in the custody or under the legal control of a party, is in controversy, the court in which the action is pending may order the party to submit to a physical examination by a physician or to submit to a mental examination by a physician or a licensed psychologist or to produce for examination the person in his custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

(b) *Report of examining physician or psychologist.*

(1) If requested by the party against whom an order is made under subsection (a) of this Code section or by the person examined, the party causing the examination to be made shall deliver to him a copy of a detailed written report of the examining physician or psychologist setting out his findings, including results of all tests made, diagnoses, and conclusions, together with like reports of all earlier examinations of the same condition.

(2) Any party shall be entitled, upon request, to receive from the party whose physical or mental condition is in issue, or who is in control of, or has legal custody of, a person whose physical or mental condition is in issue, a report of any and every examination, previously or thereafter made, of the condition in issue, unless, in the case of a report of examination of a person not a party, the party shows that he is unable to obtain it.

(3) The court, on motion, may make an order against a party requiring delivery of a report under paragraph (1) or (2) of this subsection on such terms as are just; and, if a physician or psychologist fails or refuses to make a report, the court may exclude his testimony if offered at the trial.

(4) By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives any privilege he may have in that action, or any other action involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine him in respect to the same mental or physical condition.

(5) Paragraphs (1) through (4) of this subsection apply to examinations made by agreement of the parties, unless the agreement expressly provides otherwise. Paragraphs (1) through (4) of this subsection do not preclude discovery of a report of an examining physician or psychologist or the taking of a deposition of the physician or psychologist in accordance with any other Code section of this chapter.

9-11-36

(a) *Scope; service; answer or objection; motion to determine sufficiency.*

(1) A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of subsection (b) of Code Section 9-11-26 which are set forth in the request and that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.

(2) Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection
addressed to the matter, signed by the party or by his attorney; but unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of 45 days after service of the summons and complaint upon him. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet

the substance of the requested admission; and, when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; he may, subject to subsection (c) of Code Section 9-11-37, deny the matter or set forth reasons why he cannot admit or deny it.

(3) The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this subsection, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a pretrial conference or at a designated time prior to trial. Paragraph (4) of subsection (a) of Code Section 9-11-37 shall apply to the award of expenses incurred in relation to the motion.

(b) *Effect of admission.* Any matter admitted under this Code section is conclusively established unless the court, on motion, permits withdrawal or amendment of the admission. Subject to Code Section 9-11-16 governing amendment of a pretrial order, the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice him in maintaining his action or defense on the merits. Any admission made by a party under this Code section is for the purpose of the pending action only and is not an admission by him for any other purpose, nor may it be used against him in any other proceeding.

9-11-37

(a) *Motion for order compelling discovery.* A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

(1) APPROPRIATE COURT. An application for an order to a party may be made to the court in which the action is pending or, on matters relating to a deposition, to the court in the county where the deposition is being taken. An application for an order to a deponent who is not a party shall be made to the court in the county where the deposition is being taken;

(2) MOTION; PROTECTIVE ORDER. If a deponent fails to answer a question propounded or submitted under Code Section 9-11-30 or 9-11-31, or a corporation or other entity fails to make a designation under paragraph (6) of subsection (b) of Code Section 9-11-30 or subsection (a) of Code Section 9-11-31, or a party fails to answer an interrogatory submitted under Code Section 9-11-33, or if a party, in response to a request for inspection submitted under Code Section 9-11-34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order. If the court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to subsection (c) of Code Section 9-11-26;

(3) EVASIVE OR INCOMPLETE ANSWER. For purposes of the provisions of this chapter which relate to depositions and discovery, an evasive or incomplete answer is to be treated as a failure to answer; and

(4) AWARD OF EXPENSES OF MOTION.
If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

(B) If the motion is denied, the court shall, after opportunity for hearing, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless

the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

(C) If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(b) *Failure to comply with order.*

(1) SANCTIONS BY COURT IN COUNTY WHERE DEPOSITION IS TAKEN. If a deponent fails to be sworn or to answer a question after being directed to do so by the court in the county in which the
deposition is being taken, the failure may be considered a contempt of that court.

(2) SANCTIONS BY COURT IN WHICH ACTION IS PENDING. If a party or an officer, director, or managing agent of a party or a person designated under paragraph (6) of subsection (b) of Code Section 9-11-30 or subsection (a) of Code Section 9-11-31 to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subsection (a) of this Code section or Code Section 9-11-35, the court in which the action is pending may make such orders in regard to the failure as are just and, among others, the following:

(A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence;

(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(D) In lieu of any of the foregoing orders, or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination; or

(E) Where a party has failed to comply with an order under subsection (a) of Code Section 9-11-35 requiring him to produce
another for examination, such orders as are listed in subparagraphs (A), (B), and (C) of this paragraph, unless the party failing to comply shows that he is unable to produce such person for examination. In lieu of any of the foregoing orders, or in addition thereto, the court shall require the party failing to obey the order or the attorney advising him, or both, to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(c) *Expenses on failure to admit.* If a party fails to admit the genuineness of any document or the truth of any matter as requested under Code Section 9-11-36 and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, he may apply to the court for an order requiring the other party to pay him the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The court shall make the order unless it finds that the request was held objectionable pursuant to subsection (a) of Code Section 9-11-36, or the admission sought was of no substantial importance, or the party failing to admit had reasonable ground to believe that he might prevail on the matter, or there was other good reason for the failure to admit.

(d) *Failure of party to attend at own deposition or serve answers to interrogatories or respond to request for inspection.*

1. If a party or an officer, director, or managing agent of a party or a person designated under paragraph (6) of subsection (b) of Code Section 9-11-30 or subsection (a) of Code Section 9-11-31 to testify on behalf of a party fails to appear before the officer who is to take his deposition, after being served with a proper notice, or fails to serve answers or objections to interrogatories submitted under Code Section 9-11-33, after proper service of the interrogatories, or fails to serve a written response to a request for inspection submitted under Code Section 9-11-34, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just; and, among others, it may take any action authorized under subparagraphs (b)(2)(A) through (b)(2)(C) of this Code section. In lieu of any

order, or in addition thereto, the court shall require the party failing to act or the attorney advising him, or both, to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

2. The failure to act described in the provisions of this chapter which relate to depositions and discovery may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by subsection (c) of Code Section 9-11-26.

Chapter 18 Intra State Transfer

Pre-Adjudication & Post Disposition for Reunification

Authority	**O.C.G.A. § 15-11-29 (a) for pre adjudication** **O.C.G.A. § 15-11-30.5 for post adjudication**
Purpose	To transfer the deprivation case to a more convenient Venue
Pleadings	○ Written motion or oral motion in open Court ○ For pre adjudication, child/parent county of residence must be different from the county where the child was "found" & the action was brought ○ For post adjudication, reunification must be the plan & the parent to whom reunification is directed resides in a different county
Parties	Same as Adjudication. Plus notice to foster parents / caregiver for child
Decision Points	For either type of transfer: DFCS policy requires a joint staffing between the receiving & the sending counties to assure there is an continuum of services & jurisdiction **For post adjudication**, ○ Reunification must be the plan & the parent to whom ○ Reunification is directed resides in a different county ○ Parents' residence changed during the pending action ○ **Disposition** order states reunification ○ Within 30 days, sending court provides certified copies of adjudication, disposition & transfer orders, Case Plan & other necessary documents to the receiving county **For pre adjudication,** ○ child present in county when action commenced but parties residents of another county, then for convenience of parties & witnesses Court may transfer to the county of residence of the child

Practice Points

- recommend scheduling an In Court Review as soon as possible to make sure Court, DFCS and all parties are informed of the new Venue
- may encounter meeting timeline requirements for case if there are delays with the transfer of necessary documents

Code Sections - OCGA

15-11-29. Venue.

(a) A proceeding under this article may be commenced in the county in which the child resides. If delinquent or unruly conduct is alleged, the proceeding may be commenced in the county in which the acts constituting the alleged delinquent or unruly conduct occurred. If deprivation is alleged, the proceeding may be brought in the county in which the child is present when it is commenced; provided, however, that for the convenience of the parties and witnesses, the court may transfer the proceeding to the county in which the child resides. If the proceeding is transferred, certified copies of all legal and social documents and records pertaining to the proceeding on file with the clerk of court shall accompany the transfer. A Juvenile Court judge, an associate Juvenile Court judge, a judge pro tempore of the Juvenile Court, or any person sitting as a Juvenile Court judge may conduct hearings in connection with any proceeding under this article in any county within the judicial circuit.

(b) When a Superior Court judge sits as Juvenile Court judge, hearings in connection with any proceeding under this article may be heard before the judge in any county within the judicial circuit over which the judge presides.

15-11-30.5. Transfer of jurisdiction over reunification plans.
Whenever an order of disposition incorporates a reunification plan and the residence of the parent is not in the county of the court with jurisdiction or the residence of the parent changes to a county other than the county of the court with jurisdiction, the court may transfer jurisdiction to the Juvenile Court of the residence of the parent or parents to whom reunification is directed. Said transferring court shall provide the receiving court within 30 days of the filing of the transfer order with certified copies of the adjudication order, the order of disposition, the order of transfer, the Case Plan, and such other court documents deemed necessary by the sending court to enable the receiving court to assume jurisdiction over the matter. Compliance with this Code section shall terminate jurisdiction in the transferring court and initiate jurisdiction in the receiving court.

Chapter 19 Mediation & Alternative Dispute Resolution (ADR)

Contribution by
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See Georgia Commission on Dispute Resolution for additional information
http://www.godr.org/

Authority	The Supreme Court Commission on ADR has voted to create statewide standards for mediators who mediate Juvenile court cases (both deprivation & delinquency). Model Rules for Juvenile Mediation Programs (see below for Model Rules) Council of Juvenile Court Judges (CJCJ) now has an ADR committee
Mediation Definition	A process in which a mediator helps parties to negotiate their differences with an eye toward resolution and settlement. The mediator is a neutral participant and has no authority to make a decision or impose a settlement upon the parties, but instead tries to empower the parties to make the decisions themselves. The mediator does that by focusing the parties on their needs and interests rather than on their rights and positions. Although in court, the parties may be ordered to attend a mediation session, they are not required to settle their case in mediation. If the parties are unable or unwilling to settle in mediation, their case returns to the court for trial; the parties lose none of their rights to a trial.
Pleading	Whatever pleadings are before the Court.

Benefits of Mediation	• Mediation is the "great equalizer"
	• Preserves the relationship between the case manager and the parent
	• Court hearings polarize the parties and prevent parties from working together in the future
	• Allows the caseworker to develop a greater understanding of the family's needs
	• Parents are more likely to follow through with an agreement they developed
	• Appropriate conflict resolution techniques are modeled
	• Parents, families have a better understanding of court process, case managers role and what is expected of them
	• Greater judicial economy
	• Allows cases to move towards permanency faster cutting down on:
	  ○ Appeals
	  ○ Foster care costs
	  ○ Court expenses
	• Sharpens the issues if a case goes to trial, thus reducing court time
	• Empowering for children when they are able to participate
	• Average length of a mediation session is 3 hours

When to Mediate	• When the parties have an ongoing relationship • A party has power or leverage over the other party • The outcome of litigation is unpredictable, even harmful or painful for the litigants • The parties want to tailor a solution to meet their needs • Parties are willing to try to reach a settlement or have an incentive to settle • Cases may be referred to mediation at any point in the deprivation court process where there is controversy
What to Mediate	• Case plans • Custody / Guardianship (private filings) • Visitation • Family Dynamics / Caseworker Dynamics • Services

	• Termination of Parental Rights • Motion to Extend • Permanency Planning Options • Delinquency case that becomes a deprivation • Placement Moves • Foster Parent and Parent issues • Parent and Relative placement / resource issues
Do Not Mediate	• When one or more parties is severely mentally ill or lacks the capacity to contract • Adjudication of sexual abuse • When a legal precedent is necessary • Some domestic violence cases (TPO in place) • Cases that have a criminal case that stems from the deprivation case
Who Are Mediators	• Trained in deprivation mediation, general mediation, and delinquency court mediation • Registered deprivation mediator with GODR • Experienced both as a mediator and with juvenile court issues • Professionals from various backgrounds
Mediator's Role	• Neutral facilitator • Empowers the parties • Mediator is obligated to create an atmosphere of equality and fairness so all parties can feel free to work on their conflict • Cannot give financial or legal advice
Participants in Mediation	Required Participants – should be subpoenaed to attend mediation Case managers Parent attorneys SAAG Child advocate Parents Possible Participants – participate in mediation by agreement of parties CASA Foster parent Child(ren) Relative
Attorney Role in Mediation	• Inform the Program Coordinator of any special needs before the mediation o Interpreter, incarceration, domestic violence, mental status • Prepare the client of what to expect in mediation • Act as a legal counselor o Support & advise- but not to speak "for" the client o Evaluate the strengths & weakness of settlement proposals o Give legal advice to the client & reality checking o Encourage the client to work with, rather than against opposing sides o Review all the agreements before signing (incorporated into a court order)
Judge's Role in Mediation	• Refers case to mediation sua sponte, at request of party, standing order • Agreements must be reviewed by the Judge • A Judge may: o Accept the agreement and sign the order incorporating the agreement o Modify the order after a holding a hearing o Reject the order & agreement and hold a hearing
Right to Attorney	• Participants may mediate with or without an attorney • A participant may mediate without an attorney but may request to have the mediation agreement reviewed by an attorney • Jurisdictions vary in availability of attorneys for mediation

Mediation Agreements	• Should be very specific – detailing who, what, when, how and why • Must be signed by all parties • Agreement is not confidential (mediation session is confidential) • Parties need to know that the agreement will be incorporated into a Court Order if accepted by the Judge o - enforceable by contempt powers

Deprivation Mediation Agreements	• Know who is the complainant/respondent
	  o Confirm legal standing of the participants
	  o Guardian vs. Custodian
	  o legal vs putative father
	• Know the issue - what is the actual action being mediated
	• **Agreements must state in the 1st line whether the action is granted or dismissed**
	• If the action is a guardianship termination or custody modification and the parent dismisses the underlying action based on the mediation agreement, then the mediation agreement should explicitly state what the parent must do before re-filing
	• Agreements must be reviewed by the Judge

How to Refer to Mediation	• At a hearing or at calendar call- ask the Judge to refer the case
	  o the judicial case manager can schedule it right there with everyone present. Everyone will then be served.
	  o Scheduling in court allows case to be scheduled for mediation faster
	  o Saves the court money - eliminates the cost of serving the parties at their home
	• A case can be referred anytime (doesn't have to be during a court hearing)
	  o All parties must agree to participate in mediation
	  o Contact the program coordinator

Which Counties Have Juvenile Court Mediation Programs	• Fulton, Gwinnett, 9th Circuit and Piedmont are partially funded by the county ADR Trust Fund – O.C.G.A. § 15-23-10 • Some counties charge a fee to the parties after a certain number of hours • Other courts use grant funds or general court funds so there is no cost to the parties • Fulton, Cobb, Gwinnett, Clayton and DeKalb mediate anytime after a petition issues • In Fulton all probate guardianship termination & privately filed modification of custody actions are automatically sent to mediation
Special Protocols for Mediation	• Confidentiality requirements and exceptions • Domestic violence protocol • Protocol for mediating cases that have a pending Superior court case • Protocol for transporting inmates to mediation • Protocol on child participation

Mediation Process

Orientation
Mediators' Role, Mediation Goal, Confidentiality, Agreement to Mediate

Opening Statements
Family Members, Service providers, Attorneys

Mediators Set Forth Agenda

Participants Have a Joint Discussion

Mediators May Caucus with Parties Individually or in Small Groups

Participants Return to Joint Discussion

Draft and Sign Any Agreement Reached
There may be full agreements or partial agreements may be developed. Parties are not required to reach an agreement; they are only required to mediate in good faith.

Conclude the Mediation Session
All notes are disposed of to preserve confidentiality. Complete Evaluations of the mediation session. Judge signs the mediation agreement and a copy is mailed to the parties.

MODEL COURT JUVENILE MEDIATION RULES

GENERAL POLICY:

To provide guidance to ADR court programs, litigants and parties as to the resolution of delinquent and deprived matters referred to mediation.

DEFINITION:

Mediation is a process through which a neutral facilitates settlement discussions between parties. The neutral has no authority to make a decision or impose a settlement upon the parties. The neutral attempts to focus the attention of the parties on their needs, interests and mutual goals rather than on their positions. Although in court-annexed or court-referred mediation programs the parties may be ordered to attend a mediation session, any settlement is entirely voluntary. In the absence of a settlement, the parties retain their right to a bench trial.

RULE 1. REFERRAL TO MEDIATION

(a) Except as hereinafter provided, any juvenile matter may be referred to mediation by a judge or court designee. Parties may be ordered to appear for a mediation conference. Court mediation programs should make a determination of who the parties are in accordance with case law and statutory law. Compliance does not require that the parties reach a settlement. Cases shall be screened by the judge or the court designee to determine:
   (1) Whether the case is appropriate for mediation
   (2) Whether a need for emergency relief makes referral inappropriate until the request for relief is heard by the court.
   (3) Whether the parties agree to mediate.

(b) Cases in which there are allegations of domestic violence (as defined by the Georgia Commission on Alternative Dispute Resolution's *Guidelines for Mediation in Cases Involving Issues of Domestic Violence*) will be screened to determine whether mediation is appropriate:
   The Georgia Commission on Dispute Resolution's Guidelines for Mediation in Cases Involving Issues of Domestic Violence define domestic violence as: *Causing or attempting to cause physical harm to a current or former intimate partner or spouse; placing that person in fear of physical harm; or causing that person to engage involuntarily in sexual activity by force, threat of force or duress.*
   In addition to acts or threats of physical violence, for purposes of these guidelines, domestic violence may include abusive and controlling behaviors (such as intimidation, isolation, and emotional, sexual or economic abuse) that one current or former intimate partner or spouse may exert over the other as a means of control, generally resulting in the other partner changing her or his behavior in response. Even if physical violence is not present in these circumstances, such a pattern of abusive behavior may be a critical factor in whether or not a party has the capacity to bargain effectively. Therefore, a person conducting screening for domestic violence must be alert to patterns of behavior that, while not overtly violent, may indicate a pattern of domestic abuse that should be treated as domestic violence for purposes of these guidelines.
   (1) Criminal cases that involve domestic violence will not be referred to mediation from any court. Delinquency cases that involve domestic violence may be referred to mediation.
   (2) All juvenile court cases will be screened for domestic violence allegations through intensive intake. Those juvenile court cases referred to mediation directly from the bench are also subject to the domestic violence screening process. Intake procedures are designed to identify cases in which there are allegations of domestic violence and to provide a process by which a party alleging domestic violence will make a decision based on informed consent whether or not to proceed with mediation.
   (3) The detailed domestic violence screening protocol implementing the Commission on Dispute Resolution's *Guidelines for Mediation in Cases Involving Issues of Domestic Violence* is attached hereto and incorporated in these rules and shall be followed for screening purposes.

(4) ADR staff who conduct screening for domestic violence allegations must have Specialized Domestic Violence Screening Training.
(5) Only mediators who are registered with the Georgia Office of Dispute Resolution in the category of specialized domestic violence mediation will mediate cases involving domestic violence allegations. If such allegations arise for the first time during a mediation session, a mediator who is not registered in the specialized domestic violence category must terminate the mediation session and refer the case back to the ADR program or court. In terminating the mediation session, the mediator should take precautions to guard the safety of all individuals involved in the mediation.
(6) No case involving allegations of domestic violence will be sent to mediation without the informed consent of the party alleging domestic violence, which is given after a thorough explanation of the mediation process and discussion of the circumstances of the case.

(c) Request for Mediation. Any party, including a child in a dispute, may request that the court at any time in the progression of a case refer the case to mediation or request that a matter referred to mediation is referred to another ADR process.
(d) Effect of Referral upon Progress of the Case. The scheduling of a case for a mediation conference shall not remove the case from assignment to a judge, interfere with discovery, nor serve to postpone scheduled motions before the court.
(e) Interim or Emergency Relief. A party may apply to the court for interim or emergency relief at any time. Mediation shall continue while such a motion is pending absent a contrary order of the court or a decision of the mediator to adjourn pending disposition of the motion. Time for completing mediation shall be tolled during any periods where mediation is interrupted pending resolution of such a motion.
(f) If court personnel other than judges are involved in ADR screening decisions, these individuals will receive appropriate training and will work within clearly stated written policies, procedures and criteria for screening. The Georgia Office of Dispute Resolution will assist courts in developing guidelines for training court personnel in screening decisions.
(g) In actions brought by state agencies (including the Department of Human Services or the Department of Juvenile Justice) seeking to enjoin activities injurious to the public interest, the state agency may within 10 days of service of the action make a showing to the trial court that referral to ADR would adversely affect the public interest. Upon a showing of reasonable probability of such adverse effect, the court will proceed with emergency measures provided by law. Later referral to an ADR process may be appropriate if the emergency measures do not bring the case to conclusion.

RULE 2. TIMING OF ADR PROCESSES

(a) Conference or Hearing Date: Unless otherwise ordered by the court, the first mediation conference shall be held within 30 calendar days of the case being referred to mediation.
(b) Notice: The mediation coordinator or court will select a registered deprivation or delinquency mediator. A notice will be given, preferably within two weeks prior to mediation, to all mediation participants and parties requiring their attendance at a scheduled mediation session.

RULE 3. EXEMPTION OR EXCLUSION OF CASES FROM MEDIATION

Courts and mediation programs are strongly encouraged not to mediate a case where:
(a) The issue to be considered has been previously mediated;
(b) The issue presents a question of law only;
(c) Other good cause is shown before the judge to whom the case is assigned;
(d) The issue to be considered is the occurrence of sexual abuse by a party;
(e) One or more parties is mentally incapacitated and is unable to contract and/or negotiate for themselves unless their interests are otherwise represented;
(f) If there is a pending case in another court (Superior, State, Magistrate, Probate, Court of Appeals, Supreme Court or a court in another jurisdiction) pertaining to the same issues to be mediated. (For example, this includes a criminal case in Superior Court pertaining to assault that gave rise to the deprivation allegations.)

Any party may petition the court to exclude the case from mediation if one of the above outlined (Rule 3 (a)- (f)) applies.

RULE 4. APPOINTMENT OF THE MEDIATO

(a) The mediation coordinator or court will appoint a mediator from the list of mediators registered by the Georgia Office of Dispute Resolution as deprivation or delinquency mediators.

(b) Disqualification of a Mediator: Any party may move to enter an order disqualifying a mediator for good cause. If the court rules that a mediator is disqualified from hearing a case, an order shall be entered setting forth a qualified replacement from the list of registered mediators in the mediation office. The motion disqualifying the mediator shall be presented to the mediation coordinator or the court, which shall present the motion to the judge to whom the case is assigned.

RULE 5. MEDIATION COORDINATOR QUALIFICATIONS

Mediation coordinators who screen juvenile delinquency cases to determine if they are appropriate to mediate must be registered delinquency mediators with the Georgia Office of Dispute Resolution. Mediation coordinators who screen deprivation cases must be registered deprivation mediators with the Georgia Office of Dispute Resolution. In addition, mediation coordinators must be trained in a Georgia Office of Dispute Resolution approved domestic violence screening training.

RULE 6. COMPENSATION FOR MEDIATORS

Mediators mediating juvenile delinquent or deprivation cases will be compensated at a rate to be determined by the court or ADR board. If a party fails to appear for a mediation session, then the compensation will be determined by the court.

RULE 7. CONFIDENTIALITY AND IMMUNITY

(a) Confidentiality: All parties in the juvenile mediation program and referred mediation process are entitled to confidentiality to the extent described by the Georgia Supreme Court Alternative Dispute Resolution Rules. Mediation agreements are not confidential.

(b) Exceptions to Confidentiality:
   (1) There are threats of imminent violence to self or others;
   (2) The mediator believes that a child is abused or that the safety of any party or third person is in danger.

(c) Immunity: No neutral in a court-annexed/referred program shall be held liable for civil damages and for any statement, action, omission or decision made in the course of any ADR process unless that statement, action, omission or decision is 1) grossly negligent and made with malice or 2) is in willful disregard of the safety or property of any party to the ADR process.

RULE 8. APPEARANCE

(a) The presence of notified participants and parties is required at all mediation conferences unless the court finds that a participant or party is incapacitated.

(b) If an interpreter is necessary, the appearance and cost of an interpreter is the responsibility of the court. All interpreters must be certified through the Georgia Commission on Interpreters.

RULE 9. SANCTIONS FOR FAILURE TO APPEAR

If a mediation participant or party fails to appear at a duly noticed mediation conference without good cause, the mediation program shall notify the judge to whom the case is assigned. The judge may find the mediation participant or party in contempt and impose appropriate sanctions.

RULE 10. COMMUNICATION WITH PARTICIPANTS AND PARTIES

The only *ex parte* communication between a mediation participant or party and the mediator outside of the mediation conference shall be for the purposes of verifying appointment times and locations or answering questions about the mediation process and procedures. The mediator may meet privately with any mediation participant, party or attorney during the mediation conference.

RULE 11. COMMUNICATION WITH THE COURT

(a) In order to preserve the objectivity of the court and the neutrality of the mediator, there should be no *ex parte* communication between the mediator and the court. If any communication between the court and a mediator is necessary; the communication shall be in writing or through the

mediation coordinator. Copies of any written communication with the court should be given to mediation participants, parties and their attorneys.

(b) Once a mediation is underway in a given case, contact between the mediation coordinator and the court concerning that case should be limited to:
   (1) Communicating with the court about the failure of a mediation participant or party to attend;
   (2) Communicating with the court with the consent of the parties concerning procedural action on the part of the court which might facilitate the mediation;
   (3) Communicating to the court the mediator's or mediation coordinator's assessment that the case is inappropriate for that process;
   (4) Communicating any request for additional time to complete the mediation;
   (5) Communicating information that the case has settled or has not settled and whether agreement has been reached as to any issues in the case;
   (6) Communicating the contents of an agreement ;
   (7) Communicating with the written consent of the parties information concerning any discovery, pending motions or action of any party which, if resolved or completed, would facilitate the possibility of settlement.

RULE 12. COMPLETION OF MEDIATION

(a) Mediation shall occur within 30 day of being referred. The mediation shall address the issues the court referred to mediation. If an extension is needed, the mediation coordinator may present a request for an extension to the court.

(b) Number of Mediation Sessions: Additional mediation sessions may be necessary depending on the case.

(c) The mediator may adjourn the mediation conference at any time and may set times for reconvening the adjourned conference notwithstanding Rule 2(a). Mediation participants and parties shall be given notification at the adjourned conference of when the mediation will be reconvened.

(d) Agreement: If a full or partial agreement is reached, it shall be reduced to writing at the mediation conference.
   (1) The written mediation agreement shall be signed at the end of the mediation conference by the mediator, parties, and attorneys if present, and any other participants deemed necessary by the mediation coordinator or court. The mediation agreement shall be presented to the judge for incorporation into a court order in compliance with Advisory Opinion 6 of the Commission on Dispute Resolution.
   (2) The parties who do not have an attorney or who are represented by an attorney who was not present at the mediation conference, will have the opportunity to have the agreement reviewed by an attorney. If no written objections are made to the mediation coordinator within three business days of the mediation session, the mediation agreement shall be submitted to the judge to be incorporated into a court order in compliance with Advisory Opinion 6 of the Commission on Dispute Resolution.

(e) If the parties do not reach an agreement as to any matter as a result of mediation, the mediator shall report the lack of an agreement to the mediation coordinator. The mediation coordinator shall notify the judge to whom the case was assigned of the lack of an agreement. With the written consent of the parties, the mediator's report may also identify any pending notices or outstanding legal issues, discovery processes, or other action by any party which, if resolved or completed, would facilitate the possibility of a settlement.

RULE 13. MEDIATION CONFERENCE

(a) The ultimate decision-making authority of whether or not to settle the case rests with the parties.

(b) Rescheduling Cases: The party or attorney who is requesting that a mediation session be rescheduled must obtain consent and future dates for mediation from the mediation coordinator or court, and opposing counsel. The mediation coordinator or court shall notify all mediation participants or parties of the new mediation date and time. Cancellation of the mediation, with no attempt to reschedule, will only be permitted where one or more parties has applied for relief from the judge to whom the case has been assigned or by leave of court. No other unilateral cancellations or reschedules will be permitted. Unilateral cancellations or reschedules are

violations of the court rule to attend and may subject one or more parties to being in contempt of a subpoena or court order to attend mediation.

(c) The Role of Counsel: The mediator shall at all times be in control of the mediation and procedures to be followed during the mediation. Counsel shall be permitted to communicate privately with their clients.

(d) Conflicts: For purposes of conflict, under the Uniform Rules of Superior Courts, the mediation procedure shall be construed as being a non-jury proceeding, and counsel and the parties may rely upon said designation in resolving any scheduling conflicts.

(e) Notifying the Mediator: The mediation coordinator or court shall notify the mediator, if possible at least 48 business hours before the mediation, of any rescheduling or cancellations, for whatever reason, regardless of whether relief has been granted by the court.

RULE 14. EVALUATION

The mediation coordinator will provide to the Georgia Office of Dispute Resolution information that will allow an evaluation of the program. This information will be provided on an ongoing basis. The model for this evaluation will be provided by the Georgia Office of Dispute Resolution. Participants will not be contacted for evaluation without their permission. The program should seek permission of the parties for this contact either at the beginning of the mediation or by means of an exit survey.

RULE 15. MONITORING OF CASES

The mediation coordinator or court shall monitor and track compliance of the delinquency mediation agreement. Upon completion, the mediation coordinator or court shall present a recommendation or court order to the appropriate court designee that the complaint be dismissed.

In deprivation cases the parties are responsible for monitoring compliance of the mediation agreement. If a party is not complying with the mediation agreement that is incorporated into a court order, the other parties may file a contempt action against the non-complying party.

Chapter 20 Evidence / Objections / Exceptions

Effective January 1, 2013 Georgia has a new Evidence Code. From the preamble to House Bill 24, section 1: "*It is the intent of the General Assembly to revise, modernize, and reenact the general rules of state relating to evidence while adopting, in large measure, the Federal Rules of Evidence".*

	Code Section Effective 1-1-2013	Summary of code section
Plain Error Rule	24-1-103	Party must make timely objection to preserve error or make offer of proof if evidence is excluded
Directions for Making Evidence Rulings	24-1-104	Preliminary questions of qualification of person to be witness, existence of privilege, or admissibility of evidence for judge using preponderance of the evidence standard
Judicial Notice of adjudicative facts	24-2-201	
Relevant Evidence	24-4-401	*…..evidence having the tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence*
Balancing Test for relevant evidence	24-4-403	Relevant evidence excluded if *its probative value substantially outweighed by danger of unfair prejudice, confusion of issues, or misleading the jury or by consideration of undue delay, waste of time or needless presentation of cumulative evidence*
Character testimony	24-4-405	*….evidence of character or a trait of character of a person is admissible, proof shall be made by testimony as to reputation or by testimony in the form of an opinion*
Habit Evidence	24-4-406	*Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with such habit or routine practice.*
Witness Credibility	24-6-607	May be attacked by any party
	24-6-608	Credibility by be attacked or supported by evidence in the form of opinion or reputation for truthfulness
Refreshing Recollection	24-6-612 (a)	Adverse party has right to • see any writing used to refresh recollection of witness on stand • to question witness re the writing & • introduce any portions of writing that relate to the testimony of the witness
	24-6-612 (b)	If writing used to refresh prior to testimony, and court determines it is necessary in the interest of justice, then adverse party entitled to have writing produced at trial, inspect, use for cross & introduce portions Except attorney – client privilege not waived or attorney work product protected
Impeachment by Prior Inconsistent Statement	24-6-613	Do not need to show witness the prior statement or disclose contents, but witness allowed opportunity to explain or deny

	Gibbons v. State, 286 S.E. 2d, 717, 721 (Ga. 1982)	Prior inconsistent statement admissible as both impeachment & substantive if witness available for cross examination
Lay Opinion	24-7-701	Lay witness testimony in the form of opinions or inferences limited to: • Rationally based on the perception of the witness; • Helpful to a clear understanding of the witness's testimony or the determination of a fact in issue; & • Not based on scientific, technical, or other specialized knowledge within the scope of Code Section 24-7-702
Expert Opinion	24-7-702	Expert Opinion: may be given on the facts as proved by other witnesses; If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion if: (1) The testimony is based upon sufficient facts or data; (2) The testimony is the product of reliable principles and methods; and (3) The witness has applied the principles and methods reliably to the facts of the case which have been or will be admitted into evidence before the trier of fact.
Ultimate Issue testimony allowed	24-7-704	*testimony in the form of an opinion or inference otherwise admissible shall so not be objectionable because it embraces an ultimate issue to be decided by the trier of fact*
Hypothetical not required	24-7-705	*An expert may testify in terms of opinion or inference and give reasons therefor without first testifying to the underlying facts or data, unless the court requires otherwise. An expert may in any event be required to disclose the underlying facts or data on cross examination.*
Hearsay	24-8-801 et. seq.	
	24-8-801 (a)	Statement = oral or written assertion AND nonverbal conduct of a person, if it is intended by the person to be an assertion
Hearsay defined	24-8-801 (c)	A statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence for to prove the truth of the matter asserted
Prior Witness Out of Court Statements are Not Hearsay Rules	24-8-801(d) et seq.	But may be inadmissible if considered cumulative & improper bolstering of witness's in court testimony • admissions by agents during agency relationship • co-conspirator statements
Hearsay not illegal evidence	24-8-802	Hearsay is legal evidence & admissible if a party does not object to the hearsay
Not Excluded by the Hearsay Rule	24-8-803	
	24-8-803(1)	*Present sense impression* (replaces Res Gestae exception)
	24-8-803(2)	*Excited utterance* (replaces Res Gestae exception)
	24-8-803(3)	*Then existing mental, emotional or physical condition* – limited to declarant's intent (replaces Res Gestae exception)

	24-8-803(4)	*Statements for purposes of medical diagnosis or treatment*
	24-8-803(5)	*Recorded recollection*
	24-8-803(6)	*Records of regularly conducted activity* • may include "conditions, opinions, or diagnoses" but require foundation (24-7-701 & 702) and • "regular practice" may be shown by live testimony or certification / affidavit if advance written notice given pursuant to 24-9-902 • Integrated Records Rule
	24-8-803(7)	*Absence of entry in records kept in accordance with paragraph (6) of this Code section*
	24-8-803(8)	*Public records and reports* Includes: 1. activities of office or agency *2.* matters observed pursuant to a duty to report (excluding police or law enforcement in criminal action) *3.* factual findings resulting from an investigation (might include opinions but not legal conclusions)
	24-8-803(9)	*Records of vital statistics*
	24-8-803(10)	*Absence of public record or entry*
	24-8-803(11)	*Records of religious organizations*
	24-8-803(12)	*Marriage, baptismal or similar records*
	24-8-803(13)	*Family records*
	24-8-803(14)	*Records of documents affecting an interest in property*
	24-8-803(15)	*Statements in documents affecting an interest in property*
	24-8-803(16)	*Statements in ancient documents*
	24-8-803(17)	*Market reports & commercial publications*
	24-8-803(18)	*Learned treatises* – if shown to be reliable authority in field & expert testifying relied on publication then relevant portions may be read into record on direct of expert
	24-8-803(19)	*Reputation concerning personal or family history*
	24-8-803(20)	*Reputation concerning boundaries or general history*
	24-8-803(21)	*Reputation as to character*
	24-8-803(22)	*Judgment of previous conviction*
	24-8-803(23)	*Judgment as to personal family or general history or boundaries*
Unavaialble Witness Rules	24-8-804	24-8-804(b)(3) Statement against interests
Necessity exception	24-8-807	Necessity exception requires advance notice to opposing party
Child Hearsay Statue	24-8-820	*A statement made by a child under the age of 14 years describing any act of sexual contact or physical abuse performed with or on the child by another shall be admissible in evidence by the testimony of the person to whom made if the child is available to testify in the proceedings and the court finds the circumstances of the statement provide sufficient indicia of reliability*
Authentication Rules	24-9-901et seq.	24-9-901(a) Authentication satisfied by "evidence sufficient to support finding that the matter is question is what its proponent claims."
	24-9-902	Notarized documents are self-authenticating

"Best Evidence" Rules	24-10-1001 et seq.	Applies to writings, photographs, recordings, any form of recorded facts or data
	24-10-1002	To prove the contents it must be produced
	24-10-1003	Duplicates allowed unless authenticity of original is questioned or unless it is unfair to admit duplicate in lieu of original

OBJECTIONS

Relevance

- "any evidence which logically tends to prove or to disprove a material fact which is at issue in the case, and every act or circumstance serving to elucidate or throw light upon a material issue or issues is relevant" *Madison v. State*, 238 Ga. App. (1999)
- if doubtful evidence admitted weight is left to the trier of fact

Child Hearsay Statute

- A child under the age of fourteen describing sexual or physical abuse, provided the child is available to testify and the child's statement is made under circumstances to provide sufficient indicia or reliability.
- Four requirements
    1. child must be under fourteen regardless mental capacity,
    2. child must be available to testify for both parties,
    3. statement made by the child must be a statement which explicitly & directly describes sexual or physical abuse, and the trustworthiness and the reliability of the statement,

- Factors to be considered: Gregg v. State, 201 Ga App 238 (1991)
    - atmosphere & circumstances under which the statement was made,
    - spontaneity of the child's statement,
    - child's age,
    - child's general demeanor,
    - child's physical or emotional condition,
    - presence or absence of threats and promises,
    - presence or absence of alcohol,
    - child's general credibility,
    - presence or absence or coaching by the parents or other 3rd parties
    - consistency between out of court statement & testimony at trial.

Calling the parent for purposes of cross examination

- call parent as an adverse party pursuant to
- Deprivation cases are civil actions so when a parent takes the 5th then court is allowed a rebuttable inference that the response would be contrary to the interest of the party testifying or unfavorable. *In Re S.B.* 242 Ga. App.184 (2000)

242 Ga. App. 184; IN RE S. B.; 528 SE2d 278 (01/18/2000)

In addition to the facts noted by the Juvenile Court, the record shows that the mother refused to testify at the deprivation hearing when called as a witness by the Department. Instead, she invoked her Fifth Amendment privilege against self-incrimination. While the mother asserts that she had no part in K. B.'s death, the Supreme Court has held that the invocation of the privilege against self-incrimination in such cases is an implied admission that a truthful answer would tend to prove that the witness had committed the act. The administration of justice and the search for truth demand that an inference may be drawn that witness' testimony would be unfavorable to [her] in a civil action in which the privilege is invoked to protect [herself]. This is particularly true in a child custody contest heard by a trial judge with broad discretion when the inference corroborates other proof of alleged illicit conduct between the parties which affects the welfare and interests of minor children.

List of Basic Generic Objections

- ambiguous (see vague)
- answer non-responsive
- answer exceeds (goes beyond) scope of question and constitutes a volunteered statement by the witness
- argument improper (e.g., refers to facts not in evidence, misstates evidence, misquotes witness, vouches for witness, indicates personal belief or opinion of counsel, unfairly prejudicial, comment on defendant's failure to testify, indirect attack on accused by attacking integrity of defense counsel
- argumentative in content and tone without asking for new information; using his/her question to argue the case
- assuming facts not in evidence (loaded question that prevents the witness from having the opportunity to deny the existence of the assumed fact)
- asked and answered (see repetitious)
- authentication lacking or improper (failure to identify item of evidence, e.g., writing, and show its logical relevance) (see failure to lay proper foundation)
- badgering the witness (also, quarreling with , arguing with, shouting at, bullying, looming over, and threatening)
- best evidence rule violated (see also, "original writing" rule)
- beyond scope of direct (in jurisdictions that limit the scope of cross to the subject matter of the direct and matters affecting credibility of the witness)
- chain of custody not properly established (particularly when item is fungible and thus easily alterable and no single witness can identify the item with personal knowledge)
- character evidence improper (e.g., to establish propensity)
- confusion of issues
- compound question that contains two or more questions within a single question
- comment on evidence by judge
- continuing (running) objection
- cumulative evidence, needlessly, in that it fails to add to the probity of previously admitted evidence
- displaying evidence prior to its introduction or continuing to display evidence after it has been used
- expert testimony not admissible (e.g., underlying facts or data insufficient; field of scientific, technological or other specialty of expertise not reliable and/or relevant based on factors such as: (1) whether the principle has been tested, (2) the results of published peer review, (3) error rates and (4) general acceptance;
- expert witness not competent
- final argument improper (see argument improper)
- failure to lay proper foundation for admission of testimony, exhibit, or document (predicate) (see lack of evidentiary predicate)
- habit not established, improper habit evidence because
- hearsay, question calls for or answer contains
- hearsay within hearsay
- hearsay, evidence contains
- hearsay, evidence is the result of and is based upon
- hearsay, even though the statement fits into a recognized hearsay exception, the confrontation clause (applies only when the prosecution offers hearsay against the accused) bars use of a *testimonial* out-of-court statement by an unavailable witness whom the defendant has not had the opportunity to cross-examine, irrespective of whether the statement is deemed reliable; the statement is inadmissible as un-cross-examined [see *Crawford v. Washington*, 124 s. ct. 1354 (2004)]
- immaterial in that it is of no consequence to any issue in the case (couple with irrelevant)
- impeachment improper (improper opinion or reputation character evidence, improper proof of prior conviction, improper foundation for proof of witness' prior inconsistent statement, improper proof of untruthfulness, impeachment with an irrelevant or collateral matter)

- incompetency of witness (e.g., lack of perception, lack of memory, inability to understand nature and obligation of oath, inability to communicate in language of court)
- irrelevant in the sense that it does not make a fact of consequence to the lawsuit anymore or less likely
- judicial notice improper
- lack of evidentiary predicate (foundation) for admission of testimony, exhibit, or document
- lack of personal knowledge (witness, other than expert, does not have first-hand information)
- lay witness opinion and/or inference improper; not helpful to clear understanding of witness' testimony or determination of fact in issue, not rationally based on perception of witness
- leading question (suggests or coaxes desired answer)
- legal conclusion (questions calls for or answer contains)
- limited purpose, admissible only for a (and offered generally)
- misstatement (mischaracterization) of evidence by counsel (or witness)
- non-responsive answer
- opening statement improper (e.g., argumentative, invades province of court by providing instructions on law, states personal opinion or belief of counsel, counsel speculating about opposing counsel's evidence)
- opinion on ultimate issue
- personal knowledge of lay witness lacking (see lack of personal knowledge)
- privileged communication (e.g., attorney-client; doctor-patient (if any); clergy; informant's identity; spousal capacity; spousal or marital communication; self-incrimination)
- question has been answered by witness and is now giving an answer that goes beyond the question posed (see witness has answered)
- question on cross-examination goes beyond scope of direct and issues of witness credibility (applies only in jurisdictions, e.g., federal court, where scope of cross is limited to subject of direct and issues related to witness credibility)
- relevance lacking (see irrelevant) (e.g., has no tendency to make existence of any fact of consequence to the case more or less probable than it would be without the evidence)
- religious beliefs or opinions of witness inadmissible to show witness' credibility impaired or enhanced
- repetitious (see asked and answered)
- requirement of original violated (see best evidence rule, original document rule)
- sequestration of witnesses ("the rule" of witnesses) violation (as when evidence that another witness has made notations upon is presented to a testifying witness)
- sidebar remark (sidebar remarks are statements of counsel for one party not addressed to the court and typically made while counsel for another party is examining a witness, arguing a question to the court or addressing the jury.)
- speculation (conjecture, guess)
- undue delay
- unfairly prejudicial (potential danger of "*unfair*" prejudice substantially outweighs probative value - objecting party has bop; object that the otherwise arguably relevant evidence unfairly exaggerates the truth and tends to improperly stir the passions or sympathy of the court) even though arguably relevant
- vague
- waste of time
- witness has answered the question and is now volunteering an answer to a question that hasn't been asked

Evidence Code Sections Effective January 1, 2013
24-1-103.
(a) Error shall not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected and:
(1) In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or
(2) In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by an offer of proof or was apparent from the context within which questions were asked.
Once the court makes a definitive ruling on the record admitting or excluding any evidence, either at or before trial, a party need not renew an objection or offer of proof to preserve such claim of error for appeal.
(b) The court shall accord the parties adequate opportunity to state grounds for objections and present offers of proof. The court may add any other or further statement which shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. The court may direct the making of an offer of proof in question and answer form.
(c) Jury proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, including, but not limited to, making statements or offers of proof or asking questions in the hearing of the jury.
(d) Nothing in this Code section shall preclude a court from taking notice of plain errors affecting substantial rights although such errors were not brought to the attention of the court.

24-1-104.
(a) Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the court, subject to the provisions of subsection (b) of this Code section. In making its determination, the court shall not be bound by the rules of evidence except those with respect to privileges. Preliminary questions shall be resolved by a preponderance of the evidence standard.
(b) When the relevancy of evidence depends upon the fulfillment of a condition of fact, the court shall admit it upon, or subject to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition.
(c) Hearings on the admissibility of confessions shall in all cases be conducted out of the hearing of the jury. Hearings on other preliminary matters shall be conducted out of the hearing of the jury when the interests of justice require or when an accused is a witness and requests a hearing outside the presence of the jury.
(d) The accused shall not, by testifying upon a preliminary matter, become subject to cross-examination as to other issues in the proceeding.
(e) This Code section shall not limit the right of a party to introduce before the jury evidence relevant to weight or credibility.

24-1-106.
When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which, in fairness, should be considered contemporaneously with the writing or recorded statement.
24-4-403.
Relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

24-4-404.
(a) Evidence of a person's character or a trait of character shall not be admissible for the purpose of proving action in conformity therewith on a particular occasion, except for:
(1) Evidence of a pertinent trait of character offered by an accused or by the prosecution to rebut the same; or if evidence of a trait of character of the alleged victim of the crime is offered by an accused and admitted under paragraph (2) of this subsection, evidence of the same trait of character of the accused offered by the prosecution;
(2) Subject to the limitations imposed by Code Section 24-4-412, evidence of a pertinent trait of character of the alleged victim of the crime offered by an accused or by the prosecution to rebut the same; or

evidence of a character trait of peacefulness of the alleged victim offered by the prosecution in a homicide case to rebut evidence that the alleged victim was the first aggressor; or
(3) Evidence of the character of a witness, as provided in Code Sections 24-6-607, 24-6-608, and 24-6-609.
(b) Evidence of other crimes, wrongs, or acts shall not be admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, including, but not limited to, proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. The prosecution in a criminal proceeding shall provide reasonable notice to the defense in advance of trial, unless pretrial notice is excused by the court upon good cause shown, of the general nature of any such evidence it intends to introduce at trial. Notice shall not be required when the evidence of prior crimes, wrongs, or acts is offered to prove the circumstances immediately surrounding the charged crime, motive, or prior difficulties between the accused and the alleged victim.

24-4-405.
(a) In all proceedings in which evidence of character or a trait of character of a person is admissible, proof shall be made by testimony as to reputation or by testimony in the form of an opinion.
(b) In proceedings in which character or a trait of character of a person is an essential element of a charge, claim, or defense or when an accused testifies to his or her own character, proof may also be made of specific instances of that person's conduct. The character of the accused, including specific instances of the accused's conduct, shall also be admissible in a presentencing hearing subject to the provisions of Code Section 17-10-2.
(c) On cross-examination, inquiry shall be allowable into relevant specific instances of conduct.

24-4-406.
Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with such habit or routine practice.

24-6-607.
The credibility of a witness may be attacked by any party, including the party calling the witness.

24-6-608.
(a) The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, subject to the following limitations:
(1) The evidence may refer only to character for truthfulness or untruthfulness; and
(2) Evidence of truthful character shall be admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.
(b) Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness's character for truthfulness, other than a conviction of a crime as provided in Code Section 24-6-609, or conduct indicative of the witness's bias toward a party may not be proved by extrinsic evidence. Such instances may however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness:
(1) Concerning the witness's character for truthfulness or untruthfulness; or
(2) Concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.
(c) The giving of testimony, whether by an accused or by any other witness, shall not operate as a waiver of the accused's or the witness's privilege against self-incrimination when examined with respect to matters which relate only to character for truthfulness.
24-6-612.
(a) If a witness uses a writing to refresh his or her memory while testifying, an adverse party shall be entitled to have the writing produced at the hearing or trial, to inspect it, to cross-examine the witness on such writing, and to introduce in evidence those portions of such writing which relate to the testimony of the witness.
(b) If a witness uses a writing to refresh his or her memory before testifying at trial and the court in its discretion determines it is necessary in the interests of justice, an adverse party shall be entitled to have the writing produced at the trial, to inspect it, to cross-examine the witness on such writing, and to

introduce in evidence those portions of such writing which relate to the testimony of the witness. If the writing used is protected by the attorney-client privilege or as attorney work product under Code Section 9-11-26, use of the writing to refresh recollection prior to the trial shall not constitute a waiver of that privilege or protection. If it is claimed that the writing contains matters not related to the subject matter of the testimony, the court shall examine the writing in camera, excise any portions of such writing not so related, and order delivery of the remainder of such writing to the party entitled to such writing. Any portion withheld over objections shall be preserved and made available to the appellate court in the event of an appeal. If a writing is not produced or delivered pursuant to an order under this Code section, the court shall make any order justice requires; provided, however, that in criminal proceedings, when the prosecution elects not to comply, the order shall be one striking the testimony or, if the court in its discretion determines that the interests of justice so require, declaring a mistrial.

24-6-613.
(a) In examining a witness concerning a prior statement made by the witness, whether written or not, the statement need not be shown nor its contents disclosed to the witness at that time; provided, however, upon request the same shall be shown or disclosed to opposing counsel.
(b) Except as provided in Code Section 24-8-806, extrinsic evidence of a prior inconsistent statement by a witness shall not be admissible unless the witness is first afforded an opportunity to explain or deny the prior inconsistent statement and the opposite party is afforded an opportunity to interrogate the witness on the prior inconsistent statement or the interests of justice otherwise require. This subsection shall not apply to admissions of a party-opponent as set forth in paragraph (2) of subsection (d) of Code Section 24-8-801.
(c) A prior consistent statement shall be admissible to rehabilitate a witness if the prior consistent statement logically rebuts an attack made on the witness's credibility. A general attack on a witness's credibility with evidence offered under Code Section 24-6-608 or 24-6-609 shall not permit rehabilitation under this subsection. If a prior consistent statement is offered to rebut an express or implied charge against the witness of recent fabrication or improper influence or motive, the prior consistent statement shall have been made before the alleged recent fabrication or improper influence or motive arose.

24-7-701.
(a) If the witness is not testifying as an expert, the witness's testimony in the form of opinions or inferences shall be limited to those opinions or inferences which are:
(1) Rationally based on the perception of the witness;
(2) Helpful to a clear understanding of the witness's testimony or the determination of a fact in issue; and
(3) Not based on scientific, technical, or other specialized knowledge within the scope of Code Section 24-7-702.
(b) Direct testimony as to market value is in the nature of opinion evidence. A witness need not be an expert or dealer in an article or property to testify as to its value if he or she has had an opportunity to form a reasoned opinion.

24-7-702.
(a) Except as provided in Code Section 22-1-14 and in subsection (g) of this Code section, the provisions of this Code section shall apply in all civil proceedings. The opinion of a witness qualified as an expert under this Code section may be given on the facts as proved by other witnesses.
(b) If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise, if:
(1) The testimony is based upon sufficient facts or data;
(2) The testimony is the product of reliable principles and methods; and
(3) The witness has applied the principles and methods reliably to the facts of the case which have been or will be admitted into evidence before the trier of fact.
(c) Notwithstanding the provisions of subsection (b) of this Code section and any other provision of law which might be construed to the contrary, in professional malpractice actions, the opinions of an expert, who is otherwise qualified as to the acceptable standard of conduct of the professional whose conduct is at issue, shall be admissible only if, at the time the act or omission is alleged to have occurred, such expert:

(1) Was licensed by an appropriate regulatory agency to practice his or her profession in the state in which such expert was practicing or teaching in the profession at such time; and
(2) In the case of a medical malpractice action, had actual professional knowledge and experience in the area of practice or specialty in which the opinion is to be given as the result of having been regularly engaged in:
(A) The active practice of such area of specialty of his or her profession for at least three of the last five years, with sufficient frequency to establish an appropriate level of knowledge, as determined by the judge, in performing the procedure, diagnosing the condition, or rendering the treatment which is alleged to have been performed or rendered negligently by the defendant whose conduct is at issue; or
(B) The teaching of his or her profession for at least three of the last five years as an employed member of the faculty of an educational institution accredited in the teaching of such profession, with sufficient frequency to establish an appropriate level of knowledge, as determined by the judge, in teaching others how to perform the procedure, diagnose the condition, or render the treatment which is alleged to have been performed or rendered negligently by the defendant whose conduct is at issue; and
(C) Except as provided in subparagraph (D) of this paragraph:
(i) Is a member of the same profession;
(ii) Is a medical doctor testifying as to the standard of care of a defendant who is a doctor of osteopathy; or
(iii) Is a doctor of osteopathy testifying as to the standard of care of a defendant who is a medical doctor; and
(D) Notwithstanding any other provision of this Code section, an expert who is a physician and, as a result of having, during at least three of the last five years immediately preceding the time the act or omission is alleged to have occurred, supervised, taught, or instructed nurses, nurse practitioners, certified registered nurse anesthetists, nurse midwives, physician assistants, physical therapists, occupational therapists, or medical support staff, has knowledge of the standard of care of that health care provider under the circumstances at issue shall be competent to testify as to the standard of that health care provider. However, a nurse, nurse practitioner, certified registered nurse anesthetist, nurse midwife, physician assistant, physical therapist, occupational therapist, or medical support staff shall not be competent to testify as to the standard of care of a physician.
(d) Upon motion of a party, the court may hold a pretrial hearing to determine whether the witness qualifies as an expert and whether the expert's testimony satisfies the requirements of subsections (a) and (b) of this Code section. Such hearing and ruling shall be completed no later than the final pretrial conference contemplated under Code Section 9-11-16.
(e) An affiant shall meet the requirements of this Code section in order to be deemed qualified to testify as an expert by means of the affidavit required under Code Section 9-11-9.1.
(f) It is the intent of the legislature that, in all civil proceedings, the courts of the State of Georgia not be viewed as open to expert evidence that would not be admissible in other states. Therefore, in interpreting and applying this Code section, the courts of this state may draw from the opinions of the United States Supreme Court in Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993); General Electric Co. v. Joiner, 522 U.S. 136 (1997); Kumho Tire Co. Ltd. v. Carmichael, 526 U.S. 137 (1999); and other cases in federal courts applying the standards announced by the United States Supreme Court in these cases.
(g) This Code section shall not be strictly applied in proceedings conducted pursuant to Chapter 9 of Title 34 or in administrative proceedings conducted pursuant to Chapter 13 of Title 50.

24–7-703.
The facts or data in the particular proceeding upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, such facts or data need not be admissible in evidence in order for the opinion or inference to be admitted. Such facts or data that are otherwise inadmissible shall not be disclosed to the jury by the proponent of the opinion or inference unless the court determines that their probative value in assisting the jury to evaluate the expert's opinion substantially outweighs their prejudicial effect.

24-7-704.
(a) Except as provided in subsection (b) of this Code section, testimony in the form of an opinion or inference otherwise admissible shall not be objectionable because it embraces an ultimate issue to be decided by the trier of fact.

(b) No expert witness testifying with respect to the mental state or condition of an accused in a criminal proceeding shall state an opinion or inference as to whether the accused did or did not have the mental state or condition constituting an element of the crime charged or of a defense thereto. Such ultimate issues are matters for the trier of fact alone.

24-7-705.
An expert may testify in terms of opinion or inference and give reasons therefor without first testifying to the underlying facts or data, unless the court requires otherwise. An expert may in any event be required to disclose the underlying facts or data on cross-examination.
24-8-801.
As used in this chapter, the term:
(a) 'Statement' means:
(1) An oral or written assertion; or
(2) Nonverbal conduct of a person, if it is intended by the person as an assertion.
(b) 'Declarant' means a person who makes a statement.
(c) 'Hearsay' means a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.
(d) 'Hearsay' shall be subject to the following exclusions and conditions:
(1) Prior statement by witness.
(A) An out-of-court statement shall not be hearsay if the declarant testifies at the trial or hearing, is subject to cross-examination concerning the statement, and the statement is admissible as a prior inconsistent statement or a prior consistent statement under Code Section 24-6-613 or is otherwise admissible under this chapter.
(B) If a hearsay statement is admitted and the declarant does not testify at the trial or hearing, other out-of-court statements of the declarant shall be admissible for the limited use of impeaching or rehabilitating the credibility of the declarant, and not as substantive evidence, if the other statements qualify as prior inconsistent statements or prior consistent statements under Code Section 24-6-613.
(C) A statement shall not be hearsay if the declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is one of identification of a person made after perceiving the person; and
(2) Admissions by party-opponent.
Admissions shall not be excluded by the hearsay rule. An admission is a statement offered against a party which is:
(A) The party's own statement, in either an individual or representative capacity;
(B) A statement of which the party has manifested an adoption or belief in its truth;
(C) A statement by a person authorized by the party to make a statement concerning the subject;
(D) A statement by the party's agent or employee, but not including any agent of the state in a criminal proceeding, concerning a matter within the scope of the agency or employment, made during the existence of the relationship; or
(E) A statement by a coconspirator of a party during the course and in furtherance of the conspiracy, including a statement made during the concealment phase of a conspiracy. A conspiracy need not be charged in order to make a statement admissible under this subparagraph.
The contents of the statement shall be considered but shall not alone be sufficient to establish the declarant's authority under subparagraph (C) of this paragraph, the agency or employment relationship and scope thereof under subparagraph (D) of this paragraph, or the existence of the conspiracy and the participation therein of the declarant and the party against whom the statement is offered under subparagraph (E) of this paragraph.
(e) 'Public office' means:
(1) Every state department, agency, board, bureau, commission, division, public corporation, and authority;
(2) Every county, municipal corporation, school district, or other political subdivision of this state;
(3) Every department, agency, board, bureau, commission, authority, or similar body of each such county, municipal corporation, or other political subdivision of this state; and
(4) Every city, county, regional, or other authority established pursuant to the laws of this state.
(f) 'Public official' means an elected or appointed official.

(g) 'Public record' means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form and created in the course of the operation of a public office.

24-8-802.
Hearsay shall not be admissible except as provided by this article; provided, however, that if a party does not properly object to hearsay, the objection shall be deemed waived, and the hearsay evidence shall be legal evidence and admissible.

24-8-803.
The following shall not be excluded by the hearsay rule, even though the declarant is available as a witness:
(1) Present sense impression. A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition or immediately thereafter;
(2) Excited utterance. A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition;
(3) Then existing mental, emotional, or physical condition. A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition, such as intent, plan, motive, design, mental feeling, pain, and bodily health, but not including a statement of memory or belief to prove the fact remembered or believed unless such statements relate to the execution, revocation, identification, or terms of the declarant's will and not including a statement of belief as to the intent of another person;
(4) Statements for purposes of medical diagnosis or treatment. Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment;
(5) Recorded recollection. A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately shown to have been made or adopted by the witness when the matter was fresh in the witness's memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but shall not itself be received as an exhibit unless offered by an adverse party;
(6) Records of regularly conducted activity. Unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness and subject to the provisions of Chapter 7 of this title, a memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, if (A) made at or near the time of the described acts, events, conditions, opinions, or diagnoses; (B) made by, or from information transmitted by, a person with personal knowledge and a business duty to report; (C) kept in the course of a regularly conducted business activity; and (D) it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness or by certification that complies with paragraph (11) or (12) of Code Section 24-9-902 or by any other statute permitting certification. The term 'business' as used in this paragraph includes any business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit. Public records and reports shall be admissible under paragraph (8) of this Code section and shall not be admissible under this paragraph;
(7) Absence of entry in records kept in accordance with paragraph (6) of this Code section. Evidence that a matter is not included in the memoranda, reports, records, or data compilations, in any form, kept in accordance with the provisions of paragraph (6) of this Code section, to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness;
(8) Public records and reports. Except as otherwise provided by law, public records, reports, statements, or data compilations, in any form, of public offices, setting forth:
(A) The activities of the public office;
(B) Matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, however, against the accused in criminal proceedings, matters observed by police officers and other law enforcement personnel in connection with an investigation; or

(C) In civil proceedings and against the state in criminal proceedings, factual findings resulting from an investigation made pursuant to authority granted by law, unless the sources of information or other circumstances indicate lack of trustworthiness;
(9) Records of vital statistics. Records or data compilations, in any form, of births, fetal deaths, deaths, or marriages, if the report thereof was made to a public office pursuant to requirements of law;
(10) Absence of public record or entry. To prove the absence of a record, report, statement, or data compilation, in any form, or the nonoccurrence or nonexistence of a matter of which a record, report, statement, or data compilation, in any form, was regularly made and preserved by a public office, evidence in the form of a certification in accordance with Code Section 24-9-902, or testimony, that diligent search failed to disclose the record, report, statement, or data compilation, or entry;
(11) Records of religious organizations. Statements of birth, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization;
(12) Marriage, baptismal, and similar certificates. Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a clergyman, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified and purporting to have been issued at the time of the act or within a reasonable time thereafter;
(13) Family records. Statements of fact concerning personal or family history contained in family Bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts, or tombstones, or the like;
(14) Records of documents affecting an interest in property. The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable law authorizes the recording of documents of that kind in such office;
(15) Statements in documents affecting an interest in property. A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document;
(16) Statements in ancient documents. Statements in a document in existence 20 years or more the authenticity of which is established;
(17) Market reports and commercial publications. Market quotations, tabulations, lists, directories, or other published compilations generally used and relied upon by the public or by persons in the witness's particular occupation;
(18) Learned treatises. To the extent called to the attention of an expert witness upon cross-examination, statements contained in published treatises, periodicals, or pamphlets, whether published electronically or in print, on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness, by other expert testimony, or by judicial notice. If admitted, the statements may be used for cross-examination of an expert witness and read into evidence but shall not be received as exhibits;
(19) Reputation concerning personal or family history. Reputation among members of a person's family by blood, adoption, or marriage or among a person's associates or in the community concerning a person's birth, adoption, marriage, divorce, death, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of the person's personal or family history;
(20) Reputation concerning boundaries or general history. Reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community and reputation as to events of general history important to the community or state or nation in which such lands are located;
(21) Reputation as to character. Reputation of a person's character among associates or in the community;
(22) Judgment of previous conviction. Evidence of a final judgment, entered after a trial or upon a plea of guilty but not upon a plea of nolo contendere, adjudging a person guilty of a crime punishable by death or imprisonment in excess of one year to prove any fact essential to sustain the judgment, but not including, when offered by the state in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused. The pendency of an appeal may be shown but shall not affect admissibility; or

(23) Judgment as to personal, family, or general history or boundaries. Judgments as proof of matters of personal, family, or general history or boundaries essential to the judgment, if the same would be provable by evidence of reputation.

24-8-804.
(a) As used in this Code section, the term 'unavailable as a witness' includes situations in which the declarant:
(1) Is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant's statement;
(2) Persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the court to do so;
(3) Testifies to a lack of memory of the subject matter of the declarant's statement;
(4) Is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or
(5) Is absent from the hearing and the proponent of the statement has been unable to procure the declarant's attendance or, in the case of exceptions under paragraph (2), (3), or (4) of subsection (b) of this Code section, the declarant's attendance or testimony, by process or other reasonable means.
A declarant shall not be deemed unavailable as a witness if the declarant's exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of a statement for the purpose of preventing the witness from attending or testifying.
(b) The following shall not be excluded by the hearsay rule if the declarant is unavailable as a witness:
(1) Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or, in a civil proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination. If deposition testimony is admissible under either the rules stated in Code Section 9-11-32 or this Code section, it shall be admissible at trial in accordance with the rules under which it was offered;
(2) In a prosecution for homicide or in a civil proceeding, a statement made by a declarant while believing that his or her death was imminent, concerning the cause or circumstances of what the declarant believed to be impending death;
(3) A statement against interest. A statement against interest is a statement:
(A) Which a reasonable person in the declarant's position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant's proprietary or pecuniary interest or had so great a tendency to invalidate a claim by the declarant against another or to expose the declarant to civil or criminal liability; and
(B) Supported by corroborating circumstances that clearly indicate the trustworthiness of the statement if it is offered in a criminal case as a statement that tends to expose the declarant to criminal liability;
(4) A statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history, even though the declarant had no means of acquiring personal knowledge of the matter stated or a statement concerning the foregoing matters and death also of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared; or
(5) A statement offered against a party that has engaged or acquiesced in wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness.

24-8-805.
Hearsay included within hearsay shall not be excluded under the hearsay rule if each part of the combined statements conforms with an exception to the hearsay rule.

24-8-806.
When a hearsay statement has been admitted in evidence, the credibility of the declarant may be attacked and, if attacked, may be supported by any evidence which would be admissible for those purposes if the declarant had testified as a witness. Evidence of a statement or conduct by the declarant at any time, inconsistent with the declarant's hearsay statement, shall not be subject to any requirement that the declarant may have been afforded an opportunity to deny or explain. If the party against whom a hearsay

statement has been admitted calls the declarant as a witness, the party shall be entitled to examine the declarant on the statement as if under cross-examination.

24-8-807.
A statement not specifically covered by any law but having equivalent circumstantial guarantees of trustworthiness shall not be excluded by the hearsay rule, if the court determines that:
(1) The statement is offered as evidence of a material fact;
(2) The statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and
(3) The general purposes of the rules of evidence and the interests of justice will best be served by admission of the statement into evidence.
However, a statement may not be admitted under this Code section unless the proponent of it makes known to the adverse party, sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the proponent's intention to offer the statement and the particulars of it, including the name and address of the declarant.
24-8-820.
A statement made by a child under the age of 14 years describing any act of sexual contact or physical abuse performed with or on the child by another shall be admissible in evidence by the testimony of the person to whom made if the child is available to testify in the proceedings and the court finds that the circumstances of the statement provide sufficient indicia of reliability.

24-9-901.
(a) The requirement of authentication or identification as a condition precedent to admissibility shall be satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.
(b) By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this Code section:
(1) Testimony of a witness with knowledge that a matter is what it is claimed to be;
(2) Nonexpert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of the litigation;
(3) Comparison by the trier of fact or by expert witnesses with specimens which have been authenticated. Such specimens shall be furnished to the opposite party no later than ten days prior to trial;
(4) Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances;
(5) Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker;
(6) Telephone conversations, by evidence that a call was made to the number assigned at the time by a telephone service provider to a particular person or business, if:
(A) In the case of a person, circumstances, including self-identification, show the person answering to be the one called; or
(B) In the case of a business, the call was made to a place of business and the conversation related to business reasonably transacted over the telephone;
(7) Evidence that a document authorized by law to be recorded or filed and in fact recorded or filed in a public office or a purported public record, report, statement, or data compilation, in any form, is from the public office where items of this nature are kept;
(8) Evidence that a document or data compilation, in any form:
(A) Is in such condition as to create no suspicion concerning its authenticity;
(B) Was in a place where it, if authentic, would likely be; and
(C) Has been in existence 20 years or more at the time it is offered;
(9) Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result; or
(10) Any method of authentication or identification provided by law.

24-9-902.
Extrinsic evidence of authenticity as a condition precedent to admissibility shall not be required with respect to the following:
(1) A document bearing a seal purporting to be that of the United States or of any state, district, commonwealth, territory, or insular possession thereof or the Panama Canal Zone or the Trust Territory of the Pacific Islands or of a political subdivision, department, officer, or agency thereof or of a municipal corporation of this state and bearing a signature purporting to be an attestation or execution;
(2) A document purporting to bear the signature in the official capacity of an officer or employee of any entity included in paragraph (1) of this Code section having no seal, if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine;
(3) A document purporting to be executed or attested in an official capacity by a person authorized by the laws of a foreign country to make such execution or attestation and accompanied by a final certification as to the genuineness of the signature, official position of the executing or attesting person, or of any foreign official whose certificate of genuineness of signature and official position relates to such execution or attestation or is in a chain of certificates of genuineness of signature and official position relating to such execution or attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the court may, for good cause shown, order that such documents be treated as presumptively authentic without final certification or permit such documents to be evidenced by an attested summary with or without final certification;
(4) A duplicate of an official record or report or entry therein or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification by certificate complying with paragraph (1), (2), or (3) of this Code section or complying with any law of the United States or of this state, including Code Section 24-9-920;
(5) Books, pamphlets, or other publications purporting to be issued by a public office;
(6) Printed materials purporting to be newspapers or periodicals;
(7) Inscriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicating ownership, control, or origin;
(8) Documents accompanied by a certificate of acknowledgment executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgments;
(9) Commercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law;
(10) Any signature, document, or other matter declared by any law of the United States or of this state to be presumptively or prima facie genuine or authentic;
(11) The original or a duplicate of a domestic record of regularly conducted activity that would be admissible under paragraph (6) of Code Section 24-8-803 if accompanied by a written declaration of its custodian or other qualified person certifying that the record:
(A) Was made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of such matters;
(B) Was kept in the course of the regularly conducted activity; and
(C) Was made by the regularly conducted activity as a regular practice.
A party intending to offer a record into evidence under this paragraph shall provide written notice of such intention to all adverse parties and shall make the record and declaration available for inspection sufficiently in advance of their offer into evidence to provide an adverse party with a fair opportunity to challenge such record and declaration; or
(12) In a civil proceeding, the original or a duplicate of a foreign record of regularly conducted activity that would be admissible under paragraph (6) of Code Section 24-8-803 if accompanied by a written declaration by its custodian or other qualified person certifying that the record:
(A) Was made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;
(B) Was kept in the course of the regularly conducted activity; and
(C) Was made by the regularly conducted activity as a regular practice.

The declaration shall be signed in a manner that, if falsely made, would subject the maker to criminal penalty under the laws of the country where the declaration is signed. A party intending to offer a record into evidence under this paragraph shall provide written notice of such intention to all adverse parties and shall make the record and declaration available for inspection sufficiently in advance of their offer into evidence to provide an adverse party with a fair opportunity to challenge such record and declaration.

24-9-903.
The testimony of a subscribing witness shall not be necessary to authenticate a writing unless required by the laws of the jurisdiction whose laws govern the validity of the writing.

24-10-1001.
As used in this chapter, the term:
(1) 'Writing' or 'recording' means letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, magnetic impulse, or mechanical or electronic recording or other form of data compilation.
(2) 'Photograph' includes still photographs, X-ray films, video recordings, and motion pictures.
(3) 'Original' means the writing or recording itself or any counterpart intended to have the same effect by a person executing or issuing it. An original of a photograph includes the negative or any print therefrom. If data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an original.
(4) 'Duplicate' means a counterpart produced by the same impression as the original or from the same matrix or by means of photography, including enlargements and miniatures, or by mechanical or electronic rerecording, chemical reproduction, or other equivalent techniques which accurately reproduce the original.
(5) 'Public record' shall have the same meaning as set forth in Code Section 24-8-801.

24-10-1002.
To prove the contents of a writing, recording, or photograph, the original writing, recording, or photograph shall be required.

24-10-1003.
A duplicate shall be admissible to the same extent as an original unless:
(1) A genuine question is raised as to the authenticity of the original; or
(2) A circumstance exists where it would be unfair to admit the duplicate in lieu of the original.

24-10-1004.
The original shall not be required and other evidence of the contents of a writing, recording, or photograph shall be admissible if:
(1) All originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith;
(2) No original can be obtained by any available judicial process or procedure;
(3) At a time when an original was under the control of the party against whom offered, that party was put on notice, by the pleadings or otherwise, that the contents would be a subject of proof at the hearing, and that party does not produce the original at the hearing; or
(4) The writing, recording, or photograph is not closely related to a controlling issue.

Chapter 21 Common Childhood Psychiatric Disorders and Psychotropic Medications

By: Brent Wilson, MD, Child Welfare Collaborative, Inc.

Advocating for the use of evidence-based psychiatric care in youth that have been victims of abuse or neglect. Providing educational materials, training, and support to state employees that care for children in state custody. Training the next generation of child psychiatrists.

The **Diagnostic and Statistical Manual of Mental Disorders (DSM)** is the standard classification of mental disorders used by mental health professionals in the United States. The current version is the DSM-IV-TR, is the fourth edition that has been revised (TR=text revision). This diagnostic manual was published in 2000, and it is anticipated it will be replaced with the fifth edition, DSM-V, in May, 2013. DSM-III was published in 1980, DSM-III-R in 1987, and DSM-IV in 1994.

Classifications of Diagnostic Criteria include:
Axis I: Clinical Disorders, acute or chronic, & conditions that need clinical treatment
Axis II: Personality Disorders & Mental Retardation
Axis III: General Medical Conditions
Axis IV: Psychosocial and Environmental Problems
Axis V: Global Assessment of Functioning

Axis I Diagnoses, organized by disorder class

ADHD and Other Disruptive Behavior Disorders

Attention Deficit Hyperactivity Disorder (ADHD) - sometimes inaccurately referred to as ADD (there is no clinical term by this name), is a disorder usually first diagnosed in infancy, childhood or adolescence. There are 4 recognized types of ADHD. They are: Predominantly Inattentive type; Predominantly Hyperactive-Impulsive type; Combined type (inattention and hyperactivity-impulsivity); and ADHD - Not Otherwise Specified (NOS). There is a high level of correlation between children with ADHD and other psychiatric illnesses. This included illnesses ranging from behavioral, mood, family, anxiety, cognitive, social to school functioning, with the greatest increase in those with the ADHD - combined subtype.

Conduct Disorder - essentially a disorder where the person violates the social norms and rights of others. Truancy, runaway behavior, physical aggression, drug use, lying, stealing, and threatening others are all characteristic behaviors. Those with this disorder are habitually in trouble, either with parents, teachers or peers. Despite presenting a tough image to those around them, they often have a low self-esteem. Their frustration tolerance, irritability, temper outbursts and recklessness are hallmarks. Conduct Disorder may lead to adult antisocial personality disorder, which is characterized by ongoing criminal behavior and violation of the rights of others and societal laws.

Oppositional Defiant Disorder (ODD) - children with ODD ignore or defy adults' requests and rules. They may be passive, finding ways to annoy others, or active, verbally saying "no" when asked to complete a task by an adult authority figure. They exhibit tantrum behavior, anger easily, and tend to blame others for their mistakes and difficulties. They are different from children with conduct disorders in that they do not violate the rights of others.

Disruptive Behavior Disorder NOS* – see NOS below

Anxiety Disorders

Generalized Anxiety Disorder (GAD) is characterized by persistent worry and anxiety across a number of subject areas with some or all of the following accompanying symptoms: muscle tension, restlessness, irritability, difficulty concentrating, sleep difficulties, and fatigue as a result of anxiety.

Obsessive-Compulsive Disorder (OCD) is characterized by intrusive, unwanted thoughts (obsessions) that cause anxiety and behaviors (compulsions) that serve to reduce the level of anxiety caused by these thoughts.

Post Traumatic Stress Disorder (PTSD) requires the occurrence of an extremely traumatic event that is witnessed or personally experienced, and subsequently re-experienced. The re-experienced event is accompanied by anxiety symptoms of increased arousal or heightened startle response, as well as avoidance of situations, events, or individuals that may trigger memories of the traumatic event.

Social Phobia is diagnosed in individuals with significant anxiety symptoms provoked by exposure to social situations; avoidance of anxiety-provoking social situations may occur. In children, this may occur related to school activities that evoke performance anxiety or social activities that require significant interaction with peers.

Panic Disorder results from recurrent panic attacks that are unexpected, and the anxiety associated with fear of additional attacks. Panic attacks are discrete episodes of fear or terror, often related to a feeling of impending doom or loss of control, that are associated with symptoms of chest pain, difficulty breathing, or palpitations.

Anxiety Disorder NOS* – see NOS below

Mood Disorders

Major Depressive Disorder (MDD) – episodic periods of depressed mood or lack of interest with accompanying symptoms, including low energy, decreased sleep and appetite, feelings of worthlessness/low self-esteem or guilt, impaired concentration, difficulty initiating tasks, and suicidal thinking.

Dysthymic Disorder – chronically depressed mood, for at least one year continuously more days than not, with accompanying symptoms of depression as above, but less severe and chronic rather than episodic (compared to MDD).

Bipolar Disorder (I, II, and NOS*) – fluctuation in mood between manic episodes and depressive episodes. The mood disturbance must persist for 1 week to qualify as a manic episode and for 2 weeks to qualify as a major depressive episode. Hypomanic episodes, which occur in Bipolar II Disorder have similar symptoms to manic episodes, but the length of the mood episode is shorter (4 days) than a manic episode characteristic of Bipolar I Disorder. Manic episodes may involve: feelings of very happy or acting silly in unusual ways, short temper, fast talking about a lot of different things, trouble staying focused, trouble sleeping but still not tired, doing risky things. Depressive episodes may involve: feeling very sad, complaining about pain (stomachaches & headaches), sleeping too little or too much, feelings of guilt & worthlessness, eating too little or too much, having little energy & no interest in fun activities, thinking about death or suicide.

Bipolar Disorder NOS* – see NOS below
Depressive Disorder NOS* – see NOS below
Mood Disorder NOS* – see NOS below

Psychotic Disorders

Generally the term psychotic refers to a constellation of symptoms in which delusions (distortions in thought content) and hallucinations (distortions in perception) are prominent, and the individual loses contact with reality.

Schizophrenia is a disorder that lasts at least 6 months with at least one month (active phase) of symptoms which include two or more of the following: hallucinations, delusions, disorganized speech, grossly disorganized or catatonic behavior, and "negative symptoms" which include flat affect, restricted thought / speech and restricted initiation of goal directed behavior. Sub categories – Paranoid, Disorganized, Catatonic, Undifferentiated and Residual.

Schizoaffective Disorder is a disorder in which a mood (manic or depressive) episode occurs simultaneously with the active phase symptoms of schizophrenia (hallucinations, delusions, disorganized speech, grossly disorganized or catatonic behavior, and "negative symptoms" which include flat affect, restricted thought / speech and restricted initiation of goal directed behavior). Psychotic symptoms persist in this disorder even in the absence of mood episodes.

Psychotic Disorder NOS* – see NOS below

Adjustment Disorders are diagnosed when emotional and/or behavioral symptoms develop within 3 months of stressor, and are in excess of what would be expected given the nature of the stressor. They are grouped by subtype based on the predominant symptom type. Examples of subtypes include:

Adjustment Disorder, with depressed mood,
with anxiety,
with disturbance of conduct,
with mixed disturbance of emotions and conduct

Substance Use Disorders are diagnosed when substance use leads to clinically significant impairment in other areas of one's life. These disorders are classified by the type of substance used (alcohol, cannabis, opioids, etc), and based on the severity of impairment. Substance dependence is associated with more severe impairment than is substance abuse; symptoms for substance abuse and dependence are listed in the chart below. It is more typical for children to meet criteria for substance abuse than substance dependence.

Dependence required to meet 3 criteria within a 12-month period related to substance use	**Abuse** required to meet only 1 criteria within a 12-month period related to substance use
• Tolerance (marked increase in amount consumed or marked decrease in effect) • Characteristic withdrawal symptoms; substance taken to relieve withdrawal • Substance taken in larger amount, and for longer period than intended • Persistent desire or repeated unsuccessful attempt to quit • Much time/activity to obtain, use, recover • Important social, occupational, or recreational activities given up or reduced • Use continues despite knowledge of adverse consequences (e.g., failure to fulfill role obligation, use when physically hazardous)	• Recurrent use resulting in failure to fulfill major role obligation at work, home or school • Recurrent use in physically hazardous situations • Recurrent substance related legal problems • Continued use despite persistent or recurrent social or interpersonal problems caused by, or exacerbated by, substance use

Eating Disorders

Anorexia Nervosa is defined by the inability to maintain at least 85% of ideal body weight, an intense fear of gaining weight, distorted body image, and absence of at least 3 consecutive menstrual cycles in females. In an average 5'4" female, weight would be less than 100 pounds to qualify for this diagnosis. Individuals with anorexia may either restrict their food intake or engage in episodes of binge eating and/or purging behavior. Purging behavior includes any activity designed to prevent weight gain (excessive exercise, laxative or diuretic use, enemas, fasting, or intentional vomiting).

Bulimia Nervosa is defined by uncontrollable episodes of eating quantities of food in excess of what most people would eat and compensatory mechanisms to purge. Purging is described above. Self-esteem is considerably influenced by weight and body shape.

Pervasive Developmental Disorders

Autism - may manifest in early infancy, with the infant shying away from the parent's touch, not responding to a parent who returns after an absence, and inappropriate gaze behavior. The Autistic child may fail to meet early language and other developmental milestones. And there can be as much as a 3-year delay between the report of symptoms and the diagnosis, which is usually made at around age five.

Asperger's Syndrome - a separate Autistic Spectrum disorder, which does not meet criteria for other Pervasive Developmental Disorders or Schizophrenia. Features of Asperger's Disorder are severe and sustained impairment in social interaction and the development of repetitive patterns of behavior, interests and activities, and significant impairment in social, occupational and other important areas of functioning. Because there are no significant language delays or cognitive deficits, Asperger's is sometimes referred to by the general public as a form of high functioning autism.

Pervasive Developmental Disorder NOS* - see NOS below

Other Disorders

Intermittent Explosive Disorder (IED) is primarily characterized by an individual's failure to resist aggressive impulses that result in serious physical aggression or destruction of property. Aggression must be grossly out of proportion to any precipitating stressor.

Learning Disorders occur in three major categories: reading, mathematics, and written expression. Reading problems generally occur before the age of 7. This is followed usually by problems with spelling and written language expression by the age of 8. Mathematical learning disorders often are not detected until after rote memorization mathematics work has ended, and application of more abstract skills is necessary. These diagnoses are given only after standardized testing in the particular area is significantly below that expected by the child's chronological age, IQ, and educational level.

Reactive Attachment Disorder (RAD) is characterized by the breakdown of social ability of a child. It is associated with the failure of the child to bond with a caretaker in infancy or early childhood. This can be caused by many factors, ranging from child neglect to the child being hospitalized for severe medical problems. The children may display either indiscriminate social extroversion as they grow older (treating all people as if they were their best friend) or showing mistrust of nearly everyone.

Separation Anxiety Disorder – affects children who are afraid to be separated from the main caretakers in their lives, even to go to a friend's house or school. When separated, they are constantly afraid that something horrible will happen to either themselves or to their primary caretaker (they or the caretaker will die, for instance). When the subject of separating is brought up, the child begins to present with somatic symptoms ranging from headaches to nausea and vomiting, with anxiety.

***NOS (Not Otherwise Specified)** – these diagnoses are used within each major category of diagnosis. It is a way to communicate that an individual possesses some symptoms of a class of disorders (anxiety, mood, psychotic), but does not meet all criteria necessary for diagnosis of a specific disorder.

Axis II-Personality Disorders and Mental Retardation

Personality Disorders and Mental Retardation are recorded so the clinician will give consideration to additional intervention and treatment choices. Personality disorders are not usually diagnosed in children and adolescents

Personality Disorders are diagnosed when personality traits reflect ingrained, inflexible, and maladaptive patterns of behaviors that cause discomfort, distress and impair the individual's ability to function in the daily activities of living. Examples of personality disorders include:

- Antisocial Personality Disorder (impulsive, aggressive,manipulative)
- Avoidant Personality Disorder (shy, timid, "inferiority complex")
- Borderline Personality Disorder (impulsive, self-destructive, unstable)
- Dependent Personality Disorder (dependent, submissive, clinging)
- Histrionic Personality Disorder (emotional, dramatic, theatrical)
- Narcissistic Personality Disorder (boastful, egotistical, "superiority complex")
- Obsessive-Compulsive Personality Disorder (perfectionistic, rigid, controlling)
- Paranoid Personality Disorder (suspicious, distrustful)
- Schizoid Personality Disorder (socially distant, detached)
- Schizotypal Personality Disorder (odd, eccentric)

Mental Retardation is a diagnosis is based on intellectual functioning (IQ) and adaptive functioning. It is a developmental condition that is characterized by a level of general intellectual functioning significantly below average (IQ<70). Approximately 2-3% of the general population falls within this IQ range. Impairments in adaptive functioning may be observed in any of the following areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety. Finally, the onset must be before age 18. There are 4 levels of Mental Retardation, based on IQ: Mild, IQ 55-70, mental age of 9 to 11 years old; Moderate, IQ 40-55, mental age of 6 to 9 years old; Severe, IQ 25-40, mental age of 4 to 6 years old, and Profound, IQ below 25, mental age below 4 years old. Borderline intellectual functioning (IQ 70-80) may also be a consideration for clinical focus.

Axis III – General Medical Conditions

Other medical illnesses are listed on this Axis that are potentially relevant to the understanding of the individual's psychiatric illness.

Axis IV-Psychosocial and Environmental Problems

The severity of psychosocial and environmental stressors, as well as the nature of these stressors, is listed on this Axis. These stressors will have the potential to affect the diagnosis, treatment, and prognosis of the individual's mental illness. Examples include:

- Problems with primary support group
- Problems related to the social environment
- Educational problems
- Occupational problems
- Housing problems
- Economic problems
- Problems with access to health care services
- Problems related to interaction with the legal system/crime
- Other psychosocial and environmental problems

Axis V-Global Assessment of Functioning Scale.

Global Assessment of Functioning is for reporting the clinician's judgment of the individual's overall level of functioning and carrying out activities of daily living. This information is useful in planning treatment and measuring its impact, and in predicting outcome. The Global Assessment of Functioning Scale is a 100-point scale that measures a patients overall level of psychological, social, and occupational functioning on a hypothetical continuum.

Global Assessment of Functioning Scale.

- 91-100 Superior functioning in a wide range of activities, life's problems never seem to get out of hand, is sought out by others because of his or her many positive qualities. No symptoms
- 81-90 Absent or minimal symptoms (e.g., mild anxiety before an exam), good functioning in all areas, interested and involved in a wide range of activities, socially effective, generally satisfied with life, no more than everyday problems or concerns (e.g., an occasional argument with family members)
- 71-80 If symptoms are present, they are transient and expectable reactions to psychosocial stressors (e.g., difficulty concentrating after family argument); no more than slight impairment in social occupational, or school functioning (e.g., temporarily falling behind in schoolwork)
- 61-70 Some mild symptoms (e.g., depressed mood and mild insomnia) OR some difficulty in social occupational, or school functioning (e.g., occasional truancy or theft within the household), but generally functioning pretty well, has some meaningful interpersonal relationships.
- 51-60 Moderate symptoms (e.g., flat affect and circumstantial speech, occasional panic attacks) OR moderate difficulty in social, occupational, or school functioning (e.g., few friends, conflicts with peers or co-workers).
- 41-50 Severe symptoms (e.g., suicidal ideation, severe obsessional rituals, frequent shoplifting) OR any serious impairment in social, occupational or school functioning (e.g., no friends, unable to keep a job).
- 31-40 Some impairment in reality testing or communication (e.g., speech is at times illogical, obscure, or irrelevant) OR major impairment in several areas, such as work or school, family relations, judgment, thinking, or mood (e.g., depressed man avoids friends, neglects family, and is unable to work; child frequently beats up younger children, is defiant at home, and is failing at school).
- 21-30 Behavior is considerably influenced by delusions or hallucinations OR serious impairment in communication or judgment (e.g., sometimes incoherent, acts grossly inappropriately, suicidal preoccupation) OR inability to function in almost all areas (e.g., stays in bed all day, no job, home, or friends).
- 11-20 Some danger of hurting self or others (e .g., suicidal attempts without clear expectation of death; frequently violent; manic excitement) OR occasionally fails to maintain minimal personal hygiene (e.g., smears feces) OR gross impairment in communication (e.g., largely incoherent or mute).
- 1-10 Persistent danger of severely hurting self or others (e.g., recurrent violence) OR persistent inability to maintain minimal personal hygiene OR serious suicidal act with clear expectation of death.

Commonly Prescribed Psychotropic Medications			
Brand	**Generic**	**Class**	**Typically Used to Treat** **Boldface** means the medication has an FDA indication for treatment of this condition in children
Abilify	aripiprazole	Atypical antipsychotic	**bipolar**, **schizophrenia**, depression, **autism (irritability)**
Adderall (XR)	amphetamine salts	Stimulant	**ADHD**
Ativan	lorazepam	Benzodiazepine	anxiety
Catapres	clonidine	ADHD/Other	ADHD
Celexa	citalopram	SSRI	anxiety/depression
Concerta	methylphenidate	Stimulant	**ADHD**
Cymbalta	duloxetine	SNRI	anxiety/depression
Depakote (ER)	valproic acid	Mood stabilizer	bipolar/**seizures**
Desyrel	trazodone	Antidepressant/Other	depression/sleep aid
Effexor (XR)	venlafaxine	SNRI	anxiety/depression
Focalin (XR)	dexmethylphenidate	Stimulant	**ADHD**
Geodon	ziprasidone	Atypical antipsychotic	bipolar, schizophrenia
Haldol	haloperidol	Typical antipsychotic	schizophrenia/**tourette's**
Lamictal	lamotrigine	Mood stabilizer	bipolar/**seizures**
Lexapro	escitalopram	SSRI	anxiety/**depression**
Lithium	lithium carbonate	Mood stabilizer	**bipolar**
Paxil	paroxetine	SSRI	anxiety/depression
Prozac	fluoxetine	SSRI	anxiety, **depression**, **OCD**
Remeron	mirtazapine	Antidepressant/Other	depression/sleep aid
Risperdal	risperidone	Atypical antipsychotic	**bipolar, schizophrenia, autism (irritability)**
Ritalin (LA, SR)	methylphenidate	Stimulant	**ADHD**
Seroquel	quetiapine	Atypical antipsychotic	**bipolar, schizophrenia**
Strattera	atomoxetine	ADHD/Other	**ADHD**
Tenex	guanfacine	ADHD/Other	ADHD
Trileptal	oxcarbazepine	Mood stabilizer	**seizures**/bipolar
Vistaril	hydroxyzine	Antihistamine/Other	anxiety/sleep aid
Vyvanse	lisdexamfetamine dimesylate	Stimulant	**ADHD**
Wellbutrin (SR, XL)	bupropion	Antidepressant/Other	depression
Zoloft	sertraline	SSRI	anxiety, depression, **OCD**
Zyprexa	olanzapine	Atypical antipsychotic	**bipolar, schizophrenia**

Side Effects of Commonly Prescribed Psychotropic Medications

Class of Medication	Common Side Effect	Rare or Severe Side Effect
Antidepressants	nausea, headache, diarrhea, difficulty sleeping, sexual dysfunction	Increased risk of suicidal thinking, serotonin syndrome, activation of mania, low sodium levels, abnormal bleeding
Mood stabilizers	Lithium nausea, increased thirst/urination, headache, metallic taste Depakote weight gain, sedation, nausea, weakness, tremors, hair loss Trileptal sedation, double vision, headache, nausea	Lithium kidney/thyroid dysfunction, blurred vision, diarrhea, vomiting, muscle weakness, lack of coordination, hair thinning, cardiac arrhythmia Depakote pancreatitis, hepatotoxicity, fetal abnormalities, thrombocytopenia, polycystic ovary syndrome Trileptal gait disturbance, cognitive difficulties, low sodium levels, suicidal thinking, life-threatening serious rashes
Antipsychotics (typical and atypical)	sedation, weight gain, lightheadedness	diabetes mellitus, elevated cholesterol, lower seizure threshold, involuntary muscle movements
ADHD medications	diminished appetite, weight loss, difficulty sleeping, increased blood pressure	hallucinations, tics, cardiac complications

Reasons for Consultation

- More than one medication from the same class
- More than three psychotropic medications
- Any medication prescribed to children less than 5 years old
- Antipsychotic medication prescribed to children less than 10 years old
- Starting more than one medication simultaneously
- A dosage that exceeds the maximum suggested dose on the medication's package insert
- Observable side effects

ANXIETY DISORDERS		
Disorder	**Chief Symptoms**	**Commonly Used Medication**
Generalized Anxiety Disorder	Worry or tension, difficulty concentrating, fatigue, irritability, problems sleeping, restlessness	SSRIs* (e.g., Celexa, Zoloft, Prozac), SNRIs** (e.g., Cymbalta, Effexor), Benzodiazepines (e.g., Klonopin, Ativan)
Obsessive Compulsive Disorder	Intrusive, unwanted thoughts that cause anxiety, relieved by compulsive behaviors	
Posttraumatic Stress Disorder	Personal or witnessed trauma with repeated re-experiencing of traumatic event (flashbacks, dreams), avoidance of situations or individuals that trigger memories of trauma, heightened arousal response	

MOOD DISORDERS		
Disorder	**Chief Symptoms**	**Commonly Used Medication**
Bipolar Disorder	Alternating between episodes of mania (hyperactivity, agitation, racing thoughts, reckless behaviors) and episodes of depression (see MDD below)	Mood stabilizers, antipsychotics, antidepressants (less common)
Dysthymic Disorder	Constant (non-episodic) depression less severe than MDD (see below). May include feelings of hopelessness, sleep difficulties, low energy, low self-esteem, poor appetite, difficulty concentrating	SSRIs*, SNRIs**, other antidepressants
Major Depressive Disorder	Episodic (≥ 2 weeks), dramatic change in appetite, fatigue, loss of pleasure, feelings of hopelessness/helplessness/worthlessness, irritability, thoughts of suicide or death, change in sleep patterns	

*SSRIs=Selective Serotonin Reuptake Inhibitors **SNRIs=Serotonin Norepinephrine Reuptake Inhibitors
SSRIs and SNRIs are two types of antidepressant medications commonly used for the treatment of depressive and anxiety disorders.

BEHAVIOR DISORDERS		
Disorder	**Chief Symptoms**	**Commonly Used Medication**
Attention-Deficit Hyperactivity Disorder	Inattentiveness, hyperactivity, impulsivity, or a combination of these out of the normal range for a child's age and development	Psychostimulants (e.g., Adderall, Ritalin, Concerta, Focalin, Vyvanse), Clonidine, Guanfacine
Conduct Disorder	Bullying, fighting, breaking rules with no apparent reason, cruel or aggressive behavior, destruction of property, alcohol/drug use, lying, running away, truancy, vandalism	
Oppositional Defiant Disorder	Does not follow adults' requests, angry and resentful, argues with adults, blames others for mistakes, loses temper, spiteful or seeks revenge, easily annoyed	

	PSYCHOTIC DISORDERS	
Disorder	**Chief Symptoms**	**Commonly Used Medication**
Psychotic Disorder NOS	Delusions, hallucinations, or other psychotic symptoms that cannot be fixed to any specific psychotic disorder	Antipsychotics (typicals: Haldol, Prolixin, Thorazine or atypicals: Abilify, Geodon, Risperdal, Seroquel, Zyprexa)
Schizophrenia	Disorganized speech or behavior, false beliefs or thoughts not based in reality (delusions); hearing, seeing, or feeling things that have no basis in reality (hallucinations)	
Schizoaffective Disorder	Delusions or hallucinations accompanied by a mood episode (mania, depression, or mixed)	

OTHER CHILDHOOD DISORDERS		
Disorder	**Chief Symptoms**	**Commonly Used Medications**
Adjustment Disorders	Response to a stressor in excess of the expected response given nature of stressor. Categorized based on type of emotional/behavioral disturbance (depressed mood, anxiety, conduct disturbance)	Antidepressants (SSRIs, SNRIs, or others) may help alleviate depressive or anxiety symptoms
Autistic Disorder	Impaired non-verbal communication or interpretation of social cues, delay in the development of spoken language, repetitive or stereotyped patterns of behavior, inflexible attachment to routines	Risperdal, Abilify (for irritability and aggression)
Enuresis	Repeated urination in clothes or bed several times weekly in children ≥ 5 years of age	DDAVP or imipramine (both as short-term treatments)
Reactive Attachment Disorder	Disturbance in social relationships that begins before 5 years old. May avoid caregivers or physical contact, be difficult to comfort, and resist social interactions. Others may be overly familiar and make indiscriminate relationships.	Antidepressants (SSRIs, SNRIs or others) may help alleviate anxiety symptoms

Internet Resources

The National Institute of Mental Health (NIMH)	www.nimh.nih.gov
DailyMed (medication information)	dailymed.nlm.nih.gov
National Alliance on Mental Illness (NAMI)	www.nami.org
The American Academy of Child and Adolescent Psychiatry (AACAP)	www.aacap.org
The National Child Traumatic Stress Network (NCTSN)	www.nctsn.org
Monthly Prescribing Reference (medication information)	www.empr.org

Chapter 22 Emancipation & Rescission of Emancipation

Authority	**O.C.G.A. § 15-11-200 to 208**
Definitions	Minor, at least 16 but less than 18
Purpose	Establish procedure for a minor to be emancipated by petition to the Juvenile Court Minor may be emancipated o valid marriage o reaches 18 years old o active duty in the armed forces o Emancipation through Petition filed by minor Establish procedure for emancipated minor to petition the Juvenile Court to rescind the emancipation order
Pleading for Emancipation	**Petition for Emancipation** o Signed & verified by the minor o **O.C.G.A. § 15-11-202** o **Petition** shall include o Minors full name & birth date, present address & length of time at the address o Certified copy of minor's birth certificate o Name & last known address of minor's parents or guardians, if no parent then the name & address of the minors nearest living relative residing in the state o Declaration by the minor • Demonstrating that he or she can manage his or her financial affairs • Demonstrating that he or she can manage his or her personal or social affairs o Names of adults who have personal knowledge of the minor's circumstances & believe that emancipation is in the child's best interest & will provide an affidavit **Answer** o Parents & any person served with the Petition for Emancipation for emancipation may file an answer within 30 days of being served
Pleading to Rescind Emancipation	**O.C.G.A. § 15-11-206** Petition to Rescind o Granted if the Juvenile Court finds o Minor is indigent & has no means of support o Minor & the minor's parents (guardian) agree the order should be rescinded OR o There is a resumption of family relations inconsistent with the existing emancipation order
Jurisdiction	Juvenile Court
Venue	Minor's county of residence
Timing	When minor is at least 16 & less than 18
Parties	Minor , Parents (Guardian), attorneys for minor & parent(s) **O.C.G.A. § 15-11-204(a)(1)** Court may assign a guardian ad litem or an employee of the court to investigate & report back with recommendations as to whether emancipation is I the child's best interest
Service / Notice	**O.C.G.A. § 15-11-203(a)** Summons & Petition served on parents(s), guardian & any individual identified as having information as to the circumstances of the minor & who provided an affidavit
Notice to Non Parties	**O.C.G.A. § 15-11-203(a)** Summons & Petition served on any individual identified as having information as to the circumstances of the minor & who provided an affidavit
Standard of Proof	**Preponderance of the Evidence** established by the minor that emancipation is in his or her best interest

Right to Attorney	**O.C.G.A. § 15-11-204(a)(2) & (3)** Minor & Parents
Decision Points	**O.C.G.A. § 15-11-205(a)-(b)** Is emancipation in the minors best interest An order for emancipation should be granted only if the court feels that emancipation is in the best interest of the child and the minor establishes: o Parent or guardian does not object to the petition or that emancipation is in the minors best interest despite the objection o Minor is a resident of the state. o Minor has demonstrated the ability to manage financial affairs, including proof of employment or other means of support that does not include general assistance or aid received from means-tested public assistance programs such as Temporary Assistance for Needy Families or similar programs under Title IV-A of the federal Social Security Act o Minor has the ability to manage personal and social affairs, in addition to proof of housing o Minor understands his or her rights as an emancipated minor o
Order of Emancipation	o If granted then Court retains order until minor reaches 25 years old o Minor or parent (guardian) may appeal to the Court of Appeals
Order to Rescind Emancipation	o If a Rescission of emancipation is granted, the court shall issue an order & retain a copy of the order until the minor reaches 25 years of age o Rescission of emancipation does not alter any contractual obligations or rights or any property rights or interests that arose during the period of time that the minor was emancipated o Minor or parent (guardian) may appeal to the Court of Appeals

Practice Points
O.C.G.A. § 15-11-207 Provides for rights & responsibilities of an emancipated minor

O.C.G.A. Code Sections
15-11-200 Emancipation of minor definitions.
As used in this article, the term:
(1) "Emancipation" means termination of the rights of the parents to the custody, control, services, and earnings of a minor.
(2) "Minor" means a person who is at least 16 but less than 18 years of age.
(3) "Parents" has the same meaning as set forth in Code Section 15-11-2.

15-11-201 Methods of emancipation of minor.
(a) Emancipation may occur by operation of law or pursuant to a petition filed by a minor with the Juvenile Court as provided in this article.
(b) An emancipation occurs by operation of law:
(1) When a minor is validly married;
(2) When a person reaches the age of 18 years; or
(3) During the period when the minor is on active duty with the armed forces of the United States.
(c) An emancipation occurs by court order pursuant to a petition filed by a minor with the Juvenile Court as provided in Code Sections 15-11-202 through 15-11-207.

15-11-202 Petition of minor seeking emancipation.
A minor seeking emancipation shall file a petition for emancipation in the Juvenile Court in the county where the minor resides. The petition shall be signed and verified by the minor, and shall include:
(1) The minor's full name and birth date, and the county and state where the minor was born;
(2) A certified copy of the minor's birth certificate;

(3) The name and last known address of the minor's parents or guardian, and if no parent or guardian can be found, the name and address of the minor's nearest living relative residing within this state;
(4) The minor's present address and length of residency at that address;
(5) A declaration by the minor indicating that he or she has demonstrated the ability to manage his or her financial affairs; the minor may include any information he or she considers necessary to support the declaration;
(6) A declaration by the minor indicating that he or she has the ability to manage his or her personal and social affairs; the minor may include any information he or she considers necessary to support the declaration; and
(7) The names of adults who have personal knowledge of the minor's circumstances and believe that under those circumstances emancipation is in the best interest of the minor. Such individuals may include any of the following:
(A) Physician or osteopath licensed pursuant to Chapter 34 of Title 43;
(B) Registered professional nurse or licensed practical nurse licensed pursuant to Chapter 26 of Title 43;
(C) Psychologist licensed pursuant to Chapter 39 of Title 43;
(D) Professional counselor, social worker, or marriage and family therapist licensed pursuant to Chapter 10A of Title 43;
(E) School guidance counselor, school social worker, or school psychologist;
(F) School administrator, school principal, or school teacher;
(G) Member of the clergy;
(H) Law enforcement officer; or
(I) Attorney.

15-11-203 Service of petition and summons - answer.
(a) Upon filing the petition, a copy of the petition for emancipation and a summons to appear at the hearing shall be served on the minor's parents or guardian, if applicable, upon any individual who provided an affidavit as set forth in paragraph (7) of Code Section 15-11-202, and any other individual named in the petition.
(b) Any individual served with the petition for emancipation may file an answer to such petition in the Juvenile Court within 30 days of being served.

15-11-204 Procedure following filing of emancipation petition.
(a) After a petition for emancipation is filed, the court may:
(1) Assign an employee of the court or appoint a guardian ad litem to investigate the allegations of the petition and to file a report containing the results of the investigation with the court, including a recommendation as to whether it is in the best interest of the minor that the petition for emancipation be granted;
(2) Appoint an attorney for the minor; and
(3) Appoint an attorney for the minor's parents or guardian if they are indigent and if they oppose the petition.
(b) After a petition for emancipation is filed, the court shall seek an affidavit from each individual identified in the petition pursuant to paragraph (7) of Code Section 15-11-202 which describes why the individual believes the minor should be emancipated.

15-11-205 Hearing on petition - burden of proof - fraud - appeal.
(a) The hearing on the petition for emancipation shall be before a judge; and the court shall issue an emancipation order if it determines that emancipation is in the best interest of the minor and the minor establishes:
(1) That the minor's parent or guardian does not object to the petition; or if a parent or guardian objects to the petition, that the best interest of the child is served by allowing the emancipation to occur by court order;
(2) That the minor is a resident of this state;
(3) That the minor has demonstrated the ability to manage his or her financial affairs, including proof of employment or other means of support; the term "other means of support" does not include general

assistance or aid received from means-tested public assistance programs such as Temporary Assistance for Needy Families or similar programs under Title IV-A of the federal Social Security Act;

(4) That the minor has the ability to manage his or her personal and social affairs, including, but not limited to, proof of housing; and

(5) That the minor understands his or her rights and responsibilities under this article as an emancipated minor.

(b) A minor who petitions the court for emancipation shall have the burden of showing by a preponderance of evidence that emancipation should be ordered.

(c) If the court issues an emancipation order, the court shall retain a copy of the order until the emancipated minor becomes 25 years of age.

(d) An emancipation obtained by fraud is voidable. Voiding an emancipation order does not affect an obligation, responsibility, right, or interest that arose during the period of time the order was in effect.

(e) The minor or a parent or guardian of the minor may appeal the court's grant or denial of an emancipation petition. The appeal shall be filed in the Court of Appeals.

15-11-206 Petition to rescind emancipation order.

(a) A minor emancipated by court order may petition the Juvenile Court that issued the emancipation order to rescind such order.

(b) A copy of the petition for rescission and a summons shall be served on the minor's parents or guardian.

(c) The court shall grant the petition and rescind the order of emancipation if it finds:

(1) That the minor is indigent and has no means of support;

(2) That the minor and the minor's parents or guardian agree that the order should be rescinded; or

(3) That there is a resumption of family relations inconsistent with the existing emancipation order.

(d) If a petition for rescission is granted, the court shall issue an order rescinding the emancipation order and retain a copy of the order until the minor becomes 25 years of age.

(e) Rescission of an emancipation order does not alter any contractual obligations or rights or any property rights or interests that arose during the period of time that the emancipation order was in effect.

(f) The minor or a parent or guardian of the minor may appeal the court's grant or denial of a petition for rescission of an emancipation order. The appeal shall be filed in the Court of Appeals.

15-11-207 Rights and responsibilities of emancipated minor.

(a) A minor emancipated by operation of law or by court order shall be considered to have the rights and responsibilities of an adult, except for those specific constitutional and statutory age requirements regarding voting, use of alcoholic beverages, and other health and safety regulations relevant to the minor because of his or her age. The rights of a minor to receive any transfer of property or money pursuant to "The Georgia Transfers to Minors Act" under Article 5 of Chapter 5 of Title 44; under the Uniform Transfers to Minors Act, the Uniform Gift to Minors Act, or other substantially similar act of another state; or pursuant to a trust agreement shall not be affected by a declaration of an emancipation under this article.

(b) A minor shall be considered emancipated for the purposes of, but not limited to:

(1) The right to enter into enforceable contracts, including apartment leases;

(2) The right to sue or be sued in his or her own name;

(3) The right to retain his or her own earnings;

(4) The right to establish a separate domicile;

(5) The right to act autonomously, and with the rights and responsibilities of an adult, in all business relationships, including, but not limited to, property transactions and obtaining accounts for utilities, except for those estate or property matters that the court determines may require a conservator or guardian ad litem;

(6) The right to earn a living, subject only to the health and safety regulations designed to protect those under the age of 18 regardless of their legal status;

(7) The right to authorize his or her own preventive health care, medical care, dental care, and mental health care, without parental knowledge or liability;

(8) The right to apply for a driver's license or other state licenses for which he or she might be eligible;

(9) The right to register for school;

(10) The right to apply for medical assistance programs and for other welfare assistance, if needed;

(11) The right, if a parent, to make decisions and give authority in caring for his or her own minor child; and

(12) The right to make a will.

(c) The parents or guardian of a minor emancipated by court order are not liable for any debts incurred by the minor during the period of emancipation.

15-11-208 Duty to provide support until emancipation.

(a) The duty to provide support for a minor child shall continue until an emancipation order is granted.

(b) A minor emancipated under this article shall not be considered a "deprived child" for purposes of Part 6 of Article 1 of this chapter.

(c) The provisions set forth in Code Section 19-3-2 regarding age limitations to contract for marriage shall apply to a minor who has become emancipated under this article.

Chapter 23 Parental Notification Act or Judicial By Pass Hearing

Parental Notification of Abortion & Waiver Hearing

Authority	O.C.G.A. § 15-11-110 to 117 Uniform Rules For The Juvenile Courts Of Georgia, Rule 23
Purpose	• for an un-emancipated minor located within the State who is seeking to make the abortion decision without notification to her parent / guardian • Court does NOT approve abortion ONLY authorizes the minor to make the abortion decision independently & without notice to her parent or guardian
Pleadings	• Petition prepared by Court Intake office, all pleadings and hearings are conducted in a manner to preserve complete anonymity of parties, no identifying information of the minor should be included in the pleadings
Parties	• Child, usually accompanied by representative of the Clinic
Notice	NONE
Right to Attorney	Child is appointed a Guardian Ad Litem (GAL); some Clinics provide an attorney to assist child through process
Std of Proof	Clear & Convincing
Jurisdiction	Juvenile Court
Venue	Any county in state
Timing	Within 3 days of filing, excluding weekends / holidays
Decision Points	• is the minor mature enough & well informed enough to make the abortion decision herself, in consultation with her physician? Independent of the wishes of her parents / guardian, • notice to the parents / guardian would not be in the child's best interest – fear of parental abuse or harm
Documents	Proof of pregnancy
Order	Order must be issued within 24 hours of hearing

Code Sections - OCGA

15-11-110 Parental Notification Act.

This article shall be known and may be cited as the "Parental Notification Act."

15-11-111 Parental notification definitions.

As used in this article, the term:

(1) "Abortion" means the use or prescription of any instrument, medicine, drug, or any other substance or device with the intent to terminate the pregnancy of a female known to be pregnant. The term "abortion" shall not include the use or prescription of any instrument, medicine, drug, or any other substance or device employed solely to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead unborn child who died as a result of a spontaneous abortion. The term "abortion" also shall not include the prescription or use of contraceptives.

(2) "Proper identification" means any document issued by a governmental agency containing a description of the person, the person's photograph, or both, including, but not limited to, a driver's license, an identification card authorized under Code Sections 40-5-100 through 40-5-104 or similar identification card issued by another state, a military identification card, a passport, or an appropriate work authorization issued by the United States Immigration and Customs Enforcement Division of the Department of Homeland Security.

(3) "Unemancipated minor" means any person under the age of 18 who is not or has not been married or who is under the care, custody, and control of such person's parent or parents, guardian, or the Juvenile Court of competent jurisdiction.

15-11-112 Notice of abortion on unemancipated minor - hearing.

(a) No physician or other person shall perform an abortion upon an unemancipated minor under the age of 18 years unless:

(1)(A) The minor seeking an abortion shall be accompanied by a parent or guardian who shall show proper identification and state that the parent or guardian is the lawful parent or guardian of the minor and that the parent or guardian has been notified that an abortion is to be performed on the minor;

(B) The physician or the physician's qualified agent gives at least 24 hours' actual notice, in person or by telephone, to a parent or guardian of the pending abortion and the name and address of the place where the abortion is to be performed; provided, however, that, if the person so notified indicates that he or she has been previously informed that the minor was seeking an abortion or if the person so notified has not been previously informed and he or she clearly expresses that he or she does not wish to consult with the minor, then in either event the abortion may proceed in accordance with Chapter 9A of Title 31; or

(C) The physician or a physician's qualified agent gives written notice of the pending abortion and the address of the place where the abortion is to be performed, sent by certified mail, return receipt requested with delivery confirmation, addressed to a parent or guardian at the usual place of abode of the parent or guardian. Unless proof of delivery is otherwise sooner established, such notice shall be deemed delivered 48 hours after mailing. The time of mailing shall be recorded by the physician or agent in the minor's file. The abortion may be performed 24 hours after the delivery of the notice; provided, however, that, if the person so notified certifies in writing that he or she has been previously informed that the minor was seeking an abortion or if the person so notified has not been previously informed and he or she certifies in writing that he or she does not wish to consult with the minor, then in either event the abortion may proceed in accordance with Chapter 9A of Title 31; and

(2) The minor signs a consent form stating that she consents, freely and without coercion, to the abortion.

(b) If the unemancipated minor or the physician or a physician's qualified agent, as the case may be, elects not to comply with any one of the requirements of subparagraph (a)(1)(A), (a)(1)(B), or (a)(1)(C) of this Code section, or if the parent or legal guardian of the minor cannot be located, the minor may petition, on the minor's own behalf or by next friend, any Juvenile Court in the state for a waiver of such requirement pursuant to the procedures provided for in Code Section 15-11-114. The Juvenile Court shall assist the minor or next friend in preparing the petition and notices required pursuant to this Code section. Venue shall be lawful in any county, notwithstanding Code Section 15-11-29.

(c) No abortion shall be performed unless the requirements of subparagraph (a)(1)(A), (a)(1)(B), or (a)(1)(C) of this Code section have been met or the minor has obtained a court order waiving such requirements.

15-11-113 Time and notice of abortion hearing.

Notwithstanding Code Sections 15-11-38, 15-11-38.1, and 15-11-39, the unemancipated minor or next friend shall be notified of the date, time, and place of the hearing in such proceedings at the time of filing the petition. The hearing shall be held within three days of the date of filing, excluding Saturdays, Sundays, and holidays. The parents or guardian or person standing in loco parentis of the unemancipated minor shall not be served with the petition or with a summons or otherwise notified of the proceeding. If a hearing is not held within the time prescribed in this Code section, the petition shall be deemed granted.

15-11-114 Conduct of abortion hearing - appeal.

(a) An unemancipated minor may participate in proceedings in the court on such minor's own behalf and the court shall advise such minor of the right to court appointed counsel and shall provide such minor with such counsel upon request or if such minor is not already adequately represented.

(b) All court proceedings under this Code section shall be conducted in a manner to preserve the complete anonymity of the parties and shall be given such precedence over other pending matters as is necessary to ensure that a decision is reached by the court as expeditiously as is possible under the circumstances of the case. In no event shall the name, address, birth date, or social security number of such minor be disclosed.

(c) The requirement of subparagraph (a)(1)(A), (a)(1)(B), or (a)(1)(C) of Code Section 15-11-112 shall be waived if the court finds either:

(1) That the unemancipated minor is mature enough and well enough informed to make the abortion decision in consultation with her physician, independently of the wishes of such minor's parent or guardian; or

(2) That the notice to a parent or, if the minor is subject to guardianship, the legal guardian pursuant to Code Section 15-11-112 would not be in the best interests of the minor.

(d) A court that conducts proceedings under this Code section shall issue written and specific factual findings and legal conclusions supporting its decision and shall order that a record of the evidence be maintained. The Juvenile Court shall render its decision within 24 hours of the conclusion of the hearing and a certified copy of same shall be furnished immediately to the minor. If the Juvenile Court fails to render its decision within 24 hours after the conclusion of the hearing, then the petition shall be deemed granted. All Juvenile Court records shall be sealed in a manner which will preserve anonymity.

(e) An expedited appeal completely preserving the anonymity of the parties shall be available to any unemancipated minor to whom the court denies a waiver of notice. The appellate courts are authorized and requested to issue promptly such rules as are necessary to preserve anonymity and to ensure the expeditious disposition of procedures provided by this Code section. In no event shall the name, address, birth date, or social security number of such minor be disclosed during the expedited appeal or thereafter.

(f) No filing fees shall be required of any unemancipated minor who uses the procedures provided by this Code section.

15-11-115 Application of Act to nonresidents.

The requirements and procedures of this article shall apply to all unemancipated minors within this state whether or not such persons are residents of this state.

15-11-116 Application of Act in medical emergency.

This article shall not apply when, in the best clinical judgment of the attending physician on the facts of the case before him, a medical emergency exists that so complicates the condition of the minor as to require an immediate abortion. A person who performs an abortion as a medical emergency under the provisions of this Code section shall certify in writing the medical indications on which this judgment was based when filing such reports as are required by law.

15-11-117 Immunity of health care provider.

Any physician or any person employed or connected with a physician, hospital, or health care facility performing abortions who acts in good faith shall be justified in relying on the representations of the unemancipated minor or of any other person providing the information required under this article. No physician or other person who furnishes professional services related to an act authorized or required by this article and who relies upon the information furnished pursuant to this article shall be held to have violated any criminal law or to be civilly liable for such reliance, provided that the physician or other person acted in good faith.

Uniform Rules For The Juvenile Courts Of Georgia, Rule 23
23. PARENTAL NOTIFICATION OF ABORTION

23.1 Style of the Case.

The petition and all other documents in a proceeding under Article 3, Chapter 11, Title 15 of the Official Code of Georgia, shall be as provided for in Rule 6.4 relating to cases under appeal.

23.2 Appointment of Guardian Ad Litem.

Whenever an unemancipated minor petitions the court for relief under Article 3, Chapter 11, Title 15 of the Official Code of Georgia, the court shall appoint a guardian ad litem to protect the interests of the unemancipated minor.

23.3 Relation to Other Uniform Rules.

All rules in conflict with the provisions of Article 3, Chapter 11, Title 15 of the Official Code of Georgia are subrogated to the provisions of that article for the purpose of implementing the intent of the article.

23.4 Hearing Conducted by Judge.
In order to insure the expeditious disposition of the procedures, the hearing provided for in O.C.G.A. § 15-11-113 shall be conducted by a judge in all instances.

23.5 Notification of Hearing.
The unemancipated minor, her attorney or next friend shall be notified of the date, time, and place of the hearing in proceedings under this article at the time of the filing of the petition. The hearing shall be held within three days of the date of filing, excluding Saturdays, Sundays, and holidays. Upon filing the petition, the clerk shall provide a certified copy thereof to the unemancipated minor, her attorney or next friend with the date, time, and place of the hearing recorded thereon.

23.6 Court Order.
Upon conclusion of the hearing to be held pursuant to O.C.G.A. § 15-11- 113, the court shall issue a written order stating specific factual findings and legal conclusions supporting its decision. The order shall be styled in the same manner as the petition and shall contain a physical description of the unemancipated minor for purposes of identifying the unemancipated minor to the physician who is asked to perform the abortion. The court shall prepare a certified copy of the order which shall be furnished only to the unemancipated minor, her attorney or next friend within 24 hours of the hearing. In the event that no hearing is held or more than 24 hours have elapsed since the time of the hearing and the court has not entered an order, the unemancipated minor may request the Clerk of Court to issue a certificate indicating such.

23.7 Record and Transcript.
The name of the unemancipated minor shall not appear in any public record, including the transcript of the hearing provided for in Rule 23.4. Should reference be made to the unemancipated minor, the clerk shall obliterate or render illegible the name and substitute initials.

23.8 Disclosure of Information Generally.
The court shall not disclose any information concerning a case arising under Article 3, Chapter 11, Title 15 of the Official Code of Georgia, or permit access to any such file except to the unemancipated minor who is the subject of the proceeding, the next friend, or the unemancipated minor's attorney.

23.9 Disclosure of Information on Appeal.
In the event of an expedited appeal as provided for in O.C.G.A. § 15-11-114(e), the Juvenile Court shall insure complete anonymity of the unemancipated minor by using her initials only to identify her in the complete record sent to the appellate court and shall not disclose her name, address, birth date or social security number in any part of the record.

Chapter 24 Special Immigrant Juvenile Status - SIJS
SIJS Flow Chart for Undocumented Foster Children

Deprivation Complaint / Probable Cause / Petition Issue

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Deprivation Adjudication

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Special SIJS Order with particular findings of fact, the immigrant child has been

- declared dependent on a juvenile court
- reunification with 1 or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law
- an administrative or judicial proceedings has determined that it would not be in the child's best interest to be returned to the child's or parent's previous country of nationality or country of last habitual residence.

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Application for SIJS status (min. 12 month prior to 18 birthday)
Form I –360
Form I – 485
Form I – 639
Form I – 765
Form G325A if Child over 14 years
Proof of Age
G-28 Attorney Entry of Appearance
Fee Waiver Application
Certified Copy of Juvenile Court Order
Photos
Fingerprint card
Adit Sheet

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Adjustment of Status & Adjustment Interview
Medical Exam/ Form I – 693

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Permanent Resident

↓

Five Years then application for Naturalized Citizenship

www.ILRC.org

The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (P.L. 110-457; "TVPRA") effective December 23, 2008, expands protections for trafficking victims generally, makes procedural and substantive changes to the legal relief available for unaccompanied alien children. The Act increases the protections for unaccompanied alien children seeking relief from removal, expands the definition of Special Immigrant Juvenile status (SIJS) and asylum. A Special Immigrant Juvenile is now defined as an immigrant child who is present in the United States:

(i) who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States, and whose reunification with 1 or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law;

(ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence.

The TVPRA eliminates the "eligible for long-term foster care" language for Special Immigrant Juveniles, which has always meant that family reunification was not a viable option for the youth and that finding had

to be made explicitly in the juvenile court order including the factual basis. This Act allows the juvenile court to consider family reunification with one or both of the child's parents; that family reunification need only be "not viable" with one parent, not both parents. The juvenile court should consider the viability of reunification based upon abuse, abandonment, neglect or a similar basis under state law. A child will now qualify for SIJS if abuse, abandonment or neglect by one parent even though reunification may be possible with the other parent. This Act removes the requirement that the child be declared "eligible for long term foster care".

SIJS (Special Immigrant Juvenile Status) Outline

How to get undocumented alien foster child legal documentation & what documentation means for the child??

Problem

- children of foreign birth, who are not legally in US &
- have entered State foster care as the result of abuse, neglect or abandonment, "deprived" &
- for whom reunification with either one or both parents is not a viable option &
- Not in best interest of child to be returned to country of origin &
- Child is expected to age out of the foster care system &
- Prior to turning 18, child needs permanent, lawful immigration status
- Why a problem - once child turns 18, if no lawful status then subject to deportation, cannot lawfully work, not eligible for in-state tuition

Chapter 25 Crossover Youth Or Dual Jurisdiction Youth

The effects of child abuse and neglect are cumulative. Once the developmental process of a child is insulted or arrested by bizarre child rearing patterns, the scars remain. One should not be surprised then to find that the large majority of delinquent adolescents indicate they were abused as children.
Hefler and Kempe (1968) pp.xvii-xviii

There are numerous challenges in addressing the needs of deprived youth who cross over the jurisdiction of juvenile justice.

Crossover Youth or Dual Jurisdiction Youth are simultaneously involved with or under the jurisdiction of both child welfare and juvenile justice (Department of Family and Children Services and Department of Juvenile Justice). These youth may move or "crossover" from the child welfare system to the juvenile justice system or vice versa or these are youth who have a history of abuse or neglect and are also involved with the juvenile justice system.

The path for crossing over and between DFCS and DJJ may occur in several ways:

- Youth currently in out of home placement through social services as a result of maltreatment who then become involved with juvenile justice
- Youth entering the juvenile justice system with a social services history involving abuse or neglect of the youth (history may be child protective services or foster care)
- Youth entering the juvenile justice system with a history of abuse or neglect but no prior involvement with social welfare services
- Youth entering the juvenile justice system and then abandoned by their caretakers resulting in the involvement of social services
- In Georgia, youth currently in an out of home placement through social services as a result of maltreatment who are older than 17 years, less than 18 years, and involved in the adult criminal justice system
- Crossover may occur due to "Child Welfare System Bias" and Over criminalization of problem youth behaviors

Recognition and Scope of Problem

February 2008 American Bar Association Policy On Crossover And Dual Jurisdiction Youth

RECOMMENDATION

BE IT RESOLVED, that the American Bar Association urges the federal, state, territorial, and tribal governments to revise laws, court rules, policies, and practices related to "dual jurisdiction" youth (abused and neglected youth with juvenile "dependency" cases who are charged with acts of delinquency) to:

a) Use diversion and intervention services for minor or low level acts of misbehavior committed while a youth is in foster care;
b) Eliminate statutory and legal restrictions inhibiting dual jurisdiction;
c) Create a legal preference enabling youth to have their dependency proceedings remain open with continued child and family support;
d) Provide, when feasible, that a single judge hear post-adjudication dispositional matters involving dual jurisdiction cases and that continuity of legal representation for the child in both court proceedings be secured;
e) Promote training for all juvenile defense counsel on foster care issues;
f) Ensure that an adult responsible for the youth attend hearings in both proceedings to address issues related to the child and family;
g) Encourage information-sharing among dependency and delinquency courts and agencies, establish confidentiality protections for all child welfare information shared, and restrict the use of information gathered from foster youth as part of screening, assessment, or treatment in the pending or future delinquency or criminal proceedings;
h) Promote the prompt post-arrest involvement of providers, caseworkers, or advocates acting on the youth's behalf; ensure fair treatment of foster youth in juvenile detention, incarceration, or

probation decisions; and eliminate practices that result in detention or prolonged incarceration of youth due to foster care status or an absence of suitable placement options;

i) Provide clear authority for continued social services/child welfare support for children and families when youth cross from dependency to delinquency court/juvenile justice, and eliminate funding barriers that inhibit multiple agency support of these youth and their families;

j) Apply protections afforded foster youth under Titles IV-E of the Social Security Act to youth placed through delinquency or status offense proceedings, in foster care or other non-penal settings, under court authority or under the auspices of juvenile justice agencies; and

k) Fully implement 2002 and 2003 amendments to the Juvenile Justice and Delinquency Prevention Act and the Child Abuse Prevention and Treatment Act to:
    1) make youths' child welfare records known to the juvenile court for effective treatment planning;
    2) provide effective treatment and service continuity when youth transition between child welfare and juvenile justice systems;
    3) assure that when youth are placed in settings funded through Title IV-E of the Social Security Act they receive full protections afforded under that law; and
    4) collect state data on all youth transferred from one system to another.

Research

There is a positive correlation between childhood maltreatment and an increased risk of delinquency (Bolton, Reich, & Gutierres, 1977; Alfaro, 1981; Widom, 1989; Zingraff, Leiter, Myers & Johnsen, 1993; Kelley, Thornberry & Smith, 1997; Stewart, Dennison & Waterson, 2002; Widom & Maxfield, 1996; Ryan & Testa, 2005; Wiig, Widom, & Tuell, 2002; and Petro, 2006 for reviews of this literature).

Child maltreatment does not cause delinquency but it is part of a complex of risk factors for delinquent behavior.

Crossover youth are

- more likely to be detained upon an arrest than their nonabused/neglected peers
- to remain longer in custody and under the jurisdiction of the delinquency (juvenile justice) system
- to generally "come from very disadvantaged families and neighborhoods"
- to only achieved low educational outcomes, have fewer employment opportunities, frequently face mental health problems, and substance abuse, and
- to have increased sanctions for minor offenses as compared to children living with parents (Morris, Leslee 2004; Herz, Krinsky, and Ryan, 2006)

"child welfare system bias" in favor of processing problem behaviors of foster children through the juvenile justice system (Ryan, Herz, Hernandez & Marshall, 2007)

A prospective study of over 1,500 children tracked for 20 years found that childhood abuse or neglect increased the overall odds of future juvenile delinquency and adult criminality by 40% (Widom, 2002; Widom & Maxfield, 2001). The children were ages 11 or younger at the time of the abuse or neglect and the maltreatment was found to:

- increased likelihood of a juvenile arrest by 59%
- increased likelihood of an adult arrest by 28%
- increased likelihood for an arrest for a violent crime by 30%
- maltreated children were younger at the time of their first arrest, committed nearly twice as many offenses, and were arrested more frequently

Another researcher found the delinquency rates for adolescents involved with the child welfare system were approximately 47% greater than their non-maltreated counterparts (Ryan & Testa, 2005).

Using longitudinal data from Illinois, maltreatment was found to be associated with a 51% increase in the likelihood of being adjudicated for a violent offense (Mersky and Reynolds, 2007)

A large percentage of juvenile delinquents and adult criminals have histories of child abuse and neglect; retrospective studies have found childhood abuse rates ranging from 26% to 85% (Wasserman & Seracini, 2001, p. 182);

- in Mecklenburg County (Charlotte), North Carolina, officials reported that of 50 serious, habitual offenders, 52% had child protective services (CPS) histories (Slavin, 2001)
- in Massachusetts over 50 percent of juvenile offenders served by Department of Youth Services had previously been maltreated and under the care of social services
- in New York an inmate study of felons showed early childhood victimization rates ranging from 9% to 75% to 80% among juvenile and adult inmates (National Institute of Justice, 1998); "found that 68 percent of the sample reported some form of childhood victimization and 23 percent reported experiencing multiple forms of abuse and neglect, including physical and sexual abuse."

Childhood maltreatment / trauma increases the likelihood of disruption of normal child development, including normal brain development

- Some of the factors affecting the disruption of child development include: the duration of maltreatment, child's age at onset of the maltreatment, severity of the maltreatment, type of maltreatment,
- For a presentation on Infant Brain Development & the Trauma of Removal to Foster Care by Jordan Greenbaum, M.D. go to Georgia Child Welfare Legal Academy Archive or http://www.law.emory.edu/centers-clinics/barton-child-law-policy-clinic/presentations.html#c18467

Group Homes & Peer Contagion

Peer contagion is the socialization process or social learning that promotes deviant attitudes and behaviors in group care settings. Youth in group homes or experiencing prolonged exposure to high risk peers have increased problem behaviors including delinquency, smoking, school problems, aggression and substance abuse (Dishion et al. 1999; Lee, 2007)

From Los Angeles County administrative records, researchers found that the relative risk of delinquency is approximately two and one half times greater for adolescents with at least one group home placement as compared to similar youth in other foster care settings (Ryan, Marshall, Herz, and Hernandez, 2008).

Disproportionate Minority Contact and Crossover Youth

Crossover youth are a significant contributor to the overrepresentation of African American youth in the juvenile justice system. African American children are generally overrepresented in the child welfare system at a rate of more than twice their proportion in the general population and these children are approximately two times more likely than white adolescents in the child welfare system to experience at least one arrest (Ryan & Testa, 2005).

From Los Angeles County administrative records , open child welfare cases account for 7% of all new arrests each year, but account for 14% of all African Americans entering the juvenile justice system (Ryan, Herz, Hernandez, & Marshall, 2007).

Timing and Type of Maltreatment

- Research indicates that persistent maltreatment during adolescence contributed to several negative outcomes through early adulthood, including drug use, teen pregnancy, and juvenile delinquency (Smith, Ireland, & Thornberry, 2005; Ireland, Smith, & Thornberry, 2002; Thornberry, Ireland, & Smith, 2001). Maltreatment that begins and ends in early childhood does not appear to have a strong a correlation to adolescent delinquency. In contrast, maltreatment experienced in adolescence increases a wide variety of adjustment problems (Thornberry, Ireland, & Smith, 2001).
- Males are more likely to engage in delinquency, and thus, enter the juvenile justice system (Snyder, 2006). This finding also applies to delinquency in male foster youth. In a study following two groups through child welfare and juvenile justice over an 18 year period, 14% of males experienced at least one delinquency petition compared with only 4% of females (Ryan & Testa, 2005).
- The female delinquency population is growing, having increased by 72% since 1983 as compared to 30% for males under 18 years of age (Snyder, 2002). Females are also more likely to be held for technical violations and status offenses as compared to males in the juvenile justice system (Sickmund, 2004). Once in the juvenile justice system, female offenders are more likely to be identified with mental health problems, such as PTSD, suicidal behavior, dissociative disorder, and borderline personality disorder (Cauffman, Feldman, Waterman & Steiner, 1998).
- Another study found that very young offenders are much more likely to have their criminal careers characterized by serious, chronic, and violent offenses than children who begin committing crimes at a later age (Snyder, 2001, p. 40)
- Children experiencing maltreatment as neglect are almost as likely as physically abused children to commit a violent offenses (Widom & Maxfield, 2001, p. 5)
    - the population of neglected children is much larger than the population of children who were physically abused: in 2000, 7.3 per 1,000 children for neglect compared to 2.3 per 1,000 for physical abuse (Children's Bureau)
    - very young offenders' families are more often characterized by chronic neglect (Wiig & Lahti-Johnson, 1998, p. 25)

Attachment and commitment

Attachment is important because it is a foundation for the childhood development and an important predictor of healthy psychological development (Kelly & McSherry, 2002) The establishment of positive relationships between the foster child and the foster care provider can minimize a child's emotional distress and the negative effects on their development from temporary separation from their parents. Attachment can provide a safe context in which new relational skills can be developed (Haight, Kagle, & Black, 2003). Increased positive relationships between the foster youth and foster parent were associated with a decreased risk of delinquency (Ryan, Testa, and Zhai, 2008).

Relative placements have been found to be less likely to disrupt when the child exhibits problem behavior (Chamberlain, Price, Reid, Landsverk, Fisher, and Stoolmiller, 2006). The relative's tolerance for the child's behavior problems is significant because the most frequent reason given for placement disruptions in non-relative homes is the child's behavior and the foster parent's inability to cope. A 14 year longitudinal study of placement stability in Illinois found 38% of all placement changes could be attributed to the foster parent's inability or unwillingness to tolerate the child's behavioral or emotional problems. (Zinn, Decoursey, Goerge and Courtney 2006; Testa and Rolock 1999). Although the research indicates that there is a positive ameliorative effect of relative placements, this same research points to the need for safeguards and services in these relative placements. Some of the potential issues with relative placements include the relative may have the same maltreating behaviors as the parent; unsupervised or negative contact with the maltreating parent. Also, relatives tend to be "single, older, poorer health, and of lower socio-economic status; have more mental health problems; receive less assistance and services from child welfare agencies and have fewer supportive resources than foster parents" (Rubin, et. al., 2008, p. 551. Other researchers have found that relative placements not only have service and support needs, but they also confront challenges specific to their status as relative caregivers including social and community prejudice or stigma towards relatives who care for their extended family's children, beliefs that relatives should not be reimbursed for caregiving, limited financial resources, difficulties relating to the child welfare system, and complexities associated with managing relationships with the children's parents (Barth, Berrick and Gilbert, 1994; Zinn et al. 2006).

Strategies for Advocates of Crossover Youth

- ASFA compliance – Contrary to the Welfare, Reasonable Efforts, Permanency Hearing
- IV-E Eligibility, Medicaid
- Coordinated Assessment of Child / Family
- Local Inter-Agency Planning Team (LIPT) – System of Care – KidsNet Georgia
- Coordinated Assessments of the child and family
- Coordinated Case Planning - includes Family Team Meeting, Multidisciplinary Team Meeting, Comprehensive Child and Family Assessment
- Placement Change Notification (O.C.G.A. § 15-11-55)
- Motions To Court and Court Orders, Judicial Oversight, subpoena power
- Relative Resources and subsidies or services to stabilize placement

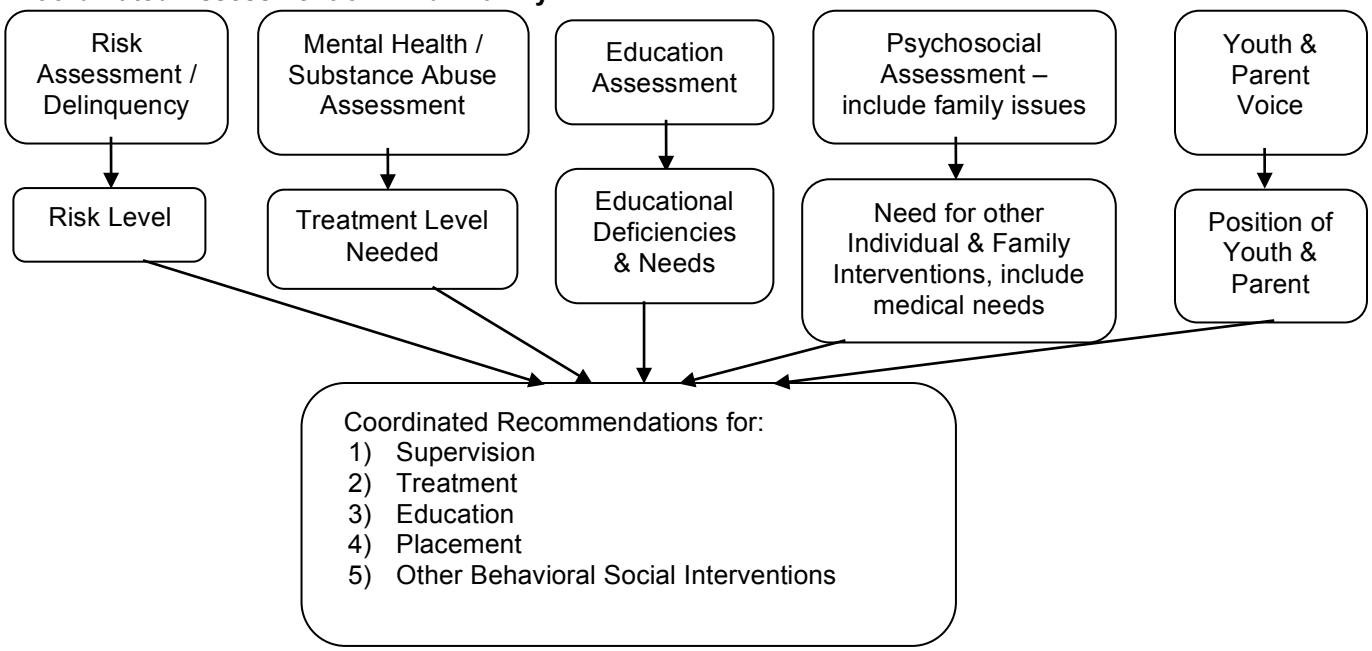
Local Interagency Planning Team (LIPT)

KidsNet Georgia is a system of care collaborative. The Local Interagency Planning Teams have statutorily mandated committee members: DFCS, DJJ, local school system, Dept of Community Health, Department of Labor / Vocational Rehabilitation and local mental health providers. O.C.G.A § 49-5-220. Information from the KidsNet Georgia website
http://www.gafcp.org/emag/archive/Spring08/f2KidsNet.htm

> *Nearly 185,000 children and youth from birth to age 17 in Georgia have some form of Severe Emotional Disturbances (SED). These children, who are seriously disturbed as a result of abuse, neglect, or family disruptions, lack self-control, are defiant, have difficulty getting along with others, can be depressed or suicidal, are in and out of child services, have an impaired ability to learn, and low self-esteem. All child-serving agencies in Georgia have embraced the System of Care approach, and the Department of Human Resources and the Department of Juvenile Justice have committed significant resources to the expansion of KidsNet. The Annie E. Casey Foundation, through its Juvenile Detention Alternatives Initiative (JDAI), also has worked in partnership with KidsNet as a result of shared interest in child outcomes. KidsNet differs from other mental health services because it is directed by a program theory that outcomes are better for children, youth, and families when services are provided:*
>
> - *in community-based, least restrictive environments;*
> - *through interagency coordination and collaboration;*
> - *in ways that are family-driven, youth-guided, and culturally appropriate.*
>
> *Whenever a parent, school, or agency refers a child to KidsNet, a service coordinator sends a family advocate meet, assist, guide, and assess eligibility. The family is assigned a case manager, who stays on top of the plan and outcomes, and remains with the family beginning to end. That's when the KidsNet Team—case manager, family advocate, child and family members, and agencies and service providers—comes together. The team agrees upon a unified service plan, and a single, collaborative treatment plan. The entire team meets weekly to keep the plan on track and to evaluate progress.*

To locate the contact information of the Family Connection Coordinator for LIPT in your county or region, go to: http://www.gafcp.org/fcnetwork/collsearch.asp

Coordinated Assessment of Child / Family



Resources for further information

Office of Juvenile Justice and Delinquency Prevention (OJJDP), http://ojjdp.ncjrs.org/

Child Welfare League of America (CWLA), http://www.cwla.org/programs/juvenilejustice/default.htm

Center for Juvenile Justice Reform (CJJR) Georgetown University 's Public Policy Institute, http://cjjr.georgetown.edu/index.html

The Annie E. Casey Foundation, http://www.aecf.org/

The Vera Institute of Justice, http://www.vera.org/

Relevant Code Sections

O.C.G.A. §15-11-1 Liberal construction of chapter.

This chapter shall be liberally construed to the end:

(1) That children whose well-being is threatened shall be assisted and protected and restored, if possible, as secure law-abiding members of society;

(2) That each child coming within the jurisdiction of the court shall receive, preferably in his or her own home, the care, guidance, and control that will be conducive to the child's welfare and the best interests of the state; and

(3) That when a child is removed from the control of his or her parents the court shall secure for the child care as nearly as possible equivalent to that which his or her parents should have given the child.

O.C.G.A. §15-11-2 Definitions

(6) "Delinquent act" means:

(A) An act designated a crime by the laws of this state, or by the laws of another state if the act occurred in that state, under federal laws, or by local ordinance, and the crime does not fall under

subparagraph (C) of paragraph (12) of this Code section and is not a juvenile traffic offense as defined in Code Section 15-11-73;

(B) The act of disobeying the terms of supervision contained in a court order which has been directed to a child who has been adjudged to have committed a delinquent act; or

(C) Failing to appear as required by a citation issued with regard to a violation of Code Section 3-3-23.

(7) "Delinquent child" means a child who has committed a delinquent act and is in need of treatment or rehabilitation.

(8) "Deprived child" means a child who:

(A) Is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, or emotional health or morals;

(B) Has been placed for care or adoption in violation of law;

(C) Has been abandoned by his or her parents or other legal custodian; or

(D) Is without a parent, guardian, or custodian.

No child who in good faith is being treated solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall, for that reason alone, be considered to be a "deprived child."

15-11-66 Disposition of delinquent child.

(a) At the conclusion of the dispositional hearing provided in subsection (a) of Code Section 15-11-65, if the child is found to have committed a delinquent act and is subsequently determined to be in need of treatment or rehabilitation, the court may make any of the following orders of disposition best suited to the child's treatment, rehabilitation, and welfare:

(1) Any order authorized by Code Section 15-11-55 for the disposition of a deprived child;

§ 15-11-55. Disposition of Deprived Child

(a) If the child is found to be a deprived child, the court may make any of the following orders of disposition best suited to the protection and physical, mental, and moral welfare of the child:

(1) Permit the child to remain with his or her parents, guardian, or other custodian, including a putative father, subject to conditions and limitations as the court prescribes, including supervision as directed by the court for the protection of the child;

(2)(A)Subject to conditions and limitations as the court prescribes, transfer temporary legal custody to any of the persons or entities described in this paragraph. Without limiting the generality of the foregoing, such conditions and limitations shall include a provision that the court shall approve or direct the retransfer of the physical custody of the child back to the parents, guardian, or other custodian either upon the occurrence of specified circumstances or in the discretion of the court. Any such retransfer of physical custody may be made subject to such further conditions and limitations as the court prescribes, including supervision for the protection of the child. The persons or entities to whom or which temporary legal custody may be transferred shall include the following:

(i)Any individual including a putative father who, after study by the probation officer or other person or agency designated by the court, is found by the court to be qualified to receive and care for the child;

(ii)An agency or other private organization licensed or otherwise authorized by law to receive and provide care for the child;

(iii)Any public agency authorized by law to receive and provide care for the child; provided, however, that for the purpose of this Code section, the term 'public agency' shall not include the Department of Juvenile Justice; or

(iv)An individual in another state with or without supervision by an appropriate officer under Code Section 15-11-89.

(B) Except for dispositions pursuant to paragraph (1) of subsection (a) of Code Section 15-11-66 and Code Section 15-11-67, within 30 days after the removal of a child from the custody of the parent or parents of the child, the Department of Human Services shall exercise due diligence to identify a parent or relative of the child or other persons who have demonstrated an ongoing commitment to the child All

identified adult relatives of the child, subject to exceptions due to family or domestic violence, shall be provided with notice:
(i) Specifying that the child has been or is being removed from parental custody;
(ii) Explaining the options the relative has to participate in the care and placement of the child and any options that may be lost by failing to respond to the notice;
(iii) Describing the process for becoming an approved foster family home and the additional services and supports available for children placed in approved foster homes; and
(iv) Describing any financial assistance for which the relative may be eligible.
(C) The results of such search and notification shall be documented in writing and filed with the court by the time of the first review. During such 30 day period, the court may order that the child be placed in the temporary legal custody of the Department of Human Services or any other appropriate entity or person.
(D) The court shall order in its preliminary disposition that the parent or other legal guardian of the child shall provide within ten days the names and addresses of all relatives and other persons who might be considered as possible placements for the child. The parties shall have an ongoing duty to supplement this information during the course of the case at each judicial review or citizen panel review. The court shall include in all published summons a notice that this information must be provided.
(E) The Council of Juvenile Court Judges shall be authorized to create uniform rules and forms to implement the provisions of this paragraph; or
(3) Without making any of the orders specified in paragraphs (1) and (2) of this subsection, transfer custody of the child to the court of another state exercising jurisdiction over children if authorized by and in accordance with Code Section 15-11-87 if the child is or is about to become a resident of that state.

(b) Unless a child found to be deprived is found also to be delinquent, such child shall not be committed to or confined in an institution or other facility designed or operated for the benefit of delinquent children.

(c) Notwithstanding any other provision of law, the court after transferring temporary legal custody of a child to the Division of Family and Children Services within the Department of Human Services may at any time conduct sua sponte a judicial review of the current placement plan being provided to said child. After its review the court may order the division to comply with the current placement plan, order the division to devise a new placement plan within available division resources, or make any other order relative to placement or custody outside the Department of Human Services as the court finds to be in the best interest of the child. Placement or a change of legal custody by the court outside the Department of Human Services shall relieve the department of further responsibility for the child so placed.

(d) The policy of this state is that children in the custody of the Division of Family and Children Services should have stable placements. Not less than five days in advance of any placement change, the division shall notify the court, a child who is 14 years of age or older, the child´s parents, guardian, or other custodian, and any attorney of record of such change in the location of the child´s placement while the child is in the division´s custody; provided, however, that if the child´s health or welfare may be endangered by any delay in changing the child´s placement, only the court and any attorney of record shall be notified of such placement change within 24 hours of such change. A child who is 14 years of age or older, the child´s parents, guardian, or other custodian, and any attorney of record may request a hearing with regard to the child´s case plan or the permanency plan in order for the court to consider the change in the location of the child´s placement and any changes to the case plan or permanency plan resulting from the child´s change in placement location. Such hearing shall be held within five days of receiving notice of a change in the location of the child´s placement and prior to any such placement change, unless the child´s health or welfare may be endangered by any delay in changing the child´s placement. At the hearing to consider the child´s case plan and permanency plan, the court shall consider the case plan and permanency plan recommendations made by the division, including a recommendation as to the location of the placement of the child, and shall make findings of fact upon which the court relied in determining to reject or accept the case plan or permanency plan and the recommendations made by the division, including the location of the child´s placement. If the court rejects the recommendations of the division, the court shall demonstrate that the division´s recommendations were considered and explain why it did not follow the recommendations. If the court rejects the division´s case plan and permanency plan recommendations, including the change in the location of the placement of the child,

the court may order the division to devise a new case plan and permanency plan recommendation, including a new recommendation as to the location of the child within the resources of the department, or make any other order relative to placement or custody outside the Department of Human Services as the court finds to be in the best interest of the child and consistent with this subsection. Placement or a change of legal custody by the court outside the Department of Human Services shall relieve the department of further responsibility for the child so placed.

(e) A juvenile court shall not be required to make an order of disposition pursuant to this Code section regarding a child who is discharged from a facility in which the child was hospitalized or habilitated pursuant to Chapter 3, 4, or 7 of Title 37 unless the child is to be discharged into the physical custody of any person who had such custody when the court made its most recent finding that such child was deprived.

(f) If a child is found to be a deprived child and the deprivation is found to have been the result of alcohol or other drug abuse by a parent or guardian, as specified in subsection (b) of Code Section 15-11-54, and the court orders transfer of temporary legal custody of the child, as provided in paragraph (2) of subsection (a) of this Code section, the court is authorized to further order that legal custody of the child may not be transferred back to the child´s custodian or guardian whose abuse of alcohol or another drug resulted in the child´s deprivation unless such person undergoes substance abuse treatment and random substance abuse screenings and those screenings remain negative for a period of no less than six consecutive months.

Chapter 26 Independent Living & IDEA Transition Services

Independent Living Program and Individuals with Disabilities Education Act - IDEA Transition Services

Independent Living Services for youth transitioning from foster care are mandated by both state and federal statutes. The stated mission of Georgia's Independent Living Program (ILP) "is to provide eligible youth in Georgia, with opportunities to successfully prepare for adulthood, by providing appropriate resources and connections with community partners." Georgia's ILP participanting youth are offered "an array of resources and opportunities" designed to "maximize their potential and achieve successful transition into adulthood." The youth must meet certain criteria to be eligible for ILP found in Section 1 and they must maintain their eligibility for ILP through participation as stated in Section 5.

When evaluating a foster youth's eligibility for Independent Living Services, a determination should also be made as to whether the youth has an Individualized Education Plan (IEP) through the school because the youth will then be eligible for IDEA Transition Services. The independent living services through DFCS and the IDEA transition services through the school should be coordinated to maximize post secondary school opportunities for the youth, expand the available services / programs, enhance the youth's participation and minimize duplication of these services and activities. *Educational Outcomes for Children and Youth in Foster and Out-of-Home Care – Fact Sheet dated December 2008 from the National Working Group on Foster Care and Education* found at http://www.abanet.org/child/education/National_EdFactSheet_2008.pdf reports numerous studies indicate anywhere between 23% to 47% of U.S. children in out-of-home or foster care receive special education services at some point in their schooling. In contrast, the national average of all school-aged children served in special education each year is close to 12%. This report also indicates in a recent study 68% of the foster children were identified as having special needs yet only yet only 36% were receiving special education services.

Authority	Purpose
O.C.G.A § 15-11-58(o)(6)	For foster youth 14 years & older the case plan shall include a determination of the services needed to assist the child to make a transition from foster care to independent living
The Foster Care Independence Act of 1999 (FCIA), The John H. Chafee Foster Care Independence Program (CFCIP) (P.L. No. 106-169, 113 Stat. 1822),	Provide states with increased and flexible funding to assist children who are likely to age out of foster care to continue their education, obtain employment and attain life skills necessary to transition out of the system, requires states involve community partners in developing independent living programs for transitioning teens, establishes a role for the youth in designing their individual transition program
Promoting Safe and Stable Families Amendments of 2001 (P.L. No. 107-133, 115 Stat. 2413)	Expanded CFCIP (Chafee Act) to include Education and Training Voucher Program (ETV) that provides federal funding for post secondary education with discretionary funds to create vouchers up to $5,000.00 per year
Individuals with Disabilities Education Act - IDEA Transition Services (IDEA 2004, P.L. 108-476)	Purpose of IDEA includes preparing the child with disabilities "for further education, employment and independent living." Beginning with the first IEP when the child is 16 years old, there should be in place specific, individualized "transition services" which are "a coordinated set of activities" designed with the result to facilitate the child's movement from school to post-school activities (secondary or vocational education, employment, continuing or adult education, adult services, independent living, community participation), the IEP must include appropriate measurable post secondary goals, the needed transition services to attain the goals, the child's participation, statement the child has been informed of rights under Part B that transfer to the child upon reaching the age of majority. Further details below.

O.C.G.A. § 20-3-660 Postsecondary Tuition Grants	created a program of grants for the payment of postsecondary tuition, ancillary fees, and living expenses for Georgia foster children and adopted children
The Fostering Connection to Success and Increasing Adoptions Act (H.R. 6893) 2008, Sections 202 & 202	***State Option for Children in Foster Care, and Certain Children in an Adoptive or Guardianship Placement, After Attaining Age 18*** o Allows States the option of providing foster care services to children until the age of 19, 20, or 21 under specified conditions. These conditions include where the youth is • completing high school or an equivalency program • enrolled in post-secondary or vocational school • participating in an program that promotes employment • employed for at least 80 hours per month • incapable of doing any of these activities due to a documented medical condition o Placements for youth 18-21 years include an independent living yet supervised settings, a foster family home or group home o States may also extend adoption assistance or guardianship payments until 21 years **Transition Plan for Children Aging Out of Foster Care** o Requires states to assist youth aging out of the system by developing a personal transition plan during the 90-day period immediately preceding the youth's exit from care at 18, 19, 20, or 21 o The state agency caseworker and other representatives of the youth should assist in developing the plan with the direction of the youth o The plan should include details of available options for housing, health insurance, education, mentoring opportunities, continuing support services and employment services or supports
Chapter 11, Division of Family and Children Services Child Welfare Manual,	The stated mission of Georgia's Independent Living Program (ILP) "is to provide eligible youth in Georgia, with opportunities to successfully prepare for adulthood, by providing appropriate resources and connections with community partners." Georgia's ILP participating youth are offered "an array of resources and opportunities" designed to "maximize their potential and achieve successful transition into adulthood."
2010 Legislation O.C.G.A. § 15-11-58(c)(9) O.C.G.A. § 15-11-58(o)(7) **Transition Plan 90 days before 18th Foster Child's Birthday**	In the 90 days prior to the foster youth's 18th birthday, DFCS case manager, staff & other representatives of the child, shall assist the child in developing a transition plan that is personalized, at the direction of the child and as detailed as the child elects; transition plan to include specific options on housing, health insurance, education, local opportunities for mentors and continuing support services, and work force supports and employment services

Selected portions of the
Division of Family and Children Services Child Welfare Manual
Chapter 11 - Independent Living
Can be found at http://www.childwelfare.net/DHR/policies/fcindex.html

Section		
1	Eligibility Criteria	
2	Enrollment in the Independent Living Program	(ILP)
3	Written Transitional Living Plan	(WTLP)
4	Independent Living Services	(ILS)
5	Youth Participation	
6	Transitional Living Support Services	(TLSS)
	Transition Living Program	(TLP)
7	Emergency Financial Assistance	
8	Post-Secondary Education Financial Support	
9	Obtaining a Learners Permit	
10	Obtaining a Drivers License	
11	Owning a Motorized Vehicle	
12	Extended Youth Supportive Services	(EYSS)
13	Chafee Medicaid	

FORMS
WTLP-Form 1 (Form 391)
WTLP- Form 2 (Case Plan Goals and Steps)
Transition Living Application
Transitional Living Program Participant Agreement
Emergency Assistance Supportive Services Participant Agreement
Independent Living Post –Secondary Financial Assistance Agreement
Consent to Receive Extended Youth Supportive Services
Notice of Determination for Youth to Received Extended Youth Supportive Services and Right to Administrative Case Review
Tools
21 Things
Applying for a Georgia ID Card
Resources for Youth Leaving Care
What are My Options
Independent Living Program Funding Matrix
Transitional Living Program DFCS/Independent Living Responsibilities
Transitional Living Program Youth Responsibilities
Transitional Living Program Service Provider Standards

Addition independent living resources at www.georgiailp.org

Policy Number 11.1 Eligibility Criteria
All youth ages 14 and older, in DFCS temporary or permanency custody, will be evaluated for ILP eligibility
Independent Living Services (ILS) to eligible youth

- between the ages 14-17
- who are a citizen of the United States or a legal resident of Georgia
- services will be discontinued if youth does not obtain Special Immigrant Juvenile Status by their 18th birthday
- previously adopted at age 14 or above
    - previously adopted at age 16 or above will also receive Post- Secondary Education Financial Assistance described in Section 11.8
    - Except Extended Youth Supportive Services (EYSS) as described in Section 11.12 will not be provided to adopted youth

- Youth who were previously in DFCS custody & over 14 years old will be evaluated for independent living services and after care services by the ILP Director

Requirements to determine eligibility for ILP:

1.
    - Youth deprived by a Georgia Court
    - who were in custody for at least 6 months (6 months may accrue anytime before or after 14th birthday, 6 months maybe noncontiguous) and
    - youth in DFCS custody on or after 14th Birthday
2. Meet one (1) of the additional requirements below:
    - Any youth age 14 and over who **is** in the temporary or permanent custody of DFCS or the youth is a delinquent via Department of Juvenile Justice (DJJ); or
    - Any youth 14 to 21 who **was** previously in the temporary custody of DFCS or was dually adjudicated, currently detained youth are also included as eligible

Policy Number 11.2 Enrollment in the Independent Living Program (ILP)
DFCS will enroll all eligible youth in the Independent Living Program (ILP) no more than 15 days after the youth meets eligibility criteria and for youth eligible for aftercare services no more than 15 days after the youth meets eligibility criteria.

Policy Number 11.3 Written Transitional Living Plan (WTLP)
DFCS must ensure the development of a Written Transitional Living Plan (WTLP) for all youth eligible to receive services through the Independent Living Program (ILP).

For eligible youth ages 14-18, in DFCS temporary or permanent custody, casemanager & ILC (independent living coordinator) will assist youth in developing an initial WTLP within 30 days of:

1. A youth in care turning 14; or
2. A youth age 14 and older entering care who becomes eligible.

The ILC will assist all eligible youth ages 14-21, who were formerly in DFCS temporary or permanent custody for at least 6 months, with developing an initial WTLP within 30 days of youth requesting aftercare services.

WTLP is incorporated into the case plan, reviewed and approved by the juvenile court. DFCS will ensure that the WTLP is amended and revised when:

1. Additional needs are identified;
2. Goals are achieved;
3. Court ordered recommendations;
4. At the minimum every 6 months;
5. At ages 14, 16 and 17 ½ upon completion of the Ansell Casey Life Skills Assessment, if new needs are identified; and
6. 90 days prior to the youths 18th birthday.

A youth centered family team meeting (FTM) will be utilized to develop and implement the youth's WTLP. DFCS **will only** expend ILP funds for, individualized services outlined in the WTLP or provided by group ILP services/functions, for youth meeting eligibility requirements.

Youth Centered Family Team Meeting includes family members, friends, members of the youth's community support system, faith based supports and professionals who join together to develop individualized plans to strengthen the youth's capacity, to transition to self sufficiency. The FTM is often the forum in which the youth's transition team comes together to help the youth craft, implement or change the Written Transitional Living Plan (WTLP). A youth centered FTM fully engages the youth in the planning process, jointly develops specific plans to address education, job skills, living skills, and designs services and identify supports. A transition team will be developed as a result of the FTM. The youth's transition team will meet at least yearly but more often as necessary to review the progress made to the Written Transitional Living Plan (WTLP).

Identifying Youth Centered FTM Participants
Often times we overlook the fact that youth may be the best resource to identify people from the past or present to serve as life-long permanent connections and FTM participants. These individuals can be found in various areas of the youth's life. They include, foster parents, relatives, biological parents, teachers, bus drivers, and mentors. It is very well documented that former youth in care seek out relatives as well as other adults they met while in care for emotional connections after they have left the system (Barth, 1990; Courtney, Piliavin, Grogan-Kaylor, & Nesmith, 2001; Courtney & Barth, 1996; Jones & Moses, 1984; Westat, 1991). To identify these significant individuals in the youth's life , case managers must engage the youth in the FTM process (adapted from Youth Focus: Engaging Young People in the Permanency Process, July 2006, National Child Welfare Resource Center for Youth Development, DHHS Childrens Bureau) www.nrcys.ou.edu/yd/resources/.../**youth**focus_permanency.doc

Youth Transition Planning
Transition planning for youth will occur upon youth's enrollment in ILP. The guide, 21 Things You Must Do Before You Leave Foster Care, will be utilized by the SSCM and/or ILC to assist youth in understanding what they need to establish and maintain self-sufficiency. Youth will be provided with assistance and support in developing a transition plan in accordance with the Fostering Connections Act, 90 days prior to their 18th birthday. The transition plan will be personalized and created with the direction of the youth. The specific options that will be included in the plan for the youth is as follows:

1. Housing;
2. Health insurance;
3. Education;
4. Local opportunities;
5. Work force/employment services; and
6. Other details as requested by the youth.

Policy Number 11.4 Independent Living Services (ILS)
Independent Living Program is composed of an array of services and resources to provide youth with an opportunity to prepare for adulthood by providing resources and connecting them with community partners who can assist in meeting their needs. The ILP provides a continuum of life skills and transitional opportunities that all adolescents need for enhancing their continued growth and development.
Independent Living Services
Independent Living services are tailored to meet the individual needs of each youth as identified through the Ansell Casey Life Skills Assessment. The services are focused on addressing the long-term needs of all eligible youth. Youth are served in accordance with federal guidelines for fair and equitable treatment. DFCS Independent Living Services include but are not limited to:

1. Concrete Services:
    a. Education
    b. Employment
    c. Housing Support
    d. Health
    e. Supportive Relationships
2. Critical Transitional Components:
    a. Life Skills
    b. Legal Documentation
    c. Personal and Cultural Identity

Policy Number 11.5 Youth Participation
DFCS requires eligible youth ages 14 and older, in the temporary or permanent custody of DFCS, or are eligible to receive aftercare services, to participate in the Independent Living Program by:

1. Attending Independent Living (IL) Orientation;
2. Completing the Ansell Casey Life Skills Assessment (ACLSA) upon entry in foster care and at ages 14, 16 and 17 ½;
3. Participating in independent living skill development activities annually, based on needs identified in youth's WTLP; and

4. Participating in additional IL services to enhance life skills development.

Policy Number 11.6 Transitional Living Support Services (TLSS)

Transitional Living Program (TLP) provides transitional services that include short term assistance consisting of; monthly financial support and individualized life coaching services (by an approved provider) and/or housing services to aid youth in the transition from foster care to self-sufficiency. Youth will be provided life coach monitoring and support in a community based living arrangement. Housing services offered through the TLP is a semi-supervised, scattered site apartment program available to employed (full-time) young adults between the ages of 18 and 21 who are no longer in DFCS custody. These services are most appropriate for those youth who solidly demonstrate the skills, knowledge and stability to successfully maintain a household with limited supervision.

The TLP for aftercare youth is supported entirely by Chafee Foster Care Independence Program (CFCIP) funds that are used to pay a monthly housing support for a period of one year or until the youth reaches his 21st birthday or the $8,000 funding limit, which ever comes first. Funds are monitored and distributed via the IL and may be used for the following based on the youths identified needs:

1. Transitional Living Assessments to determine youth eligibility and needs.
2. Targeted Life Skills Training/ Life Coaching.
3. Short term Counseling and Support Group related expenses
4. Start-up Cost that include:
    a. First month's rent, security deposits, renter's insurance, start up utility and telephone connection fees (NO cable or satellite television installation fees are allowable)
    b. Basic furniture items (bed, chest of drawers, table and chairs)
    c. Cooking and cleaning supplies

Allowable Transitional Living Services

The ILC will assess the needs of youth entering the transitional living support program. The ILC is responsible for coordinating TL services with private providers and other agencies. Examples of allowable services may include but are not limited to the following:

1. Transitional Living Assessment
2. Transitional Living Conference related expense
3. Transportation
4. Start-up funds
5. Deposits
6. Basic Furniture
7. Cooking and cleaning supplies
8. Monthly housing and utility subsidy
9. Counseling
10. Support Group related expense
11. Life Coaching Fees

If the youth is not satisfied with services provided by the Life Coach or ILC, they should be referred to the website, www. georgiailp@dhr.state.ga.us. The youth will have the opportunity to provide and receive feedback from the Independent Living Program Director. The Transitional Living Support Program Packet must be provided to youth at age 17.5 or sooner. This packet will assist the SSCM in explaining the services offered through the transitional program. Financial assistance for services offered through TLP are based on availability of funds.

Policy Number 11.7 Emergency Financial Assistance

DFCS will offer emergency financial assistance to eligible former foster youth, ages 18 to 20.5, who emancipate from foster care after age 18. DFCS will provide financial assistance for 90 days or less to stabilize living conditions and/or personal circumstances. DFCS will deny emergency financial assistance if supporting documentation necessary for payment or reimbursement is not provided by the youth or vendor.

Policy Number 11.8 Post-Secondary Education Financial Support
DFCS will provide eligible youth and youth who were adopted from foster care at age 16 or older, with financial assistance toward completion of their post secondary education, up to the completion of a bachelor's degree, a certification program (at least 12 months in length) or a two-year college. DFCS will discontinue funding for youth who do not maintain continuous enrollment in an educational institution working toward degree completion and once funding is discontinued it **will not** be restarted.
DFCS will require all youth to submit their grades within 14 days of grades being posted by the educational institution, and maintain a 2.0 grade point average to receive financial support for the next semester. DFCS will require all youth enrolled in a 4 year institution to develop and maintain an academic plan.
DFCS may provide post secondary financial assistance for the following:

1. Application fees (waiver of fees should be requested).
2. Registration fees.
3. Tuition.
4. Room and board (On campus housing and meal plans must be used, if available).
5. Course books & supplies.
6. Tutoring.
7. Testing (SAT, ACT, etc).
8. Educational stipends for hygiene and personal maintenance (youth may be eligible for funds up to $75.00 a month if youth live on campus, or up to $150 a month for youth living off campus).
9. Transportation assistance.

Policy Number 11.9 Obtaining a Learners Permit
Under specific conditions, DFCS will permit youth in temporary or permanent custody, to obtain an Instructional Permit, otherwise known as "CP" at age 15 and/or an Intermediate License, otherwise known as "Class D," at ages 16-18.

Policy Number 11.10 Obtaining a Drivers License
At age 18 and over and under specific conditions, DFCS will permit youth who are receiving extended youth supportive services (EYSS) pursuant to Policy 11.12 to obtain a full license "Class C". Youth must have held a "Class D" license and had no major traffic convictions in the previous 12 months.

Policy Number 11.11 Owning a Motorized Vehicle
DFCS will permit youth age 18 and over in who are receiving extended youth supportive services (EYSS) pursuant to Policy 11.12, to own a motorized vehicle with the written approval of the County Director. DFCS prohibits youth under age 18 from owning a vehicle

Policy Number 11.12 Extended Youth Supportive Services (Remainig in Care)
Extended youth supportive services (EYSS) is often utilized for youth that need more assistance in transitioning to independence, these youth often have some developmental, mental, or behavioral disabilities. Services offered through EYSS as well as community supportive services such as ***Individuals with Disabilities Education Act*** (***IDEA***) should be utilized jointly to provide the youth with the best available services. The youth should be provided with specific guidance to aid in the plan for transitioning to independence and/or out of foster care.

DFCS will advise all youth ages 16 in over in agency custody, verbally and in writing, of their ability to request extended youth supportive services (EYSS) after their 18th birthday. DFCS will allow youth to request to receive EYSS upon turning age 18 or within 6 months of emancipating from foster care. DFCS will consider consent, upon request by the youth, to allow youth ages 18 up to age 21, who were in care at least 6 months, to receive EYSS to accomplish specific educational or work related goals (see Policy 11.6 Transitional Living Support Services and 11.8 Post Secondary Educational Support) and support by a DFCS Social Services Case Manager (SSCM).

DFCS will authorize the Regional Director or his or her designee to approve or deny a youth's request to continue to receive EYSS. DFCS will allow youth to request a case review of denial to continue EYSS; placement and permanency services will continue until a final administrative decision is made.

Policy Number 11.13 Chafee Medicaid
The Division of Family and Children (DFCS) will notify all youth in care who are age 17 and older of their eligibility to receive Chafee Independence Program Medicaid. Chafee Medicaid covers youth from ages of 18-21 if the youth:

1. Aged out of foster care at age 18 or older and received benefits on their 18th birthday;
2. Is a Georgia resident;
3. Is a citizen of the United States;
4. Can verify their identity; and
5. Has a social security number or has an application for a social security number.

The youth's Medicaid eligibility will continue unless one of the following occurs:

1. The youth dies.
2. The youth moves out of state.
3. The youth request closure of their Medicaid case.
4. DFCS determines another Medicaid program would be more beneficial.
5. The youth is incarcerated.
6. The youth fails to cooperate with their eligibility redetermination or case review.

IDEA Transition Services

The purpose of the IDEA Transition Services is much the same as the mission for DFCS Independent Living Program. For foster youth with special educational needs and an Individual Educational Plan (IEP) the goals and needed services or supports to achieve those goals as identified in the foster child's written transitional living plan (WTLP) are essentially parallel to the "coordinated set of activities", the transition services, mandated by IDEA 2004. Both IDEA and ILP seek to move the special needs foster youth from school and the foster care environment to post school environments and independent living. The focus of both IDEA and ILP is to provide the special needs foster youth with skills necessary to be successful in education, employment, and independent living after completion of high school. Both IDEA and ILP transition requires the coordination and support from multiple sources for the youth to make "choices, develop connections, and access services".

Beginning with the first IEP to be in effect when the youth turns 16, or younger if determined appropriate by the IEP team, the IEP must include:
(1) appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills, and
(2) the transition services (including course of study) needed to assist the child in reaching those goals.
Just as the foster youth WTLP determines the services for the child the IDEA transition plan directs the services in the IEP.
The state model transition plan, developed by the State, includes:

1. Measurable Post- Secondary /Outcome Goals
2. Preferences, Strengths, Interests and Course of Study based on Present Levels of Performance and Age Appropriate Transition Assessments
3. Measurable Transition IEP Goals
4. Transition Activities and Services
5. The Persons and Agencies Involved
6. The Date of Completion and Achieved Outcomes

IDEA requires that transition services be an interagency process and requires the schools to identify and invite representatives from agencies and/or private services. These other agencies is identified to be involved in the transition process because:

1. The agency is currently involved with the student or family,
2. The agency could provide needed information to the IDEA Transition Team,
3. The agency is likely to become involved in providing support or services once the student leaves public secondary education and transitions into the community, a job, or post secondary training,
4. The agency may be responsible for the direct provision of support services or they may be a purchasing agent for support services.

For the foster child with special needs inclusion of the youth's foster parents, DFCS case manager, Independent Living Coordinator and the youth's representative in the juvenile court process (either lay or legal guardian) would be essential for coordinated transition planning. The juvenile court judge providing oversight for the foster child's case plan including, the WTLP should also be advised of the IDEA Transition Plan as part of the youths path to independence and movement out of foster care.

IDEA 2004 also requires "The Summary of Performance" (SOP) (Section 614(c)(5)(B)(ii)) which states "For a child whose eligibility under special education terminates due to graduation with a regular diploma, or due to exceeding the age of eligibility, the local education agency shall provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals." The SOP, with the accompanying documentation, is critical as a student transitions from high school to higher education, post-secondary training and/or employment and is an important document for the foster youth independent living plan. The SOP is also essential for the youth to establish eligibility for reasonable accommodations and supports in postsecondary settings under Section 504 of the Rehabilitation Act and the Americans with Disabilities Act.

According to the Georgia Department of Education web site located at http://www.doe.k12.ga.us/ci_exceptional.aspx?PageReq=CIEXCTransition describes the SOP template as follows:

Part 1: Student Information – Complete this section as specified. Please note this section you are requested to provide copies of the most recent formal and informal assessment reports that document the student's disability and provides information to assist in post-high school planning.

Part 2: Student's Postsecondary Goals – These goals should indicate the post-school environment or environments in which the student intends to transition upon completion of his/her high school education. These goals should address education, employment, independent living and community access, as appropriate for the student.

Part 3: Present Levels of Performance Summary – This section includes two critical areas of student performance: Academic and Functional Levels of Performance. Next to each academic or functional area, please complete the student's present level of performance, the accommodations used and the rationale for why those accommodations are necessary. When listing accommodations include any accommodation, modification, assistive technology or other supports used to assist the student in achieving success in this area. Include specific details about each accommodation, such as 30 minutes extra time instead of simply extra time. In the rationale section, provide the explanation of how the student's disability impacted his or her performance such that the listed accommodations were necessary for success.

An Accommodation is defined as a support or service that is provided to help a student fully access the general education curriculum or subject matter. An accommodation does not change the content of what is being taught or the expectation that the student meet a performance standard applied for all students. A Modification is defined as a change to the general education curriculum, which changes the standards or expectations for students. Assistive Technology is defined as any device that helps a student with a disability function in a given environment, and includes "low tech" or "high-tech" options.

Part 4: Recommendations to Assist the Student in Meeting Post Secondary Goals – This section should present suggestions for accommodations, adaptive devices, assistive devices, assistive services, compensatory strategies, modifications, or general areas of need that a student will require to be successful in a post-high school environment, including higher education, training, employment, independent living and/or community participation.

Part 5: Student Perspective - The student provides information for the development of this SOP. The student's contribution can help (a) secondary professionals complete the summary, (b) the student to better understand the impact of his/her disability on academic and functional performance in the postsecondary setting, and (c) postsecondary personnel to more clearly understand the impact of the disability on this student. This section may be filled out independently by the student or completed with the student through an interview.

Part 6: Postsecondary Community Agency Contacts, Team Members, and Supports - The Transition Team should provide all the necessary contact information to help the student as he or she transitions to postsecondary settings.

Georgia Statutes

O.C.G.A § 15-11-58(o)(6) provides as follows

> (6) The court or judicial citizen review panel which conducts the permanency hearing shall determine, as a finding of fact, whether the Division of Family and Children Services of the Department of Human Services has made reasonable efforts to finalize the permanency plan which is in effect at the time of the hearing. Further, the court or the judicial citizen review panel, if applicable, shall determine as a finding of fact whether, in the case of a child placed out of the state, the out-of-state placement continues to be appropriate and in the best interest of the child and, **in the case of a child who has attained the age of 14, shall determine the services needed to assist the child to make a transition from foster care to independent living.** Also, in the case of a child whose permanency plan provides that the child will not be returned to the parent, the court or judicial citizen review panel, if applicable, shall consider in-state and out-of-state placement options for such child. Such findings of fact shall be made a part of the report of the judicial citizen review panel to the court and any supplemental order entered by the court. (emphasis added)

§ 20-3-660. Postsecondary Tuition Grants

> From funds appropriated by the General Assembly for such purpose, there is created a program of grants for the payment of postsecondary tuition, ancillary fees, and living expenses for Georgia foster children and adopted children. Such grants shall be subject to the following terms and conditions:
> (1) Tuition, ancillary student fees, and the cost-of-living expenses for any undergraduate program of any Georgia public postsecondary institution, including all four-year and two-year colleges and universities and institutions of the Georgia Community and Technical College System, shall be paid for a Georgia foster or adopted child who is a full-time or part-time student if the student meets all entrance requirements and maintains academic eligibility while enrolled at the postsecondary institution and if:
> (A) The student´s family receives state funded adoption assistance under Code Section 49-5-8;
> (B) The student is currently committed to the Department of Family and Children Services under Code Section 15-1-55 and placed in a family foster home or is placed in accordance with Code Section 15-11-2;

(C) The student is in an independent living program and the placement is funded by the Department of Family and Children Services; or
(D) The student who is an adopted child was in the permanent legal custody of and placed for adoption by the Department of Family and Children Services following the child´s fourteenth birthday. A student who meets the eligibility criteria of this subparagraph and lives outside this state at the time of application to a Georgia postsecondary institution may apply for the grant as though he or she were still a resident of this state'
(2) The student shall:
(A) Obtain the application for the grant through the Department of Family and Children Services; and
(B) Complete the Free Application for Federal Student Aid to determine the level of need and eligibility for state and federal financial aid programs. If the student´s financial need for total cost of attendance, as defined in 20 U.S.C. Section 1087ll, exceeds the available funding from all sources, except loans and the work-study program under 42 U.S.C. Sections 2751-2756b, the foster care tuition grant shall be used to cover the excess assessed need for cost of attendance at the postsecondary institution;
(3) The student shall be eligible and remain eligible for the grant so long as:
(A) The student applies for entrance to the institution within three years of receipt of his or her high school diploma or general educational development (GED) diploma;
(B) The student maintains satisfactory academic progress as defined by the institution attended; and
(C) The student has not reached the age of 26;
(4) The Department of Family and Children Services shall:
(A) Advertise the availability of the program and ensure that the children and young adults leaving foster care, foster parents, and family services counselors are informed of the availability of the program and the application procedures;
(B) Provide grant applications to all students leaving foster care; and
(C) Report the number of students participating in the tuition grant program on October 1 of each year to the Office of Planning and Budget and the Office of the Child Advocate;
(5) Cost-of-living expenses and necessary fees shall be determined for this program by the institution in which the student enrolls. Cost-of-living may include but is not limited to room, board, books, fees, supplies, transportation fees, and a basic health care policy endorsed by the institution in which the student is enrolled;
(6) The Education Coordinating Council shall report nonidentifying data on graduation rates of students participating in the tuition grant program by November 30 each year to the Office of Planning and Budget and the Office of the Child Advocate;
(7) Nothing in this Code section shall be construed to:
(A) Guarantee acceptance of or entrance into any postsecondary institution for a foster or adopted child;
(B) Limit the participation of a foster or adopted student in any other program of financial assistance for postsecondary education;
(C) Require any postsecondary institution to waive costs or fees relating to tuition, fees, room, and board;
(D) Restrict any postsecondary institution or the Department of Family and Children Services from accessing other sources of financial assistance, except loans, that may be available to a foster or adopted student; or
(E) Prevent the student from maintaining the grant if transferring to another public postsecondary institution in this state, provided that the student meets all of the requirements of the transferring and receiving institutions.

Chapter 27 Child Development

Developmental Trends in Cognitive Development, Language Acquisition, Concept of Self, Moral Judgment, Temporal Concepts, Recognition of Emotion, Person Perception

The following charts of developmental trends were adapted from Sattler, J. M. (1998). *Clinical and Forensic Interviewing of Children and Families: Guidelines for the Mental Health, Education, Pediatric, and Child Maltreatment Fields*. San Diego, California: Jerome M. Sattler, Publisher, Inc., pages 887 through 890.

Birth to 12 Months	**Developmental Trend**
Cognitive Birth to 2 years	• focus on senses and motor abilities • realize that objects exist even when they can't be seen • remember and imagine ideas and experiences
Language Acquisition 0 to 13 months	• progress from crying to cooing to babbling to patterned speech • uses gestures or sounds to communication • speak first meaningful words
Concept of Self 9-12 months	• begin to show self recognition
Moral Judgment	
Temporal Concepts	
Recognition of Emotion 7 months 12 months	• Distinguish facial expressions • Use expressive information from mother's face to guide behavior
Person Perception	
12 to 24 months	**Developmental Trend**
Cognitive Birth to 2 years	• focus on senses and motor abilities • realize that objects exist even when they can't be seen • remember and imagine ideas and experiences
Language Acquisition 13 to 18 months	• increase use of gesturing for communication pointing, waving • develop vocabulary of approximately 50 words • understand that words represent objects that can be acted upon • overextend word meanings,(e.g., all males called daddy) • under extend word meanings, (e.g., call only a red ball a ball)
Concept of Self 15-18 months ---------- 18 – 24 months	• differentiate between pictures of oneself and others ---------- • refer to oneself by name
Moral Judgment	
Temporal Concepts	
Regulation of Emotion 12 months	• Use expressive information from mother's face to guide behavior
Person Perception	

24 Months to 3 Years	Developmental Trend
Cognitive	
Language Acquisition 18 to 30 months	• increase vocabulary from a few dozen to several hundred words, use imitation • engage in conversation • develop syntactical skills needed to create two or three word sentences, (e.g., I want milk)
Concept of Self 18 – 24 months	• refer to oneself by name
28 months	• describe physical states thirsty, tired
Moral Judgment	
Temporal Concepts 24 months to 3½ years	• Focus primarily on the present
Recognition of Emotion 3 to 5 years	• Reliably identify sad, angry & happy • Communicate about simple emotions in everyday situations • Deny the presence of simultaneous emotions • Identify feelings in stories based on situational cues • Base judgments of affect on facial expressions • Use idiosyncratic body cues a smile or situational cues birthday party to identify one's own emotions • See feelings as global and "all or none" either good or bad rather than mixed • Believe that an event causes the same feelings in all people
Person Perception	
3 to 5 years	**Developmental Trend**
Cognitive 3 to 6 years	• think symbolically, using pretend play and language • focus on one aspect of a problem at a time • think concretely and deal with specific content • remember by recalling prior knowledge, rather than specific details of the materials presented
Language Acquisition 30 months to 5 Years	• use strings of sounds that convey meaning grammatical morphemes, including plurals, prepositions, irregular verb endings, articles, possessives, auxiliary verbs and verb contractions • develop vocabulary of 900 words by 3 yrs • use language competently in a meaningful context, use simple sentences
Concept of Self 3 to 6 years	• conceptualize oneself primarily in physical terms (I have black hair) • make distinctions between oneself and others primarily on the basis of observable behaviors and characteristics bill is tall • have overly positive perceptions of own abilities, despite feedback to the contrary
Moral Judgment 3 to 6 years	• Base judgments of right & wrong on good or bad consequences & not on intentions • Base moral choices on wishes that good things would happen to oneself • Simply assert choices rather than justify choices
Temporal Concepts 24 months to 3½ years	• Focus primarily on the present
3½ years to 5 years	• Understand time in a rudimentary way but have difficulty distinguishing morning from afternoon & remembering days of the week • Measure time by special events or identified routines, such as time to get up rather than morning

Recognition of Emotion 3 to 5 years	• Reliably identify sad, angry & happy • Communicate about simple emotions in everyday situations • Deny the presence of simultaneous emotions • Identify feelings in stories based on situational cues • Base judgments of affect on facial expressions • Use idiosyncratic body cues a smile or situational cues (such as: birthday party to identify one's own emotions) • See feelings as global and "all or none" either good or bad rather than mixed
5 to 6 years	• Believe that an event causes the same feelings in all people • Believe that one is the cause of other people's emotions
Person Perception 3 to 6 years	• Differentiate oneself from others but fail to distinguish between one's own social perspective thoughts & feelings & those of others • Label others' overt feelings but fail to see the cause & effect relationship between reasons & social actions • Describe others primarily in terms of concrete, observable characteristics such as clothes, possessions, hair color & size • View others as good or bad use all or nothing reasoning • Equate effort with ability regardless of outcome • Describe others in global, highly evaluative, egocentric, & subjective terms ("He is nice because he gave me a toy") • Report one's own misdeeds honestly because of an inability to deceive, which requires taking another's perspective • Exhibit eagerness for adult approval
4 years	• Assume that all acts & outcomes are intended because of an inability to differentiate accidental from intended actions or outcomes
5 to 6 years	• Distinguish accidental from intended acts & outcomes • Assume that others in similar situations will have perceptions similar to one's own • Reflect on thoughts & feelings from another's perspective • Understand that another's perspective is different
5 to 7 years	**Developmental Trend**
Cognitive 3 to 6 years	• think symbolically, using pretend play and language, • focus on one aspect of a problem at a time • think concretely and deal with specific content • remember by recalling prior knowledge, rather than specific details of the materials presented
Language Acquisition 5 to 8 years	• structure language much as adults do, using an awareness of grammar and language structure and meaning • continue to increase vocabulary rapidly, from 10k at 6 yrs to 20k at 8 yrs • use concrete word definitions, referring to functions and appearance • improve language awareness
Concept of Self 3 to 6 years	• conceptualize oneself primarily in physical terms i have black hair • make distinctions between oneself and others primarily on the basis of observable behaviors and characteristics bill is tall • have overly positive perceptions of own abilities, despite feedback to the contrary
7-8 years	• realize that one has better access to one's own thoughts than others do • use info about one's own performance, as well as that of peers, in evaluating oneself • change from "all or none" thinking to being able to distinguish between one situation and another (for example, I'm good in reading but not good in drawing)

	• distinguish between mental and physical aspects of self • recognize that discrepancies may exist between psychological experiences and physical appearance, one can act one way and feel another • adjust self perceptions on the basis of feedback and past experiences with success and failure
Moral Judgment 3 to 6 years	• Base judgments of right & wrong on good or bad consequences & not on intentions • Base moral choices on wishes that good things would happen to oneself • Simply assert choices rather than justify choices
6 to 8 years	• Define morality by resort to authority figures whose rules must be obeyed • Understand that good actions are based on good intentions • Develop a sense of fairness
Temporal Concepts 3½ years to 5 years	• Understand time in a rudimentary way but have difficulty distinguishing morning from afternoon & remembering days of the week • Measure time by special events or identified routines, such as time to get up rather than morning
6 to 8 years	• Master clock time, days of the week & months of the years • Give temporal information about symptoms & their duration how long it takes to fall asleep or how long a headache has been present
Recognition of Emotion 5 to 6 years	• Believe that one is the cause of other people's emotions
6 to 8 years	• Identify fear disgust & other difficult emotions • Accept the possibility of simultaneous feelings only if they are separated temporarily (happy when eating ice cream & sad when the ice cream falls on the ground) • Use inner experiences & mental cues to identify emotions • Understand that one can change & hide one's feelings • See oneself as the primary cause of parental emotions but at the same time identify causes that are more appropriate • Recognize one's own emotions but have difficulty describing them, often associating physiological or behavioral cues with feelings such as saying "I have a stomach ache" when feeling bad or "I kicked the door" when feeling angry
Person Perception 3 to 6 years	• Differentiate oneself from others but fail to distinguish between one's own social perspective thoughts & feelings & those of others • Label others' overt feelings but fail to see the cause & effect relationship between reasons & social actions • Describe others primarily in terms of concrete, observable characteristics such as clothes, possessions, hair color & size • View others as good or bad use all or nothing reasoning • Equate effort with ability regardless of outcome • Describe others in global, highly evaluative, egocentric, & subjective terms ("He is nice because he gave me a toy") • Report one's own misdeeds honestly because of an inability to deceive, which requires taking another's perspective • Exhibit eagerness for adult approval
5 to 6 years	• Distinguish accidental from intended acts & outcomes • Assume that others in similar situations will have perceptions similar to one's own • Reflect on thoughts & feelings from another's perspective • Understand that another's perspective is different
	• Describe others in more differentiated, individualized & detailed ways

7 to 12 years	using traits, dispositions & attitudes ("Alice is nice" "Henry is stubborn") • Describe others in "all-or-none" fashion; that is possessing either desirable or undesirable traits • Understand that effort influences outcomes • Realize that individuals are aware of others' perspectives & that this awareness influences them & others' views of them • Put oneself in others' places as a way of judging others' intentions, purposes & actions
7 to 9 years	**Developmental Trend**
Cognitive 7 to 11 years	• assume multiple perspectives, take on role of another • reason simultaneously about a subclass and the whole class • give relatively more weight to language than to contextual cues • think more logically and objectively, continue to tie thinking to concrete experiences
Language Acquisition 8 to 11 years	• Develop vocabulary of 40k by 10 yrs • use word definitions that emphasize synonyms and categorical relations • understand complex grammatical forms, refine conversational strategies • grasp double meanings of words, as in metaphors and humor • consider needs of listeners in complex communicative situations
Concept of Self 7-8 years	• realize that one has better access to one's own thoughts than others do • use info about one's own performance, as well as that of peers, in evaluating oneself • change from "all or none" thinking to being able to distinguish between one situation & another (for example, I'm good in reading but not good in drawing) • distinguish be between mental and physical aspects of self • recognize that discrepancies may exist between psychological experiences & physical appearance, one can act one way and feel another • adjust self perceptions based on feedback & past experiences with success & failure
Moral Judgment 6 to 8 years	• Define morality by resort to authority figures whose rules must be obeyed • Understand that good actions are based on good intentions • Develop a sense of fairness
8 to 10 years	• Realize that others have a different point of view & that others are aware that one has one's own particular point of view • Recognize that if one has a mean intention toward one, it may be right to act in kind • Define right by what one values
Temporal Concepts 6 to 8 years	• Master clock time, days of the week & months of the years • Give temporal information about symptoms & their duration (how long it takes to fall asleep or how long a headache has been present)
8 to 9 years	• Understand temporal concepts; Temporal order – succession of events & Temporal duration – length of intervals between events
Recognition of Emotion 6 to 8 years	• Identify fear disgust & other difficult emotions • Accept the possibility of simultaneous feelings only if they are separated temporarily (such as: happy when eating ice cream & sad when the ice cream falls on the ground) • Use inner experiences & mental cues to identify emotions • Understand that one can change & hide one's feelings • See oneself as the primary cause of parental emotions but at the same time identify causes that are more appropriate • Recognize one's own emotions but have difficulty describing them, often

	associating physiological or behavioral cues with feelings such as saying "I have a stomach ache" when feeling bad or "I kicked the door" when feeling angry
8 to 10 years	• Use content cues in judging a story character's feelings, • Base judgments of affect on situational cues, • Accept the simultaneous co-occurrence of two emotions feeling happy & sad at the same time • Recognize that events in one's parents lives cause the parents emotions
Person Perception 7 to 12 years	• Describe others in more differentiated, individualized & detailed ways using traits, dispositions & attitudes ("Alice is nice" "Henry is stubborn") • Describe others in "all-or-none" fashion; that is possessing either desirable or undesirable traits • Understand that effort influences outcomes • Realize that individuals are aware of others' perspectives & that this awareness influences them & others' views of them • Put oneself in others' places to judge others' intentions, purposes & actions
9 to 11 years	**Developmental Trend**
Cognitive 7 to 11 years	• assume multiple perspectives, take on role of another • reason simultaneously about a subclass and the whole class • give relatively more weight to language than to contextual cues • think more logically and objectively, continue to tie thinking to concrete experiences
Language Acquisition 8 to 11 years	• Develop vocabulary of 40k by 10 yrs • use word definitions that emphasize synonyms and categorical relations • understand complex grammatical forms, grasp double meanings of words, as in metaphors and humor • consider the needs of listeners in complex communicative situations • refine conversational strategies
Concept of Self 10 years	• realize that one can be smart and ignorant in the same area
Moral Judgment 8 to 10 years	• Realize that others have a different point of view & that others are aware that one has one's own particular point of view • Recognize that if one has a mean intention toward one, it may be right to act in kind • Define right by what one values
10 to 12 years	• Focus on conforming to what people believe is the right behavior • Define right in terms of the Golden Rule "Do unto others as you would have others do unto you" • Obey rules to obtain the approval of people one cares about
Temporal Concepts 9 to 11 years	• Comprehend years & dates • Estimate adults' ages • Develop a grasp of historical chronology
Recognition of Emotion 8 to 10 years	• Use content cues in judging a story character's feelings • Base judgments on affect on situational cues • Accept the simultaneous co-occurrence of two emotions feeling happy & sad at the same time • Recognize that events in one's parents lives cause the parents emotions
10 to 12 years	• Understand that internal emotional experiences & external affective expressions need not correspond • Recognize that the sources of one's parents' emotions can include

	people & events unrelated to oneself • Recognize that emotions come from “inner experiences”
Person Perception 7 to 12 years	• Describe others in more differentiated, individualized & detailed ways using traits, dispositions & attitudes (“Alice is nice” “Henry is stubborn”) • Describe others in “all-or-none” fashion; that is possessing either desirable or undesirable traits • Understand that effort influences outcomes • Realize that individuals are aware of others’ perspectives & that this awareness influences them & others’ views of them • Put oneself in others’ places as a way of judging others’ intentions, purposes & actions
11 to 13 years	**Developmental Trend**
Cognitive 12 & up	• engage in abstract thought, develop problem solving strategies • develop personal characteristics, values and relationships • consider how several different aspects of a problem might affect other people • separate the real from the impossible, recognize a hypothetical problem • think sequentially, consider events in relation to one another • separate one's own point of view from that of others • recognize how one's opinions affect others • see from another's perspective, detect inconsistent logic • understand metaphors, generalize
Language Acquisition	
Concept of Self 12 & up	• realize that one has better access to one's own thoughts than others do • use info about one's own performance, as well as that of peers, in evaluating oneself • change from "all or none" thinking to being able to distinguish between one situation and another (for example, I'm good in reading but not good in drawing) • distinguish between mental and physical aspects of self • recognize that discrepancies may exist between psychological experiences & physical appearance, one can act one way and feel another • adjust self perceptions on the basis of feedback and past experiences with success and failure
Moral Judgment 10 to 12 years	• Focus on conforming to what people believe is the right behavior • Define right in terms of the Golden Rule “Do unto others as you would have others do unto you” • Obey rules to obtain the approval of people one cares about
12 to 15 years & up	• View morality from the perspective of the social system & what is necessary to keep it working • Consider individual needs less important than maintaining social order • Base morality on protecting each individual’s human rights • View behavior that harms society as wrong
Temporal Concepts 9 to 11 years	• Comprehend years & dates • Estimate adults’ ages • Develop a grasp of historical chronology
12 to 14 years	• Develop a more complete sense of personal & historical time making it possible to report on duration the duration of one symptom relative to others & on the persistence of symptoms

Recognition of Emotion	
Person Perception 12 to 13 years & up	• View behavior of others as an interaction between personal characteristics & situational factors • Use psychological constructs to reflect consistent traits in describing others "Bill is smarter than Frank" • Understand how personal characteristics relate to each other • Differentiate among specific courses of behavior • Develop more advanced, less hedonistic concepts of morality • Understand that others may have simultaneously both desirable & undesirable traits
13 to 15 years	**Developmental Trend**
Cognitive 12 & up	• engage in abstract thought, develop problem solving strategies • develop personal characteristics, values and relationships • consider how several different aspects of a problem might affect other people • separate the real from the impossible, recognize a hypothetical problem • think sequentially, consider events in relation to one another • separate one's own point of view from that of others • recognize how one's opinions affect others • see from another's perspective, detect inconsistent logic • understand metaphors, generalize
Language Acquisition	
Concept of Self 12 & up	• realize that one has better access to one's own thoughts than others do • use info about one's own performance, as well as that of peers, in evaluating oneself • change from "all or none" thinking to being able to distinguish between one situation & another (for example, I'm good in reading but not good in drawing) • distinguish between mental and physical aspects of self • recognize that discrepancies may exist between psychological experiences and physical appearance, one can act one way and feel another • adjust self perceptions based on feedback & past experiences w/ success & failure
Moral Judgment 12 to 15 years & up	• View morality from the perspective of the social system & what is necessary to keep it working • Consider individual needs less important than maintaining social order • Base morality on protecting each individual's human rights • View behavior that harms society as wrong
Temporal Concepts 12 to 14 years 14 years & up	• Develop a more complete sense of personal & historical time making it possible to report on duration the duration of one symptom relative to others & on the persistence of symptoms • Develop greater understanding of & preoccupation with the future
Recognition of Emotion	
Person Perception	• View behavior of others as an interaction between personal characteristics & situational factors

12 to 13 years & up	• Use psychological constructs to reflect consistent traits in describing others “Bill is smarter than Frank” • Understand how personal characteristics relate to each other • Differentiate among specific courses of behavior • Develop more advanced, less hedonistic concepts of morality • Understand that others may have simultaneously both desirable & undesirable traits
15 & up	**Developmental Trend**
Cognitive 12 & up	• engage in abstract thought, develop problem solving strategies • develop personal characteristics, values and relationships • consider how several different aspects of a problem might affect other people • separate the real from the impossible, recognize a hypothetical problem • think sequentially, consider events in relation to one another • separate one's own point of view from that of others • recognize how one's opinions affect others • see from another's perspective, detect inconsistent logic • understand metaphors, generalize
Language Acquisition	
Concept of Self 12 & up	• realize that one has better access to one's own thoughts than others do • use info about one's own performance, as well as that of peers, in evaluating oneself • change from "all or none" thinking to being able to distinguish between one situation and another (for example, I'm good in reading but not good in drawing) • distinguish between mental and physical aspects of self • recognize that discrepancies may exist between psychological experiences & physical appearance, one can act one way and feel another • adjust self perceptions based on feedback & past experiences with success & failure
Moral Judgment 12 to 15 years & up	• View morality from the perspective of the social system & what is necessary to keep it working • Consider individual needs less important than maintaining social order • Base morality on protecting each individual’s human rights • View behavior that harms society as wrong
Temporal Concepts 14 years & up	• Develop greater understanding of & preoccupation with the future
Recognition of Emotion	
Person Perception 12 to 13 years & up	• View behavior of others as an interaction between personal characteristics & situational factors • Use psychological constructs to reflect consistent traits in describing others “Bill is smarter than Frank” • Understand how personal characteristics relate to each other • Differentiate among specific courses of behavior • Develop more advanced, less hedonistic concepts of morality • Understand that others may have simultaneously both desirable & undesirable traits

Developmental Summary of the Effects of Different Forms of Maltreatment

INFANCY AND EARLY CHILDHOOD

	PHYSICAL ABUSE	*NEGLECT*	*PSYCH. ABUSE*	*SEXUAL ABUSE*	*DOM. VIOLENCE*
COGNITIVE	cognitive delays	most severe cognitive and language delays	cognitive delays	cognitive delays	cognitive delays
EMOTIONAL	avoidant attachment, limited understanding of emotions	ambivalent attachment	anger and avoidance, serious psychopathology	anxiety, withdrawal	anxiety, separation fears
SOCIAL	fearfulness, aggression	avoidance, dependence	withdrawal, aggression	inappropriate sexual behavior	aggression

MIDDLE CHILDHOOD

	PHYSICAL ABUSE	*NEGLECT*	*PSYCH. ABUSE*	*SEXUAL ABUSE*	*DOM. VIOLENCE*
COGNITIVE	cognitive, language delays, learning disorder	most severe cognitive deficits	low achievement and IQ, poor school performance	school avoidance, learning problems	poor academic performance
EMOTIONAL	poor affect recognition, externalizing (boys), internalizing (esp girls)	dependence, lowest self esteem	depression most likely, aggression	PTSD, fears, low self esteem, depression, regression	depression, anxiety, externalizing, PTSD
SOCIAL	aggression, peer rejection	isolation, passivity	poor social competence, aggression, withdrawal	inappropriate sexual behavior, revictimization	aggression

ADOLESCENCE					
	PHYSICAL ABUSE	*NEGLECT*	*PSYCH. ABUSE*	*SEXUAL ABUSE*	*DOM. VIOLENCE*
COGNITIVE	low academic achievement	lowest grades, most likely to be retained	low achievement	poor academic performance	truancy, poor performance in school
EMOTIONAL	depression, low self esteem, conduct disorder, violence	internalizing, externalizing, low initiative	delinquency, depression, poor emotion regulation, eating disorders, personality disorder	depression, suicide, substance abuse, running away	depression, suicidal thoughts, delinquency
SOCIAL	aggression	poor social skills	pessimism	revictimization	violence in dating relationships

Chapter 28 Glossary of Terms

Commonly Heard In Juvenile Court Proceedings

10-DAY HEARING (Adjudicatory Hearing, Formal Hearing)- must be set on the calendar within 10 days of filing the petition if the child is detained. **See Chapter 2.**

72-HOUR HEARING (Probable Cause Hearing, Detention Hearing) - must be held within 72 hours after the juvenile is taken into custody (excluding week-ends and holidays). Also called emergency shelter care hearing (in deprivation proceedings). In delinquency cases, a probable cause hearing is technically a separate proceeding. **See Chapter 2.**

30-DAY CASE PLAN- Initial Case Plan required to be presented to the court within 30 days after the child is taken into protective custody in a deprivation case. **See Chapter 4 & 13.**

IV-E Eligibility – federal funding reimbursement to the State for dollars spent on children in foster care if the Juvenile Court Orders specifically find DFCS has used reasonable efforts to prevent removal of the child from the family, reunify the child with the family and finalize the child's permanent plan. **See Chapter 12.**

ADJUDICATION- Fact-finding proceeding to determine whether the facts alleged in the petition or other pleadings are true. This is the Juvenile Court equivalent to a trial in civil cases. Standard of proof is clear and convincing evidence in deprivation proceedings and beyond a reasonable doubt in delinquency proceedings. **See Chapter 3.**

ADOPTION AND SAFE FAMILIES ACT OF 1997- ASFA, Federal law signed November 09, 1997, which significantly changes federal laws concerning foster care. Among other things, changes states' obligations regarding reasonable efforts, encourages termination of parental rights if children have been in agency foster care for 15 out of 22 months, requires a "permanency hearing" after a child has been in foster care for 12 out of the last 15 months, calculates time in foster care from earlier of adjudication of deprivation or 60 days after child is removed from home.

ADOPTION SUPPLEMENT – monthly per diem paid to foster parents who adopt children from foster with "special needs".

ANOTHER PLANNED PERMANENT LIVING ARRANGEMENT (APPLA) – for children where reunification with family / relatives or adoption is not an option, provides for a deliberate plan that is supported with lifelong connections to other supportive adults, it is NOT a "default" option but must be well documented as the most appropriate plan with case specific facts

BABIES CAN'T WAIT (BCW) – part of the CAPTA legislation, federally funded State program which provides and coordinates assessments and rehabilitative services to developmentally delayed or disabled children ages 0 to 3 years at no cost to the parents. Requires every child 0 to 3 years who is found by the Juvenile Court to be "deprived" to receive a developmental assessment and rehabilitative services as needed.

BEST INTEREST OF THE CHILD- The legal standard, which the judge must use in deciding disposition, custody, and other matters. What is the best interest of the child is not always the same as the child's wishes. It is not a standard of proof.

CAPTA – CHILD ABUSE PREVENTION AND TREATMENT ACT – mandates, coordinates, funds programs at State and Federal level designed to prevent and treat child abuse. Initiatives include Babies Can't Wait, training for GALs and attorneys representing children in deprivation cases, educational plans for special needs children, Juvenile Court in Improvement Projects.

CASA – Court Appointed Special Advocate – community members who are specially trained and appointed by the court as officers of the court to represent the best interests of the child in deprivation proceedings; sometimes referred to as a lay guardian.

CASE PLAN – Document developed in a deprivation case by DFCS, parents, and sometimes the citizen review panel, which states the reasons a child is brought into protective custody and the exact steps which must be taken by everyone involved to alleviate the conditions of deprivation and allow the parent to provide a safe and stable home for the child. This plan must be reviewed by the Juvenile Court at least every six months. **See Chapter 13.**

- 3 types of caseplan 1. reunification, 2. concurrent & 3. non-reunification
- 5 types of caseplan Permanency goals 1. Reunification, 2. Adoption, 3. Guardianship, 4. Placement with a Fit & Willing Relative, 5. APPLA – Another Planned Permanent Living Arrangement

CCFA – Comprehensive Child and Family Assessment, formerly First Placement Best Placement assessment; private providers under contract with DFCS are given child / family referrals within 48 hours of the child entering DFCS custody; the CCFA includes a trauma assessment / developmental evaluations of the child, health check screens, educational assessment of child with records, dynamic assessment of the child/ family interaction, family history, genogram, relative search information, attends Family Team Meeting and Multi-Disciplinary Team Meeting. CCFA includes a trauma assessment of child, 1. Trauma history of child, what child has experienced or been exposed to as well as how the child coped with the trauma in the past & present; 2. Standardized trauma screening tool; 3. Summary & recommendation for treatment and determines whether a full psychological or other specialized assessment is indicated (psycho-sexual, educational neuro-psychological).

CHILD – Any individual who is:
Under the age of 17 years;
Under the age of 21 years, who committed an act of delinquency before reaching the age of 17 years, and who has been placed under the supervision of the court or on probation to the court; or
Under the age of 18 years, if alleged to be a "deprived child" as defined by this article.

CITIZEN REVIEW PANEL Community members who are specially trained and appointed by the court to conduct periodic reviews of the cases of children who are in foster care. The Citizen Review Panel serves a judicial function. The Panel reviews progress on the Case Plan and makes recommendations to the parties and to the judge regarding changes that may need to be made in the Case Plan or the placement of the child. Any party may request an in-court review of the Panel's recommendations within 5 days of receiving a copy of the revised Case Plan. **See Chapter 13.**

CONCURRENT PLANNING - Case Plan which allows for the simultaneous planning and delivery of services to the family for reunification with the family and a permanent plan outside the family

CPS – CHILD PROTECTIVE SERVICES – the section of DFCS, which receives initial calls alleging child abuse and neglect and which is responsible for investigating the initial complaints (often heard as "CPS worker"). Also referred to as an "Intake" or "Investigations Unit". CPS unit also provides "ongoing services" to families where the child remains in the home, CPS may be referred to as Family Preservation Services (FPS)

CROSSOVER YOUTH OR DUAL JURISDICTION YOUTH – These youth are simultaneously involved with or under the jurisdiction of both child welfare and juvenile justice (Department of Family and Children Services and Department of Juvenile Justice). These youth may move or "crossover" from the child welfare system to the juvenile justice system or vice versa or these are youth who have a history of abuse or neglect and are also involved with the juvenile justice system.

CUSTODIAN – A person, other than a parent or legal guardian, who stands in loco parentis to the child or a person to whom legal custody of the child has been given by order of a court, and who has the rights and duties provided in Code Section 15-11-13.

CUSTODY – The right to a child's care and control carrying with it the duty of providing food, shelter, medical care, education and discipline.

DELINQUENT ACT –
An act designated as a crime by the laws of this state, or by the laws of another state if the act occurred in that state, under federal laws, or by local ordinance, and the act is not an unruly offense or a juvenile traffic offense as defined in Code Section 15-11-731
The act of disobeying the terms of supervision contained in a court order which has been directed to a child who has been adjudged to have committed a delinquent act; or
Failing to appear as required by a citation issued with regard to a violation of Code Section 3-3-23, (offenses involving alcoholic beverages and persons under age 21).

DELINQUENT CHILD – Child who has committed a delinquent act and is in need of treatment or rehabilitation.

DEPENDENCY – Term used in other jurisdictions to refer to child abuse and neglect cases (synonym for deprivation)

DEPRIVED CHILD – A child who:
Is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his physical, mental,or emotional health or morals;
Has been placed for care or adoption in violation of law;
Has been abandoned by his parents or other legal custodian; or
Is without a parent, guardian, or custodian.

No child who in good faith is being treated solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall, for that reason alone be considered to be a "deprived child".

DEPRIVATION PROCEEDINGS – Juvenile Court proceedings held when there are allegations of abuse or neglect of a child.

DETENTION – confinement of a minor by a public officer pursuant to law. Holding a juvenile in the custody of the county or state, whether in a jail, a youth detention facility, a shelter, a foster home, or another placement other than placement with the child's custodian.

DENTENTION HEARING- Proceeding, which must be held within 72 hours of taking a juvenile into custody (excluding week-ends and holidays) to determine whether the juvenile shall be held in custody (detained) or released.

DFCS (DFCS) – Department of Family and Children Services, the department of DHR charged with delivering child protective services, family rehabilitation services, and other related services.

DHR – Department of Human Resources.

DILIGENT SEARCH for relatives or others who have shown an ongoing commitment to the child. **See Chapter 4.**

DISPOSITION - Term used to describe outcome of case or placement of child; i.e. the disposition in a deprivation case may be that custody is placed with DFCS and the parent must accomplish the tasks described in the Case Plan. **See Chapter 4.**

DISPOSITION HEARING – (DISPOSITIONAL) – proceeding to determine what placement is best suited to the protection and physical, mental, and moral welfare of a child adjudicated deprived, delinquent, or unruly. Held after the adjudication; can be in the same proceeding as the adjudication or held within a reasonable time after the adjudication. DFCS must present "Diligent Search for Relatives" to proceed to a final disposition of the case. **See Chapter 4.**

DJJ – Department of Juvenile Justice – Formerly the Department of Children and Youth Services – The state agency charged with providing for the needs of children who are adjudicated delinquent or unruly. In the disposition stage of a delinquency or unruly hearing, juveniles are "committed to the custody" of DJJ and DJJ then has responsibility for placing the child. DJJ placement options include Youth Development Campuses, community treatment facilities, group homes, therapeutic residential placements, boot camps, community schools, a wilderness program, court-based programs, and others.

DSM – IV – The Diagnostic and Statistical Manual of Mental Disorders – the standard classification of mental disorders used by mental health providers in the US. Includes 5 axis for Clinical Disorders, Personality Disorders, General Medical Conditions, Psychosocial & Environmental Problems and Global Assessment of Functioning Scale (GAF). **See Chapter 21.**

EPSDT – Early and Periodic Screening, Diagnosis, and Treatment – Medicaid provides for health screening and treatment of all eligible children up to age 21. Under EPSTD, each state must screen children regularly and provide all necessary medical treatment for any problem discovered during the screening.

FAMILY PRESERVATION SERVICES (FPS) – formerly ongoing Child Protection Services, services to prevent removal of the child from the home or to reunify the child to the home

FAMILY TEAM MEETING (FTM) DFCS policy requires a FTM to occur within 9 days of the child coming into care to discuss the critical issues and circumstances which led to the child's placement; needs / strengths of the child / family, relative resources, placement resources …….

FOSTER CARE – Temporary residential care provided to a juvenile pursuant to a court order from a deprivation proceeding; can include care by a non-biological foster family, group care, residential care, or institutional care.

FOSTER CARE PER DIEM – as of March 2011 the foster care per diem rates in Georgia were as follows:

$14.60 for a child age 0-5
$16.50 for a child age 6-12
$18.80 for a child age 13 and older

80% Foster Care Rates Monthly (for relative care subsidy (RCS) and subsidized guardianships (SG)

$ 355.25 for a child age 0-5
$ 401.50 for a child age 6-12
$ 457.47 for a child age 13 and older

Room, Board & Watchful Oversight (RBWO) is the program administered by the Office of Provider Utilization and Outcomes Management (OPUOM) implemented on 7/1/07; RBWO is the provision of lodging, food, and the attentive and responsible care of children.

Placement providers are paid a per diem for RBWO:

	Base	Additional	Maximum
Group Homes	$ 105.69	$ 133.83	$ 187.64
Child Placing Agency	$ 42.11	$ 57.71	$ 93.92

More information at www.kidSTARga.com

- Traditional
- Base Watchful Oversight (BWO)

- Maximum Watchful Oversight (MWO)
- Specialty Base Watchful Oversight (SBWO)
- Specialty Maximum Watchful Oversight (SMWO)
- Specialty Medically Fragile Watchful Oversight (SMFWO)
- Psychiatric Residential Treatment Facility (PRTF)

FOSTERING CONNECTION TO SUCCESS AND INCREASING ADOPTIONS ACT (H.R. 6893) signed by President Bush on October 7, 2008 enhances federal financial support for state programs that promote permanent families for foster children through adoptions and relative guardianships. **See Chapter 32**, For implementation checklists see http://www.abanet.org/child/education/publications/fc_implementation_checklists_final.pdf

GLOBAL ASSESSMENT OF FUNCTIONING SCALE (GAF) – mental health clinician's subjective judgment of the individual's overall level of functioning and carrying out activities of daily life. A 100 point scale measures a patient's overall level of psychological, social & occupational functioning on a hypothetical continuum with 100 being the highest. **See Chapter 21.**

GUARDIAN AD LITEM (GAL) – Officer of the court who is appointed to represent the best interest of the child in abuse and neglect proceedings, custody proceedings, and sometimes in delinquency or unruly proceedings. May be an attorney or layperson. Often referred to as "G.A.L.".

GUARDIANSHIP – Term describing the legal status of a custodian of a juvenile which confers certain rights and responsibilities, including the requirement to provide for the child's physical, spiritual, and mental needs and the ability to register the child for school, obtain medical care, and provide legal consent when needed. May be granted by Probate Court or Juvenile Court. The guardian caregiver may be eligible for financial subsidy from DFCS. **See Chapter 15.**

Indian Child Welfare Act (ICWA) was passed in 1978 to protect the best interests of Indian children and promote the stability of Indian tribes and families. **ICWA** provides minimum Federal standards for the removal of Indian children from their families and placement of these children in foster care or in adoptive homes that reflect Indian culture. **ICWA** applies in all child custody proceedings involving foster care placements, termination of parental rights, and pre-adoptive and adoptive placements. ICWA does not apply in divorce proceedings involving custody disputes.
http://www.childwelfare.gov/systemwide/courts/icwa.cfm

IEP (Individualized Educational Program) – Written plan required to be developed for every child who is provided special education and related services. The plan is required by federal and state law and is developed by the school district and the child's parent or guardian. The IEP must describe all services needed by the child and the services that will be provided to meet the individualized educational needs of the child in the least restrictive environment.

IMPACT TRAINING – formerly MAPP training, DFCS training for foster parents and adoptive parents

INDEPENDENT LIVING PROGRAM (ILP) – DFCS program for older teens in DFCS custody; county ILP coordinator assists teens with housing, school, and job arrangements and teaches life skills; is transitional program for teens in non-traditional foster care settings who are becoming adults. Each foster child 14 and older must have a written transitional ILP.

IN LOCO PARENTIS - Latin term – "in the place of the parent"; refers to actions of a custodian, guardian, or other person acting in the parent's stead.

INTERSTATE COMPACT (ICPC)– Interstate Compact on the Placement of Children is a uniform law enacted by all states, Washington D.C., and the U.S. Virgin Islands. It establishes orderly procedures for the placement of children across state lines for foster care or adoption and fixes responsibilities for those involved in placing the child. **See Chapter 19.**

KINSHIP GUARDIANSHIP - **Kinship Navigator Program** - "to assist kinship caregivers in learning about, finding, and using programs and services to meet the needs of the children they are raising and their own needs, and to promote effective partnerships among public and private agencies to ensure kinship caregiver families"

LEGAL FATHER - Unless otherwise indicated by a court, a man whose wife had a child during the marriage or within 9 months after dissolution of the marriage; or a putative father who has acknowledged paternity and legitimated the child; or a biological father who later marries the mother and acknowledges paternity; and has not surrendered or had his parental rights to the child terminated. **See Chapter 16.**

LEGITIMATION – The legal process by which a child born out of wedlock is "put on equal footing" with a child born within a legal marriage. Establishes a legally recognized parent-child relationship between a father and child. If pending deprivation action, may be filed in Juvenile Court. **See Chapter 16.**

LONG TERM FOSTER CARE – Extended residential care provided to a juvenile who has been adjudicated deprived. This term has been replaced with the term Another Planned Permanent Living Arrangement (APPLA).

MAPP (Model Approach to Partnerships in Parenting) – DFCS training program for foster parents, now called IMPACT training.

MEDICAID – Health insurance for low-income children, their parents or other caretaker relatives, or pregnant women.

NEGLECT – Failure of a custodian to adequately provide for the physical, emotional or spiritual needs of a child either by acts of commission or omission.

NON-REUNIFICATION PLAN – Case Plan developed by DFCS with input from the parents and the citizen review panel which states that reunification of the family is not in the best interest of the child, which alleviates DFCS from being responsible for providing reunification services, and which provides for a permanent plan for the child other than placement in the birth family. **See Chapter 9.**

NUNC PRO TUNC ORDER – Latin term – "now for then"; an order used by the courts to protect the record. It supplements a prior judgment or order in any matter over which the court originally had jurisdiction.

PARENTING ASSESSMENT - Battery of psychological tests which evaluates a parent's current parenting skills, any deficits in parenting skills and the parent's potential or ability to correct the parenting deficits.

PARENS PATRIAE – Latin term – "the father of his country"; from English law, the legal doctrine under which the Crown assumed the protection of certain minors, orphans and other persons in need of protection. Phrase used to express the historical benevolent and rehabilitative philosophy of the Juvenile Court.

"PER DIEM" – The amount of money paid to foster parent to care for children in their home. See Foster Care Per Diem.

PERIODIC REVIEWS – Mandated judicial reviews of children in foster care. Reviews of children in foster care must take place at least every six months and may be conducted by citizen review panel. Every party has the right to have periodic reviews conducted by a judge. Reviews of children who are available for adoption must be conducted by a Judge every 6 months least annually. Reviews of children in relative placements must be reviewed by the Court every 36 months.

PERMANENCY PLANNING HEARING – Special type of post-dispositional proceeding designed to reach a decision concerning the permanent placement of a child; the time of the hearing symbolically represents a deadline by which a permanent placement for the child will be established. A permanency hearing; is required every 12 months the child is in foster care. **See Chapter 7.**

PERMANENT PLAN – Final placement goal for a child who has been removed from the home due to abuse or neglect. Every child who enters foster care should have a permanent plan which states where the child will ultimately reside (i.e. reunification with family, guardianship, another planned permanent living arrangement, adoption). **See Chapter 7.**

PETITION – A civil pleading filed to initiate a matter in Juvenile Court; the petition sets forth the grounds for the court to take jurisdiction and the reasons the court should intervene.

POWER OF ATTORNEY FOR THE CARE OF A MINOR CHILD ACT –
O.C.G.A. § 19-9-120 to 19-9-128, This act provides for a parent delegating to any grandparent residing in this state, the caregiving authority regarding a minor child when hardship prevents the parent from caring for the child; this authority may be delegated to the grandparent without the approval of a court by executing in writing a power of attorney for the care of a minor child in a form substantially complying with the provisions of this act; Hardships may include, but are not limited to, times when the parent is unable to provide care because of: the death of the other parent; a serious illness or terminal illness of a parent; physical or mental condition of the parent or the child; incarceration of a parent; loss or uninhabitability of the child's home as the result of a natural disaster; or a period of active military duty of a parent exceeding 24 months. Hardship shall not include events whose purpose is to subvert an investigation of the child's welfare initiated by the Department of Human Resources or other agency responsible for such investigations, .

PROMOTING SAFE & STABLE FAMILIES (PSSF) – network of community based family support services, list of services & description of these services found at www.pssfnet.com

PUP FUNDS – "Prevention of Unnecessary Placement" – discretionary funds available for DFCS to use to assist families at risk of having children placed in foster care; funds are used to remedy the situation which may result in removal of children; i.e. if a family's utilities are cut off, PUP funds can be used to pay bills and have the utilities reinstated.

PUTATIVE FATHER – Person alleged to have fathered a child whose parentage is at issue.
PUTATIVE FATHER REGISTRY means the registry established and maintained pursuant to **O.C.G.A. § 19-11-9. See Chapter 11.**

RELATIVE CARE ASSESSMENT (RCA) – referral for a RCA may be made at any time during the child's stay in foster care; generally relative options should be identified at the FTM; RCA should be completed within 30 days of referral for the RCA to the provider; includes home evaluation / safety check, CPS history check, criminal background check, DFCS policy overview & benefits for relative caregivers. Placements with relatives may be expedited & immediate pending a full RCA if there is no CPS history, satisfactory home safety check & a local criminal background check on all household members over 18 years.

RELATIVE FOSTER CARE – Residential care provided by a relative to a child who is the subject of deprivation proceedings. Relative caregiver for a child may or may not be qualified as foster parents; there are several different levels of subsidy paid to relative caregivers. See Chapter 9 for further descriptions. The financial assistance for the relative caregiver for child who remains in the custody of DFCS and placed with a relative caregiver is: subsidized as a foster parent at 100% of the foster care per diem, their home meets all foster care requirements; subsidized under the "Enhanced Relative Rate" (ERR) because their home is otherwise suitable but does not qualify as a foster home; the rate is 80% of the foster care per diem for the child's age if the enhanced rate or $10.00 per diem for regular RCS; receives TANF benefits & Medicaid; household may be eligible for food stamps, but no subsidy. **See Chapter 10.**

RELATIVE CARE SUBSIDY (RCS) – a per child, monthly supplement paid by DFCS to a "fit and willing relative" who has received custody of the child following a Non-Reunification Order and a Petition to Modify. The goal of RCS is to move older foster children from foster homes to relatives who can care for these children with some financial assistance. Maybe either regular rate of $10.00 per diem or 80% of the foster care per diem for the child's age. **See Chapter 10.**

RESONABLE EFFORTS – Term used to describe the legal (federal and state) requirement placed on DFCS, the court and other providers to provide services to alleviate conditions which may result in removal of the child from the home and to provide services to reunite the family after removal has occurred. As a result of the Senate Study Committee on Foster Care and Adoption, Georgia is in the process of developing a legal definition of the term "reasonable efforts", and some guidelines regarding what services and actions are considered "reasonable". **See Chapter 12.**

RULE NISI – Procedure by which a party is commanded to show cause why a proposed rule or temporary order should not become a final order of the court, or why a party should not be compelled to comply with a court order. **See Chapter 6.**

RYDC – Regional Youth Detention Center; DJJ facility for housing juveniles who are adjudicated delinquent; many 90-day programs are located within RYDCs.

SAAG – Special Assistant Attorney General – Attorney representing DFCS in deprivation proceedings.

SAFEKEEPING – Term used in some counties to describe process by which a child is placed into protective custody by the court in the course of another proceeding (similar to an emergency shelter care order but the court may do this sua sponte); i.e. when a parent has agreed to a relative having guardianship over a child and then seeks to revoke the guardianship, if the court believes the child will be in danger with the parent, the court may temporarily place the child in DFCS custody "for safekeeping" until further investigation can be conducted. **See Chapter 2.**

SAFE PLACE FOR NEWBORNS ACT OF 2002. O.C.G.A. § 19-10A-1
This chapter shall be known and may be cited as the "Safe Place for Newborns Act of 2002."
Purpose of Act. It is the express purpose and intent of the General Assembly in enacting this chapter to prevent injuries to and deaths of newborn children that are caused by a mother who abandons the newborn.

SENATE BILL 236 (SB 236) – Foster Parent Bill of Rights

SENATE BILL 440 (SB440) – Legislation effective May 1, 1994 which gives the Superior Court exclusive jurisdiction over juveniles aged 13-17 who are alleged to have committed murder, voluntary manslaughter, rape, aggravated sodomy, aggravated child molestation, aggravated sexual battery, or armed robbery if committed with a firearm. A juvenile charged in Superior Court may be transferred back to Juvenile Court at the discretion of the prosecutor before indictment or by the judge after indictment for extraordinary cause if the offense is not punishable by loss of life or life imprisonment. SB440 also provided judges authority to directly sentence a juvenile to 90 days in a detention facility.

SENATE BILL 611 (SB611) – Legislation effective July 1, 1996 which affected O.C.G.A. Sec. 15-11-58 regarding the disposition of deprived children. SB611 reduced the duration of an initial custody order to DFCS from 18 months to 12 months and allows Non-Reunification plans to be submitted to the court instead of reunification plans when DFCS believes that reuniting the parent and child is not in the best interest of the child and the parental behavior meets certain specific statutory requirements.

SHELTER CARE – Temporary placement for a child who is the subject of deprivation proceedings, which is:

A licensed foster home or home approved by the court which may be a public or private home or the home of the noncustodial parent or a relative; or
A facility operated by a licensed child welfare agency.

SSI (Supplemental Security Income) – Monetary eligibility benefits provided to children and parents who are disabled but have not worked enough to receive social security disability; eligibility determination is made regarding disability; 1997 legislation changed definitions of disabilities so many children who previously received SSI benefits will no longer be eligible.

STATUS OFFENDER – a child who is charged with or adjudicated of an offense which would not be a crime if it were committed by an adult, in other words, an act which is only an offense because of the perpetrator's status as a child. Such offenses shall include, but are not limited to, truancy, running away from home, incorrigibility, and unruly behavior.

TANF (Temporary Assistance for Needy Families) – The Georgia State Plan to implement changes in public assistance (welfare) mandated by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193) signed into law on August 22, 1996. P.L. 104-193 converted Aid to Families with Dependent Children (AFDC), the federal cash assistance program to low-income families, into block grant funds to be administered by the states. TANF provisions include a lifetime limit (in Georgia this limit is 4 years) or receipt of assistance, stringent work requirements, and strict eligibility guidelines. Juvenile Court professionals must be aware of the changes in public benefits arising from TANF because resources traditionally accessed in Juvenile Court proceedings may no longer be available, and will certainly be limited. Additionally, there is a possibility that parents or caretakers may be referred to a Neglect Prevention Unit to assess potential risks to children from a failure to achieve self-sufficiency within mandated time limits.

TPR (Termination of Parental Rights) – Legal proceeding resulting in the permanent severance of the parent-child relationship. **See Chapter 11.**

TRUANCY INTERVENTION PROJECT (TIP) – Delinquency prevention program provided in some Juvenile Courts to prevent juveniles adjudicated unruly on the basis of truancy from progressing to delinquency offenses. Juveniles in TIP are paired with volunteer attorneys who represent the juvenile and act as a mentor for the juvenile.

UNRULY CHILD – A child who:
While subject to compulsory school attendance is habitually and without justification truant from school; Is habitually disobedient of the reasonable and lawful commands of his or her parent, guardian, or other custodian and is ungovernable; Has committed an offense applicable only to a child; Without just cause and without the consent of his or her parent or legal custodian deserts his or her home or place of abode; Wanders or loiters about the streets of any city, or in or about any highway or any public place, between the hours of 12:00 Midnight and 5:00 A.M.; Disobeys the terms of supervision contained in a court order which has been directed to such child, who has been adjudicated unruly; or Patronizes any bar where alcoholic beverages are being sold, unaccompanied by such child's parents, guardian, or custodian, or possesses alcoholic beverages; and is in need of supervision, treatment, or rehabilitation; or Has committed a delinquent act and is in need of supervision, but not of treatment or rehabilitation.

WRAPAROUND SERVICES – time limited services to a family by a provider under contract with DFCS which are designed to prevent removal of the child or to assist the family unit in the transition of the child back into the home after a stay in foster care. Includes family / individual counseling, conflict resolution and assistance to the family in locating community resources.

WIC - Special Supplemental Food Program for Women, Infants, and Children – Federal program that provides food supplements and health care to pregnant women, breastfeeding mothers, infants, and young children. WIC participants must have incomes at or below 185% of the poverty level and must be nutritionally at risk.

WRITTEN TRANSITIONAL LIVING PLAN – WTLP-

YDC (Youth Development Campus) – DCYS facility for housing juveniles who are adjudicated delinquent.

Chapter 29 DFCS Timeline for Services & Obligations Under *Kenny A*

	DFCS SERVICE	TIMING
FOR CHILDREN ENTERING PLACEMENT AFTER THE ENTRY OF THE CONSENT DECREE	Comprehensive Child & Family Assessment (CCFA)	Within **24 hours** of a Detentional Hearing **DFCS will** make a referral to CCFA provider
	Family Team Meeting (FTM	Within **3-9 days** after a child enters FC
	Physical Health Screen	Within **10 days** of a child's entry into FC
	Dental Health Screen	Within **10 days** of a child's entry into FC
	Multidisciplinary Meeting (MDT)	Within **25 days** of a child's entry into FC
	Case Plan	Within **30 days** of a child's entry into FC
	CCFA	Within **30 days** of a child's entry into FC, CCFA due.
	Mental Health Screen	Within **30 days** of a child's entry into FC
	(Child: 4 yrs. & older)	Within **30 days** of a child's entry into FC.
	Developmental Assessment (Child: 4 yrs. & under)	CAA recommends Babies Can't Wait (BCW) referral be made immediately
FOR CHILDREN WHO HAVE REACHED THEIR 6th MONTH IN FOSTER CARE	Judicial Citizen Plan Review (JCPR)	Within **6 months** of a child's entry into FC, & every six months thereafter
FOR CHILDREN WHO REACH THEIR 13th MONTH IN FOSTER CARE DFCS SERVICE	Family Team Meeting (FTM)	By the end of the **13th month** after a child's entry into FC
	Permanency Report	By the end of the **13th month** after a child's entry into FC, DFCS will forward the Permanency Report to the State Social Services Director.
	Director Review of Permanency Report	Within **5 days** after receipt of Permanency Report the Director or his designee shall either concur with the report or refer the case for a county/state staffing
FOR CHILDREN WHO HAVE ALREADY REACHED THEIR 13TH MONTH IN FOSTER CARE	Permanency Report	Within **120 days** from the entry of the Consent Decree, DFCS will submit a Permanency Report to State Social Service Director for a permanency review as provided above
FOR CHILDREN WHO WILL REACH, & HAVE REACHED, THEIR 18TH MONTH FOSTER CARE	Specialized Case Manager	Within **60 days** of the entry of this consent decree, all children who have reached & will reach their 18th month in care will have a Specialized Case Manager

Family Team Meeting (FTM)

- FTM participants shall include
  - DFCS case manager
  - DFCS supervisor
  - Parents (**DFCS must** use reasonable efforts to secure parent attendance)
  - The child if 12 or older (**DFCS must** make reasonable efforts to have the child attend)
- The FTM participants may include
  - CCFA provider
  - Relatives
  - Other persons significant to the family
- A meeting shall not be cancelled solely because of the absence of any participant as long as the required determinations can be made without them.
- Efforts to ensure the attendance of participants shall be documented in child's file.
- Participant's in the meeting will identify
  - the needs of the child & parents
  - Goals for meeting those needs
  - Steps for meeting the goals
  - Strengths of the family member in meeting the needs of the child.
- At the meeting **DFCS must** make the following determinations & ensure the provisions of necessary services to achieve them
  - Whether the child can safely returned home
  - Whether any evaluations are necessary of child/parent to ensure development of Case Plan
  - If child has siblings in placement & the siblings are not placed together, **DFCS must** identify the necessary steps to place the siblings together & necessary steps to ensure visitation
  - If child is of school age, **DFCS must** identify steps that can be taken to ensure that the child:
    - Remains enrolled in school; does not miss extensive school days &
    - Does not have to change schools if at all possible
- The frequency with which visiting the child will take place between child & parent/significant family members.
- If DFCS is unable to secure the parents' attendance, the meeting will go on but, **DFCS must** make reasonable efforts to notify & review with the parents the goings-on at the meeting.

Multidisciplinary Meeting:

- The MDT participants shall include
  - DFCS case manager
  - DFCS supervisor
  - Parents (**DFCS must** reasonable efforts for their attendance)
  - The child if 12 or older (**DFCS must** make reasonable efforts)
  - The MDT participants may include:
  - Foster Parents/ Placement Providers
  - DFCS representatives
  - School representatives
  - Therapists
  - Mental health professionals
  - Representatives from Public Heath
  - Judicial Representatives
- A meeting shall not be cancelled solely because of the absence of any participant as long as the required determinations can be made without them
- Efforts to ensure the attendance of participants shall be documented in child's file
- An MDT will

        - Review the CCFA & make recommendations concerning the Case Plan & the services to be provided to the child & family, included but not limited to the issues addressed at the FTM
        - The appropriateness of education (including special education)
        - The creation & appropriateness of independent living plans & services for children 14 & older
        - An appropriate permanency goal for the child & the services necessary to implement that goal
        - The Case Plan shall be an outgrowth of the CCFA assessment & shall be developed at the MDT meeting
        - **DFCS Shall** identify & ensure the provisions of necessary services to achieve the determinations made at the MDT meeting, & contained in the child's Case Plan, unless & until altered by the Superior Court

Judicial Citizen Plan Review

- Participants in JCRP or Juvenile Court Review shall include
    - the parents
    - the child
    - pre-adoptive parents or relatives providing care for the child
    - foster parents/placement provider
    - DFCS case manager
    - the private provider case manager (if applicable)
    - the case supervisor
    - other DFCS representatives
    - the CCFA providers
    - medical & mental health professionals
    - representatives from Public Health & the child's school
    - other professionals having specific knowledge or information relative to the child's case
- JRCP or Juvenile Court Review shall not be cancelled solely because of the absence of any participant as long as the required determinations can be made with the participant's who are in attendance
- At each six month Case Plan review, the JRCP &/or Juvenile Court shall evaluate the following
    - The necessity & appropriateness of the child's placement
    - Whether reasonable efforts have been made to obtain permanency for the child
    - The degree of compliance with the specific goals & action steps set out in the Case Plan
    - Whether any progress has been made in improving the conditions that caused the child's removal from the home
    - Whether changes need to be made to the Case Plan, including a change in permanency goal & the projected date when permanency for the child is likely to be achieved, or changes or the addition of any services needed by the child

Permanency Report

- The Permanency Report shall include:
    - a profile description of the child
    - the Case Plan
    - a list of impediments for achieving permanency
    - the CCFA
    - a list of steps to be taken by the county to achieve permanency

County/State Staffing

- The staffing shall include:
    - DFCS case manager
    - DFCS supervisor
    - regional adoption coordinator

        - regional field specialist
        - county program administrator
        - state social services director or his designee

Specialized Case Manager

- The Specialized Case Manager provided for in this paragraph shall do the following as appropriate for the children
    - convene meetings
    - access funding
    - make independent decisions in order to:
        - determine the continuing appropriateness & effectiveness of the child's permanency goal & to seek court approved change of the goal if appropriate
        - determine the continuing appropriateness & effectiveness of the services being provided to the child; whether new or different services are necessary for the child; &, if so, by whom & when they will be provided
    - partner with the county Independent Living Coordinator to determine whether adequate independent living services & plans are being provided for all children age 14 or older
    - evaluate the continuing appropriateness & effectiveness of services to biological parents & relatives, & determine whether new or different services are necessary to assist the biological parents & relatives in achieving the child's permanency goal
    - consult with public & private professionals & take all steps necessary to ensure the provision of services leading to the child achieving permanency
    - No sooner than 30 days prior to discharge, convene a special discharge planning meeting that shall be held to ensure that appropriate services & plans are in place to ensure a successful discharge

Chapter 30 Fostering Connection to Success & Increasing Adoptions Act

The *Fostering Connection to Success and Increasing Adoptions Act* (H.R. 6893) signed by President Bush on October 7, 2008 enhances federal financial support for state programs that promote permanent families for foster children through adoptions and relative guardianships.
For implementation checklists see
http://www.abanet.org/child/education/publications/fc_implementation_checklists_final.pdf

Title I – Connecting and Supporting Relative Caregivers	
Section 101	**Kinship Guardianship Assistance Payments for Children** ○ Allows states the option of using Title IV-E funds to pay for kinship guardianship. These funds are available where the child is in relative foster care with the relative for at least six months consecutive months, the child has a strong attachment to the relative, the relative has committed to permanently caring for the child and neither adoption nor returning to the parents' home is an option for the child. ○ Directs the state to make a written, binding kinship agreement to include the amount of the kinship payments, how to apply for modifications of the kinship payments in the future and any services available the child and family under the kinship agreement. ○ Makes siblings of the child eligible for kinship care payments ○ Mandates that the Case Plans for children receiving kinship guardianship payments include six additional statements. A description of: 7. the steps taken by the state to determine it is not appropriate for the child to be adopted or returned home; 8. the reasons why any siblings are separated during placement; 9. the reasons why kinship guardianship as a permanent plan is in the child's best interest; 10. how the child meets the kinship guardianship requirements; 11. the efforts made by the state to discuss adoption with the relative foster parent including documentation of the reasons why the relative is not pursuing; and 12. the efforts made to discuss kinship guardianship with the parents. ○ Makes Medicaid automatic for kinship care children and children receiving adoption assistance. ○ Independent living services and education or training vouchers are also federally required for children moving into kinship guardianships after age 16.
Section 102	**Family Connection Grants** ○ Provides for federally funded Family Connection Grants that will assist children who are either at risk of entering foster care or who are in foster care to reconnect with family members. ○ There are four types of programs eligible for Family Connection Grants: 1. kinship navigator programs 2. intensive family-finding programs 3. family group decision making programs 4. residential family treatment programs
Section 103	**Notification of Relatives** ○ Directs that within 30 days of the child's removal, the state shall exercise due diligence to identify and provide notice to all adult relatives that the child has been or is being removed from the custody of the parents. ○ Notice to relatives should also include the options available to the relatives to be considered for placement of the child including kinship guardianship assistance payments.

Section 104	**Licensing Standards for Relatives** ○ Allows states to use waivers of non-safety licensing standards on a case-by-case basis to remove barriers to placement of children with relatives. ○ The Department of Health and Human Services is also required to report back to Congress within two years as to how the waivers have been used by the states, the effect on children in foster care and recommendations for actions that would allow more foster children to be safely placed with licensed, federally supported relatives.
Title II – Improving Outcomes for Children in Foster Care	
Section 201	**State Option for Children in Foster Care, and Certain Children in an Adoptive or Guardianship Placement, After Attaining Age 18** ○ Allows States the option of providing foster care services to children until the age of 19, 20, or 21 under specified conditions. These conditions include where the youth is • completing high school or an equivalency program • enrolled in post-secondary or vocational school • participating in an program that promotes employment • employed for at least 80 hours per month • incapable of doing any of these activities due to a documented medical condition ○ Placements for youth 18-21 years include an independent living yet supervised settings, a foster family home or group home ○ States may also extend adoption assistance or guardianship payments until 21 years
Section 202	**Transition Plan for Children Aging Out of Foster Care** ○ Requires states to assist youth aging out of the system by developing a personal transition plan during the 90-day period immediately preceding the youth's exit from care at 18, 19, 20, or 21 ○ The state agency caseworker and other representatives of the youth should assist in developing the plan with the direction of the youth ○ The plan should include details of available options for housing, health insurance, education, mentoring opportunities, continuing support services and employment services or supports
Section 203	**Short Term Training for Child Welfare Agencies, Relative Guardians, and Court Personnel** ○ Makes federal Title IV-E training funds available for staff in state agencies, private child welfare agencies, court personnel, attorneys, Guardian Ad Litem (GAL)s, court appointed special advocates, prospective relative guardians, and foster or adoptive parents
Section 204	**Educational Stability** ○ Requires the state to develop an educational stability plan for foster children that includes consideration of the appropriateness of the child continuing in the child's school at the time of placement, unless that would not be in the child's best interests ○ Increases the amount of federal funding available to cover education related transportation costs for children in foster care ○ When a change in schools is required, the state must immediately enroll the foster child in the new school and provide the school with the child's educational records ○ Requires states to ensure that all school age children in foster care or who are receiving adoption assistance or subsidized guardianship are enrolled as full time students or have completed secondary school
Section 205	**Health Oversight and Coordination Plan** ○ Requires states to collaborate and consult with Medicaid, pediatricians and experts to develop a health care oversight plan for foster children including dental and mental health issues for the child ○ Include procedures for initial and follow-up health screenings, treatment and monitoring of the child's health needs, oversight of the child's prescription medications, continuity of the child's health care services and sharing the child's health information with other health care providers ○ Suggests the development of electronic health records and establishing a medical home for each child in foster care

Section 206	**Sibling Placement** ○ Requires states to use reasonable efforts to place siblings together except where a joint placement would be contrary to the safety or well-being of any of the siblings ○ In the event siblings are not jointly placed, the state is required to use reasonable efforts to provide frequent visitation or other sibling interaction except where sibling contact is deemed contrary to the safety or well-being of any of the siblings
Title III – Tribal Foster Care and Adoption Access	
Section 301	**Equitable Access for Foster Care & Adoption Services for Indian Children In Tribal Areas** ○ Extends the IV-E resources and protections to Indian children in foster care ○ Provides for tribes to have either direct access to IV-E funds or through Tribal/State agreements ○ Tribal youth in foster care would also have access to independent living services through a portion of the state's Chafee Foster Care Independence Program (CFCIP) funds
Section 302	**Technical Assistance and Implementation** ○ Requires the Secretary of the Department of Health and Human Services to provide grants, technical assistance and other services to assist tribes in accessing the IV-E funds and other resources
Title IV – Improvement of Incentives for Adoption	
Section 401	**Adoption Incentives Program** ○ Renews the Adoption Incentive Grant Program for five years, increases the states' adoption incentive payments for special needs children from $2,000.00 to $4,000.00 and for older children from $4,000.00 to $8,000.00 ○ Requires the adoption incentive payments be used by the states within 24 months ○ States may be eligible for additional incentive payments for exceeding their highest adoption rates since 2002 adoption rates
Section 402	**Promotion of Adoption of Children with Special Needs** ○ Increases the availability of federal adoption assistance for special needs children by eliminating eligibility based on the income of the child's home of removal ○ Creates adoption assistance eligibility for the child based upon the child's needs ○ The state must determine the child cannot be placed for adoption without providing adoption assistance due to a specific factor or condition of the child such as ethnic background, age, membership in a minority or sibling group, medical, physical, mental or emotional condition of the child. Children who meet all medical or disability requirements for SSI eligibility are automatically entitled to adoption assistance as special needs children ○ Increased adoption assistance described in this section is to be phased in over the next nine years with priority given to children in care at least 60 consecutive months, older children and sibling groups ○ Special needs children placed with or relinquished to Indian tribal organizations or licensed private child placement agencies are also eligible for this adoption assistance
Section 403	○ **Information on Adoption Tax Credit** ○ Directs states to inform all adopting parents or those considering adopting children in state custody of the potential eligibility for the adoption tax credit under §23 of the 1986 Internal Revenue Code
Title V – Clarification of Uniform Definitions of Child and Other Provisions	
	○ **Clarification of Uniform Definition of Child** defines child under §152(c)(3)(A) of the 1986 Internal Revenue Code
	Investment of Operating Cash – not relevant to foster care issues
Title VI – Effective Date	
	○ **Effective Date** ○ Effective date for the federal monetary incentives is first quarter after the act was signed (January 2009) and Effective date for the state programs that require state legislative action is the first day of the first quarter following the end of the state legislative session ending after October 7, 2009, For Georgia this date should be June 1, 2010

Chapter 31 DFCS Policy Excerpts

PARENT/CHILD VISITATION AT INITIAL PLACEMENT
AFTERCARE AND PLACEMENT SUPERVISION
ATTORNEY - CLIENT RELATIONSHIP
CLIENT ACCESS TO RECORDS
DEPRIVATION RESULTING FROM SUBSTANCE ABUSE
CONSULAR NOTIFICATION PROCEDURE
SERVICE NEEDS OF AN IMMIGRANT CHILD

2102 REASONABLE EFFORTS
2102.3A REASONABLY DILIGENT SEARCH
2102.4 REASONABLE EFFORTS DOCUMENTATION

PARENT/CHILD VISITATION AT INITIAL PLACEMENT
1009.3
Requirement
If possible, a child initially placed should have a family visit in the first week following placement. If a visit cannot be arranged, then plans should be made for a telephone or written contact during the first week of placement.
PRACTICE ISSUE
The child's confusion and anxiety can be greatly reduced by arranging some form of contact with birth family as soon as possible following placement. The child is reassured that the parent is still available and concerned about him/her. Another psychological advantage for the child is that he/she senses parental "permission" for being placed away from the parent. This alleviates much of the guilt most children feel when placed. As always, safety of the child is a paramount concern when considering the benefits of parent-child contacts.
WRITTEN PLAN FOR VISITATION
1009.4
Requirement
A plan for parental visitation with the child is part of every Case Plan, a copy of which is provided to the parent. Should the Case Manager and supervisor determine that visits are detrimental to the child, the reasons for ceasing visitation must be well documented in the case record, and, whenever possible, be supported by professional opinion or a court order. The parent must have the reason for ceasing or limiting visits explained verbally and in writing. (See appeal rights of parents through the court or through an Administrative Hearing as outlined in Section 1013 Legal.)
PROCEDURES
1. If visitation arrangements are specified in a court-ordered Case Plan, then any modification to the visitation schedule may require the filing of a motion to amend the Plan.
2. If the Case Plan is not incorporated into a court order, then any change in the visitation plan must follow the policy contained in Section 1013 Legal, concerning Administrative Hearings.
3. If the county department is contemplating overnight, unsupervised visits, approval of the court must first be obtained. (See Section 1009.6.)

PRACTICE ISSUES
1. It is a right, as well as a responsibility, for the parent to maintain meaningful contact with his/her child while in care. (See Section1013, Legal regarding the court's consideration of the parent's efforts to maintain contacts and parent-child bonding when a termination of parental rights action is before the court.)
2. Visits represent the most significant means of developing, maintaining or enhancing parent-child attachment.
3. The frequency of visits is the greatest predictor of timely reunification.
4. Generally, the child who is visited makes a more successful adjustment to foster care and experiences a greater sense of well-being than does the child whose parent visits infrequently or not at all.
5. The county department has the responsibility to reach out to parents and assure that a pattern of regular visitation is established early in placement. Parents may require strong encouragement and

support to exercise their visitation rights. The parent who misses visits, shows up late, seems disinterested, etc., may be experiencing great discomfort at having to continually face the reality of having the child taken away. The parent may respond to a better understanding of how important visitation is to the child when encouraged by the Case Manager.

6. For more successful visits, planning with the child, foster parent and parent in advance of the visit may be helpful. If there are difficulties experienced in relating to the child, the Case Manager may need to assist the parent in developing more meaningful ways of interacting with or relating to the child such as activities, games, etc. The parent and child may need assistance in understanding when and how to end a visit and say good-bye. Post-visit discussions with the child, foster parent and parent may assist in planning for the next visit.
7. It is anticipated that face-to-face contacts between a parent and child will be stressful. The reasons for placement and separation will surface, along with the feelings on the part of both the parent and child around those issues. Typically, the child will express his feelings through his behavior prior to or following a visit; e.g., aggressiveness, temper tantrums, bed-wetting, angry outbursts, crying, etc. A child who is particularly upset by visits may need additional assistance and support by the Case Manager and foster parent to verbalize his/her feelings about the parent, the reasons he/she is in care, the purpose and expectations of having visits with his/her family, etc.
8. Visits provide parents with opportunities to practice appropriate parenting behavior and obtain feedback. Parental readiness and capacity for reunification can be assessed and documented in the case record and Case Plan.
9. An incarcerated parent retains visitation rights. It may be necessary for the county department to arrange for or to provide transportation where agency resources permit. Other forms of meaningful contact can include letters, cards, calls, etc.

STANDARD FOR PARENT – CHILD VISITATION
1009.5
Requirement
When agency resources allow, visitation shall be scheduled at two-week intervals, unless the court has specified another visitation arrangement.
PRACTICE ISSUES
The following guidelines should be considered when scheduling parent/child visitation:

1. The younger the child, the more frequent visitation is needed for the child to maintain a relationship with the parent.
2. Supervised office visits may offer the best opportunity to assess how visitation affects the parent and the child and the quality of the interaction, especially during the first visits after the initial placement.
3. Visits should be held in the least restrictive, most relaxed environments possible. Parks, playgrounds, and even the home of the foster parent or parent may offer alternatives to office visits.
4. Visits should be scheduled taking into account:
   - Child's eating, sleeping and activity patterns;
   - Parent's work schedule or other responsibilities;
   - Activities and responsibilities of the home/facility,
5. Ideally, visits should involve parents in routine activities of parenting such as attending his/her child's school functions, special occasions and medical check-ups, as well as engaging in feeding, diapering, and other direct child care responsibilities.
6. Family visits should become more frequent and of longer duration when placement with the parent nears. Visits in the home of the parent are important in the transition from foster care to the home, but *require the approval of the court*. (See Section 1009.6.)

UNSUPERVISED, OVERNIGHT VISITS APPROVED BY COURT
1009.6
Requirement
When the county department is considering unsupervised visits, overnight visits between the child and his/her parent, relative or person who:

previously had custody; and/or
was involved in the maltreatment of the child, THEN

prior approval must be obtained from the court.
PRACTICE ISSUE
Should the court-ordered Case Plan already address unsupervised, overnight visits, approval from the court is not necessary.
PRESERVING SIBLING CONNECTIONS to their FAMILIES
1009.7
Requirement
Whenever possible, efforts should be made to place siblings together in care to preserve their connections to family.
1009.7 PRACTICE ISSUE
Placing siblings together lessens separation trauma, eases the stress on their parents, reinforces the importance of family relationships, and facilitates visits and communication between children and their parents.
WHEN SIBLINGS ARE PLACED IN SEPARATE HOMES
1009.8
Requirement
If siblings must be placed in separate homes/facilities, frequent and regular contact between the children needs to be maintained. There must be documentation in the Case Plan as to why it was necessary to place siblings in separate homes/facilities; e.g., due to the lack of available resources, pattern of disrupted placements, individual needs of the child that could only be met in separate placements, etc. The reason/explanation is documented in the Case Plan item that relates to whether the child is placed in the "most family-like setting."
1009.8 PRACTICE ISSUES

1. Placement of siblings apart from each other should take place very rarely, and only if placement together would be contrary to the developmental, treatment and safety needs of a given child.
2. Separating siblings compounds the child's sense of loss and feelings of being disconnected from family.
3. Siblings should share in special times like birthdays, graduation, and other significant family events.
4. Besides face-to-face visits, other forms of contact may include telephone calls and letters.
5. All contacts between siblings are documented in the case record.

GRANDPARENT VISITATION
1009.9
Requirement
The county department may grant the request of a grandparent to visit the child in care if it is deemed important for the child. Depending on the interaction between the grandparent and the child, the agency can supervise the visits when needed.
1009.9 PRACTICE ISSUES

1. Should DFCS not grant grandparent visitation, the grandparent has the legal right according to O.C.G.A. Section 19-7-3, to petition the court for visitation rights with a minor child when:
    - The minor child's parents are divorced;
    - The parental rights of either parent have been terminated;
    - The parent of the child is deceased; or
    - The child has been adopted by the child's blood relative or by a step-parent.

    Note: "Grandparent" (as used in this provision of the law) refers to the parent of a minor child's parent; the parent of a minor child's parent who has died, or the parent of a minor child's parent whose parental rights have been terminated.
2. Reasonable visitation rights between the grandparent and the child may be granted if the court finds:

- The health or welfare of the child would be harmed unless such visitation is granted; and
- The best interest of the child would be served by granting the visitation request.

VISITS WITH SIGNIFICANT OTHERS
1009.10
Requirement
Other family members or friends, with whom the child has had a significant, positive relationship before entering care, may visit when the county department deems it important for the child.

PRACTICE ISSUES

1. When parents object to certain individuals having visits with their child while in DFCS custody, the Case Manager needs to understand the reasons for the parent's objection and determine if such contact is indeed contrary to the well-being of the child. Should the county department arrange contacts despite the objections of the parent, the Case Plan must clearly document all of the reasons for the parent's objections. *The approval of the court must be obtained.*
2. When visits with significant others are not supervised, the Case Manager is responsible for assessing the adequacy and safety of the "visiting resource." (See 1004 Placement Resources, for the outline used in conducting an assessment.)
3. The county department must be notified of and approve all contacts and visits the child has with adult friends and family.

AFTERCARE and PLACEMENT SUPERVISION
1009.18
Requirement
When the court has transferred custody of a child to his/her parents or other custodian, the county department may only provide aftercare services/placement supervision by court order. In the event that the child's return to the parent is the result of the parent signing a Form 518 (*Termination of Voluntary Agreement to Place Child in Foster Care),* aftercare services are dependent on the willingness of the parent to participate.

TIME LIMITS FOR AFTERCARE SERVICES
1009.19
Requirement
When the physical and legal custody of a child has been returned to the parent/relative, the Case Manager may provide aftercare services up to 12 months (or longer, if ordered by the court) to support the reunified family.

1009.19 PRACTICE ISSUES

1. Post-placement activities assist the family in adjusting to the placement and in assuming full responsibility for the child.
2. Services may be provided to or arranged for the family through referrals to community agencies.
3. Monitoring the child during post-reunification focuses on safety issues as well as the provision of care that meets the child's basic needs.

AFTERCARE CASE PLAN
1009.20
Requirement
An Aftercare Case Plan is mutually developed and periodically reviewed to address the specific goals/steps for the child to be safely maintained in the home.

1009.20 PROCEDURES

1. Arrange a meeting or family conference to discuss services needs of the reunified family.
2. Identify the specific goals and steps that the family must meet in order for the child to be safely maintained in the home.
3. Monitor the child in placement by making monthly face-to-face visits (See contact requirements in Section 1011 Service Needs of the Child.)
4. Document with sufficient detail the parent's progress with achieving the Case Plan goals and in meeting the needs of the child.
5. Discuss the termination of agency supervision and services with the parent in a family conference or face-to-face visit once the home is stable and/or the period of court-ordered supervision expires.
6. Provide referrals, as needed, to other agencies/programs for the family to maintain the health, safety and well-being of the children.

Kenny A Consent Order with DFCS page 10, paragraph 6

> *If the Juvenile Court orders aftercare supervision, the child's case manager shall make monthly visits with the child following discharge from foster care for the period of time specified by the Juvenile Court. DFCS will determine whether additional services are necessary to ensure the continued success of the discharge.*

- DFCS Policy 2104.16 & 2104.18 - Safety Plan, DFCS Form 455 B,
- DFCS Policy 2102.3 & 2102.4 - Safety Assessment, DFCS Form 455 A, "The burden in a reasonable efforts determination is on the department. Attach a copy of Safety Assessment (Form 455 A), which includes the Reasonable Efforts list, to a deprivation complaint filed at Juvenile Court"
- DFCS Policy 2102.16 - Visitation - If possible, child should have visitation with parents during the first week in foster care; if not possible, then telephone or written contact
- DFCS Policy 2109.5 – Releaseable information & procedures when child is not in DFCS custody
- DFCS Policy 1013.2 to 1013.5 - Information & procedure for accessing DFCS records when the child is in DFCS custody; J.J. v. Ledbetter

ATTORNEY - CLIENT RELATIONSHIP

1013.1 Requirement

Whenever a birth parent is represented by an attorney, the county department shall recognize the implications of the attorney - client relationship.

1013.1 PRACTICE ISSUES

The Case Manager needs to ensure that the SAAG is informed of the attorney representing the parent. The parent's attorney may review portions of the case record and any agency-generated reports provided that a release is signed by the parent. The provisions outlined in Requirement 1013.2 are followed in determining the releasable portions. If the parent does want his/her attorney to see the case record, the parent may either refuse to sign the release or may revoke the release the parent has already signed. The parent may bring an attorney as his/her representative to any conference or review held at the county department or other location.

If the parent's attorney is appointed by the court, the attorney cannot be relieved of responsibility until the court issues an order indicating that he/she is no longer the attorney of record. If an attorney has entered an appearance in the juvenile court, he/she remains the parent's attorney for the matter until the court has permitted the attorney to withdraw by appropriate order.

CLIENT ACCESS TO RECORDS

The right of a parent to have access to information in the case record is one of the provisions outlined in a Federal consent order signed as a result of the J.J. v. Ledbetter class action suit. If any conflict exists between this Manual section and the Federal consent order, the provisions contained in Appendix P shall control.

1013.2 Requirement

Any parent/guardian of a child for whom Department has placement authority, is entitled to receive copies, upon request, of all the following portions of the case record pertaining to the parent/guardian and the child:

1. Contact sheets summarizing information observed or given orally by parents and others to the Case Manager except as expressly prohibited (see below).
2. Family Assessment, 30-Day Case Plan (Form 389), Case Review (Form 390), Written Transitional Living Plan (Form 391), Social Services - Case Plan (Form 387), Case Plan: Goals and Steps (Form 388), Case Review Summary.
3. Other summary reports prepared by county department staff.
4. Court petitions and orders.
5. Service plans, goals and objectives, and service agreements other than those in 2 above.
6. Pictures of abuse and neglect (pictures may be viewed by the client and/or his attorney at reasonable times arranged with the Case Manager.

The following portions of the case record shall not be released to the parent/guardian by the county department:

1. Any initial or corroborating reports of child abuse and neglect or information in the case record quoted from third parties constituting a direct report of child abuse or neglect.
2. Medical records (e.g., hospital records or physicians', psychologists', psychiatrists' evaluation and treatment summaries).
3. School records.
4. Information from other public and private agencies, including other DHR agencies.
5. Reports, correspondence, or verbal quotes from privileged sources, such as psychologists, psychiatrists, ministers, etc.
6. Information from or about a spouse or other adult family member without a written authorization from the person(s) involved.

All other information in the case file not excluded by this section will be released to the parent/guardian or legal representative of the parent/guardian upon presentation of a duly signed authorization.

1013.2 PROCEDURES

1. Give the parent the form, "Information Which May Be Maintained in Case Records by County Department of Family and Children Services," when the case is opened (See Appendix P).
2. Explain this form to the parent, preferably during a face-to-face contact. Otherwise, provide a written explanation.
3. Document on the Form 452 that the form and the explanation have been given to the parent.
4. Remove or obliterate any information that cannot be released by the county department prior to the parent or the parent's attorney seeing the case record or receiving copies of releasable portions.
5. Provide free of charge copies of the 30-Day Case Plan, Family Assessment, Case Review, Written Transitional Living Plan, Social Service - Case Plan, Case Plan: Goals and Steps, Case Review Summary, and any document other than the above which constitutes a case plan or service agreement generated by the county department when requested by the parent or attorney.
6. Provide all other releasable material at a cost of no more than .25 cents a page, advising the parent in advance of the cost. Establish procedures in the county department to ensure the accountability for any funds collected.
7. Provide the releasable material to the parent within ten working days of the receipt of the oral or written request. Provide a general statement if any of the information cannot be released, informing the parent of the type of information being withheld and why.
8. Provide a list of primary sources and a general statement of the type of information each source produced if the parent requests to review or have copies of information the county cannot release. Give the form, "Non-Objection to Subsequent Release of Information by Primary Sources" to the parent (See Appendix P).
9. Obtain a written authorization from each adult family member before releasing information about him or her.

NOTICE TO THE PARENT

1013.4 Requirement

The parent shall be informed in writing at the time of any agency action denying, reducing or terminating social services or reasonable visitation (See Requirement 1013.3). The written notice includes: the parent's right to appeal the change or decision within 30 days; information on how to obtain a hearing and how to be represented by legal counsel, a friend or other spokesperson1013.19

ATTORNEYS AND GUARDIANS AD LITEM

1013.19 Requirement

The Case Manager shall cooperate with a guardian ad litem appointed by the court to represent a child.

1013.19 PROCEDURES

If requested, arrange for the guardian ad litem to interview the child and to have pertinent information from the DFCS case record. (Note: The names of reporters should be removed.)

Provide copies of all Case Plans to the appointed guardian ad liltem and invite him/her to participate in all case reviews.

1013.20 Requirement
The Case Manager shall cooperate with the CASA volunteer appointed by the court to represent the best interest of a child.
1013.20 PROCEDURES
If requested, arrange for the CASA volunteer to interview the child and all parties having knowledge of the child's situation. If requested, make the DFCS case record available for the CASA's review with the exception of the of the names of reporters, which shall be removed.
2102.9 Deprivation Resulting From Substance Abuse
Discussion
If the court determines that the underlying reason for the deprivation of the child is a result of the parent's alcohol or other substance abuse, DFCS shall recommend to the court the parent be required to undergo a substance abuse assessment to determine appropriate level of care and random drug tests. DFCS will not recommend reunification until we have documentation confirming that the screens remain negative for a period of no less than six consecutive months per O.C.G.A. Section 15-11-55(e) and that client is compliant with treatment recommendations.
Requirement
When a court finds that deprivation resulted from a parent's alcohol or other substance abuse, immediately:

Inform the parent of the seriousness and implication of the court requirements (parental rights may be terminated);
Provide the parent with a list of available treatment resources;
Assist the parent, as needed, with referrals to resources;
Inform the parent of the limited time available to obtain required treatment; and,
Inform the parent that reunification is contingent upon an initial drug free period of six consecutive months.
Keep the court informed of any situation where a parent is non-complaint with required drug treatment or drug tests.

Procedures/Practice Issues
Termination of parental rights may be a consequence of a parent's not meeting the court's requirement (O.C.G.A 15-11-41), Juvenile Court Code). Law requires that the parent complete treatment and remain substance free for six consecutive months, and this must occur within the twelve-month duration of the deprivation order issued by the court (See 2102.19). The case manager who has responsibility (this is the case manager when the case does not require transfer to a placement case manager) must help the parent stay focused on getting treatment and on meeting the court's requirements.
Use PUP funds to pay for drug tests when no other payment resources are identified i.e., client's private insurance, Medicaid client pays for screening etc., (See 2107.16 through 2107.24).
Counties using PUP for drug tests should use the local community behavioral health provider or Promoting Safe and Stable Families Providers if services are available in their community. If private providers/vendors are used counties must use providers/vendors where contracts with existing confidentiality and HIPPA agreements have been signed.
Any county without a resource list should develop one. In counties where a resource list has not been developed it may be helpful to call a meeting of community representatives to put together a list of the resources available to people in the area.
2102.19 Return of Custody to Parent
Requirement
Secure approval from the Juvenile Court through an amended order prior to returning a child to the parent.
Procedures/Practice Issues
A plan to return physical and/or legal custody of a child to the parent always requires an amended court order. The court must approve and direct placement prior to retransfer of either physical or legal custody of a child to the parent.
If deprivation of a child is found to result from alcohol or other drug abuse (O.C.G.A. 15-11-55), the court is authorized to order that legal custody of the child may not be transferred back to the person that had custody of the child when the deprivation occurred unless such person underwent substance abuse treatment and random substance abuse screenings and those screenings remain negative for a period of no less than six consecutive months (See 2102.9).

CONSULAR NOTIFICATION PROCEDURE
1011.19
The Vienna Convention on Consular Relations (VCCR) establishes the provisions for obligations between the United States and other countries with respect to the treatment of foreign national minors and the performance of consular functions. Accordingly, VCCR addresses notification to a consular officer when a minor is from a foreign nation. For the purposes of consular notification, a "foreign national" is defined as any child who is not a U.S. citizen. If DFCS obtains legal custody of a child who is a foreign national, federal treaty obligations require that the foreign consulate be given notice.
Requirement
Whenever the County Department has reason to believe that a child is a foreign national and the child is subject to removal, placement and/or any other legal action, the closest consulate for the national's country must be notified.
1011.19 PROCEDURES
The Case Manager determines the child's country of birth and completes the Immigrant Child in Foster Care Form, and faxes it to the Program Planning and Policy Development (PPPD) Unit @ (404) 657-3486.
The Case Manager documents in the case record, the date and time the Immigrant Child in Foster Care Form was faxed to the State Office on Contact Sheet Form 452. The Case Manager must retain the fax and the fax confirmation sheet in the correspondence section of the child's case record.
The Case Manager informs the parent and/or child (if age fourteen or older) of the consulate notification protocol guidelines when the court considers or awards temporary custody.
The PPPD Unit Project Administrator verifies whether the child is a foreign national or has dual citizenship and notifies the child's closest consular official.
1011.19 PRACTICE ISSUES
The VCCR requirements are mutual obligations with foreign countries. In general, you should treat a foreign national parent and/or child as you would like for an American citizen to be treated in a similar situation in a foreign country.
The VCCR requires that the consular official be notified. The consular authorities should be notified and permitted to express any interest their government might have in the issue being addressed by the county department. However, the legal process for deprivation and foster care placement of a foreign national minor is not impeded by the VCCR.
The VCCR grants a consular officer the opportunity to assist with services for the foreign national minor. The actual services provided by the consular officer will vary in light of numerous factors, including the foreign country's level of representation in the United States and available resources.
The VCCR requirements apply to all foreign national citizens. Therefore, all foreign national citizens are entitled to consular notification and access, regardless of their visa, refugee, or immigration status in the United States. There is no reason, for purposes of consular notification, to inquire into the foreign national child's legal status in the United States.
If the foreign national child's parents report being afraid of their government, the county agency must comply with Consular Notification and Access regardless of the foreign national minor's visa, refugee, or immigration status in the United States. However, under no circumstances should the fact that a foreign national has applied for asylum or refugee status be revealed to that foreign national government.
Immigration and Nationality Act
1011.20
The Immigration and Nationality Act establishes procedures for the admission of lawful immigrants into the United States and provides registration protocols for undocumented immigrants present in the United States.
1011.20
Requirement
Whenever the county department has reason to believe that a child is a foreign national and is unable to determine the child's lawful US residency status, the provisions of the Immigration and Nationality Act shall be carefully followed.
Procedures
The SSCM determines child's place of birth, United States citizenship, or lawful residency status by documentary evidence such as a birth certificate, passport, visa, green card or by interview with the child, parent or relatives.

The SSCM must complete and fax the Immigrant Child in Foster Care Form to Program Planning and Policy Development Unit within 5 days of identifying a child who does not have US citizenship documentation. The Immigrant Child in Foster Care Form is faxed to (404) 657-3486.
The SSCM must request a non-citizen identification number when nationality documentation indicates child is not a US citizen or the child does not have documentation for legal residency. (See Chapter 60 Internal Data System Appendix A: Social Security Number)

SERVICE NEEDS OF AN IMMIGRANT CHILD

1011.21

All immigrant children can be provided foster care services without regard to their immigration status. However, compliance with federal funding restrictions and other legal requirements makes it essential to determine the immigration status of all children in care.

PROCEDURES

The SSCM ensures the child's nationality is entered on Form 223 Medicaid and IV-E Application with documentary evidence attached. If the SSCM is unable to secure the child's nationality documentation, then Form 223 must indicate attempts made to obtain nationality documentation.
The SSCM sends Interagency Communications Form 713 to the Revenue Maximization Unit to verify if legal immigrant or refugee status documentary evidence. The Medicaid Eligibility Specialist sends reply form 713 with refugee or immigrant status verification information to SSCM.
The SSCM must request an interpreter to assist with language interpretation when English is not the primary spoken language of the child, parents, or relatives. The LEP/SI request is accessed through the County Department's Client Language Services Coordinator.
Foster Care expenditures for an undocumented immigrant child are charged to UAS Programs 529, 530 or 562 (See Section 1016 Fiscal)
(NOTE: An undocumented immigrant child is not IV-E eligible, including services funded through Chafee Foster Care Independence Program. Expenditures are absorbed through Title IV-B, county & local funds.)
The SSCM completes the Comprehensive Child and Family Assessment (CCFA) referral (see Foster Care Policy 1006.) The SSCM ensures the CCFA is a culturally competent assessment that addresses the following information:
The child's, parent's and relative's nationality,
The child's, parent's or relative's immigration status,
The child's home country's Human Rights Conditions,
The child's Consulate Office input/response,
Recommendation to address if child should remain in this country when permanency planning considers petitioning court for approval of non-reunification goal.
(NOTE: the above list is not all-inclusive and does not replace CCFA minimum standards)
The SSCM completes the agency section on the Immigrant Child in Foster Care Form and sends to the Program Planning and Policy Development Unit's Project Administrator within five working days after the 72-hour hearing granting the Department temporary custody. The notification is faxed to (404) 657-3486.
The PPPD Unit's Project Administrator completes State Office section on the Immigration Child in Foster Form and forwards a copy to the County Director.
The SSCM must staff case with the Supervisor, Director or designee, and Field Program Specialist within 14 working days after receipt of the Immigration Child in Foster Care Form to incorporate immigration status issues into the child's case plan goals and assess placement with relatives.
(NOTE: Permanency planning should incorporate results of the above steps, with careful consideration of Another Planned Permanent Living Arrangement/Long term Foster care and Placement with relatives.)
The County Director must request Social Services Director's approval for the following:
County Department's decision to sign FORM 7 Consent To Remain In Foster Care.
County Department's decision to place an undocumented immigrant child with an undocumented immigrant relative placement resource.
County Department's decision to petition for termination of parental rights.
County Department's request for International Social Services relative care assessments.
The SSCM submits International Social Services Request for Services form to State Office ICPC Unit when the Consulate Office is unable to assist with the Relative Care Assessment on an identified relative resource who lives outside of The United States. (Refer to Foster Care Policy 1010.4 Procedures for Placement Out of Georgia)

Chapter 32 Case Law Quotes

Quotes from Deprivation & Termination Cases

And "what weight to give recent improvements is a question for the trier of fact. In considering a parent's claims of recent improvement, the trial court, not the appellate court, determines whether a parent's conduct warrants hope of rehabilitation."

In the Interest of A. T. H. , 248 Ga. App. 570, 573 (1) (547 SE2d 299) (2001). In the Interest of D. D. B. , 282 Ga. App. 416, 418-419 (1) (638 SE2d 843) (2006);

Likewise, the mother's continued failure to comply with her reunification plan supported the juvenile court's finding that deprivation was likely to continue.

In the Interest of F. C. , 248 Ga. App. 675, 678 (1) (549 SE2d 125) (2001);

[I]t is not automatically true that a finding that deprivation is likely to continue will support a finding that continued deprivation will harm the child.

In the Interest of J. T. W. , 270 Ga. App. 26, 37 (606 SE2d 59) (2004)

T]he juvenile court is not obligated to return a child to a parent and wait for the child to actually be harmed before terminating the parent's rights to the child.

In the Interest of B. S. , 274 Ga. App. 647, 651 (3) (618 SE2d 695) (2005).

[I]t is well settled that children need permanence of home and emotional stability or they are likely to suffer serious emotional problems.

In the Interest of A. B. , 274 Ga. App. 230, 232 (617 SE2d 189) (2005).

Because the mother did not appeal the juvenile court's orders finding that the children were deprived, she is bound by that determination.

In the Interest of B. L. S. , 239 Ga. App. 771, 774 (521 SE2d 906) (1999);

Moreover, the mother's failure to appeal the deprivation order renders the juvenile court's determination on this second factor binding as well.

In the Interest of A. B. , 283 Ga. App. 131, 136 (1) (a) (640 SE2d 702) (2006)

a]lthough it is well settled that a juvenile court may consider the past conduct of the parent in determining whether the conditions of deprivation are likely to continue,

In the Interest of L. G. , 273 Ga. App. 468, 474 (2) (c) (615 SE2d 551) (2005)

it is equally true that "evidence of past unfitness, standing alone, is insufficient to terminate the rights of a parent in her natural child; clear and convincing evidence of present unfitness is required."

In the Interest of A.M. , 275 Ga. App. 630, 633 (621 SE2d 567) (2005)

However, in considering past deprivations compared to present achievements, juvenile courts are entitled to assign "much less weight to such 'assertions of sudden parental fitness' when compared to the other evidence."

In the Interest of L. G. , 273 Ga. App. at 474 (2005)

And "what weight to give recent improvements is a question for the trier of fact. In considering a parent's claims of recent improvement, the trial court, not the appellate court, determines whether a parent's conduct warrants hope of rehabilitation."

In the Interest of A. T. H. , 248 Ga. App. 570, 573 (1) (547 SE2d 299) (2001)
In the Interest of D. D. B. , 282 Ga. App. 416, 418-419 (1) (638 SE2d 843) (2006)

Notably, a juvenile court may consider past conduct of a parent in deciding whether deprivation is likely to continue; the decision as to a child's future must rest on more than positive promises which

are contrary to negative past fact. Ultimately, the trial court must determine whether a parent's conduct warrants hope of rehabilitation, not an appellate court;

In the Interest of R. N. H., 286 Ga. App. 737, 741 (1) (c) (650 SE2d 397) (2007)

The decision as to a child's future must rest on more than positive promises which are contrary to negative past fact.

In the Interest of C.J. , 279 Ga. App. 213, 217 (1) (630 SE2d 836) (2006)

In the absence of that transcript, we must assume that the juvenile court's findings with regard to the Department's actions were supported by the evidence.

Dept. of Human Resources v. Cowan , 220 Ga. App. 230, 232 (2) (469 SE2d 384) (1996)

"*consider, among other things, whether appellant's felony convictions and imprisonments therefore had a demonstrable negative effect on the quality of the parent-child relationship. Although incarceration alone does not always compel termination of parental rights, it may support that ruling if sufficient aggravating circumstances are present. These aggravating circumstances may include a criminal history of repetitive incarcerations for the commission of criminal offenses or parole violations. Further, when the child is not in the custody of the parent whose rights are at issue, the court must consider, among other things, whether the parent, without justifiable cause, failed significantly for a period of one year or longer to communicate or make a bona fide attempt to communicate with the child in a meaningful, supportive, parental manner and to provide for the care and support of the child."*

In the Interest of B. L. H. , 259 Ga. App. 482, 484 (1) (578 SE2d 143) (2003).

OCGA § 15-11-103 (a) (1) does not require a trial court to give preference to family members in making a placement of a child following termination of parental rights. Rather, the statute states that a placement shall be made "if the court determines such placement is the most appropriate for and in the best interest of the child." A trial court's determination that placement with a relative is not in the best interest of the child will not be disturbed by this Court absent an abuse of discretion.

In the Interest of S. V. , 281 Ga. App. 331, 333 (2) (636 SE2d 80) (2006);

"termination of father's parental rights reversed where father could not complete case plan goals because of incarceration but wrote to his children every week, had one visit with his children post-incarceration that a counselor described as "quite a positive visit," and the children were closely bonded with their father despite his two-year incarceration and expressed a desire to continue their relationship with him."

In the Interest of R. C. M. , 284 Ga. App. 791, (645 SE2d 363) (2007);

The decision as to a child's future must rest on more than positive promises which are contrary to negative past fact.

In the Interest of S. B., 287 Ga. App. 203, 213 (2007).

Although the court should take recent improvements into account, it ultimately must determine whether those improvements warrant hope of rehabilitation. And it may "assign much less weight to . . . assertions of sudden parental fitness when compared to the other evidence.

In the Interest of D. D. B., 282 Ga. App. 416, 419 (1) (2006).

Under Georgia law, the definition of deprivation focuses on the needs of the child regardless of parental fault; "It is the child's welfare and not who is responsible for the conditions which amount to deprivation that is the issue."

In the Interest of M. D. , 283 Ga. App. 805, 806 (642 SE2d 863) (2007);

Relatives receive no conclusive preference, and "the juvenile court is afforded wide discretion to determine whether a child should be placed with a relative or kept in a stable foster home."

In the Interest of K. W. *, 283 Ga. App. 398, 402-403 (2) (641 SE2d 598) (2007);*

DFACS is not required to provide around-the-clock assistance to enable a mentally disabled parent to care for a child in the home."

In re M. W. *, 275 Ga. App. 849, 854 (622 SE2d 68) (2005)*

"[I]t is not automatically true that a finding that deprivation is likely to continue will support a finding that continued deprivation will harm the child."

In the Interest of J. T. W. *, 270 Ga. App. 26, 37 (2) (d) (606 SE2d 59) (2004)*

"termination warranted even though case plan mostly completed because mother lacks the mental ability to care for child without around-the-clock support; she cannot independently fulfill her parenting responsibilities and had no real support; child had developmental problems, and foster parents wished to adopt";

In the Interest of H. F. G. *, 281 Ga. App. 22, 27 (1) (635 SE2d 338) (2006)*

"regarding parental fitness, the question is "can the parent provide for the child sufficiently so that the government is not forced to step in and separate the child from the parent"; it is not proper to terminate parental rights for the reason that "the child might have better financial, educational, or even moral advantages elsewhere";

Clark v. Wade , *273 Ga. 587, 591 (544 SE2d 99) (2001)*

While the trial court is entitled to consider evidence of the parents' past actions in determining whether the deprivation is likely to continue, this case does not rest on past unfitness. The mother and father have failed to show that their present circumstances are any different than they were when the children were removed from their home and adjudicated deprived.

In the Interest of A. B., 283 Ga. App. 131, (640 SE2d 702) (2006)

fact that a mother has other children in DFCS custody that she does not support or care for bolsters the conclusion that she will not be able to support and care for another child .

In the Interest of A. G., 287 Ga. App. 732 (652 SE2d 616) (2007)

In the Interest of R. N. H, 286 Ga. App. 737, 740-743 (1), (2) (650 SE2d 397) (2007)

The state failed to present evidence as to the effect that continued deprivation would have on the child, where there was no lay or professional testimony that the child was then suffering physical, mental, emotional or moral harm, and there was evidence that the mother was capable of providing adequate care for herself and the child, albeit in a supervised independent living arrangement.

In the Interest of T. P. , *270 Ga. App. 700 (608 SE2d 43) (2004)*

"[t]here is no judicial ruling that has greater significance than one severing the parental bond."

In the Interest of K. C. R*. , 283 Ga. App. 593, 594 (642 SE2d 214) (2007)*

Even if the mother did not cause the injuries, the juvenile court was authorized to conclude that the injuries were attributable to her inability to protect her child[ren], which . . . constitutes lack of proper parental care and control."

In the Interest of V. M. T *, 243 Ga. App. 732, 736 (3) (534 SE2d 452) (2000)*

Unexplained injuries may constitute evidence of deprivation."

In the Interest of S. Y*., 284 Ga. App. 218, 219 (644 SE2d 145) (2007)*

The juvenile court was authorized to find a lack of proper parental care and control based on the mother's failure to protect her child from injury.

In the Interest of V. M. T., *243 Ga. App. 732, 736 (3) (534 SE2d 452) (2000)*

In the Interest of C. T. et al., children., 286 Ga. App. 186 (2007) the Court of Appeals reversed a termination of a mother's parental rights citing several cases relevant to poverty and deprivation.

> *Although the apparently deplorable condition of the mother's house prior to DFCS's most recent involvement is troubling, the mother's "past unfitness, alone, is insufficient to terminate her right to custody. A*

finding of parental unfitness must be based on present circumstances." In the Interest of L. J. L., 247 Ga. App. 477, 479 (543 SE2d 818) (2001). In many respects, the mother's present compliance with her case plan is exemplary. Notably, she has maintained both employment and a lasting bond with her children. Her shortcomings with regard to her case plan stem largely from her relative poverty. However, poverty alone is not a basis for termination. Under these circumstances, we cannot permit DFCS and the juvenile court to "establish societal standards, unrelated to parental bonds of love or the unique natural protectiveness of a parent for offspring; quantifying and qualifying the socially acceptable environment which a parent must afford a child or be subjected to severance of the parental cords." Shover v. Dept. of Human Resources, 155 Ga. App. 38, 39-40 (1) (270 SE2d 462) (1980). In other words, although the mother may struggle financially and indeed may need assistance in the care of her children, the mere fact that she earns little money and lives in a modest home does not constitute clear and convincing evidence that the mother is unfit and that the children's deprivation is likely to continue. Accordingly, we reverse the juvenile court's order terminating the mother's parental rights. In the Interest of K. M., 240 Ga. App. 677, 680-681 (523 SE2d 640) (1999).

"Proof of unfitness must be shown by clear and convincing evidence; this standard recognizes the importance of the familial bond and `helps eliminate the risk that a factfinder might base his determination on a few isolated instances of unusual conduct or idiosyncratic behavior.'" In the Int. of C.L.Z., 283 Ga. App. 247 (2007) In C.L.Z., the appellate court found that a single reported instance of the guardian yelling at the child, without evidence the child was emotionally injured or that the guardian had some ongoing inability to control her emotions, did not prove deprivation.

In considering a legitimation petition, the court must initially determine whether the father has abandoned his opportunity interest to develop a relationship with the child. Then, depending on the nature of the putative father's relationship with the child and other surrounding circumstances, the standard for evaluating whether legitimation is appropriate is either a test of his fitness as a parent or the best interest of the child.

In re M. K., 288 Ga.App. 71, 653 S.E.2d 354, (2007).

"In making this determination, the court must examine the benefits that might flow to the child if she were legitimated and to consider the legal consequences of the grant of the petition."

Adamavage v. Holloway, 206 Ga.App.156, (424 S.E.2d 837) (1992)

"a man has no absolute right to the grant of his petition to legitimate a child simply because he is the biological father"; OCGA § 19-7-20 (b) "Where possibility of access exists, the strong presumption is in favor of legitimacy and the proof must be clear to establish the contrary.".

Davis v. Labrec, 274 Ga. 5, 549 S.E.2d 76 (2001);
Ghrist v. Fricks, 219 Ga.App. 415,(465 S.E.2d 501 (1995)

In ruling on a legitimation petition presented by a putative biological father, the juvenile court must initially determine whether the father has abandoned his opportunity interest to develop a relationship with the child.

In the Interest of J.L.E., 281 Ga.App. 637 S.E.2d 446 (2006).

If the juvenile court concludes that the father has abandoned his opportunity interest, that finding is sufficient to end the court's inquiry and justifies the denial of the legitimation petition.

In the Interest of L.S.T., 286 Ga.App. 638, 649 S.E.2d 841 (2007), Smith v. Soligon, 254 Ga.App. 172, 173(2), 561 S.E.2d 850 (2002).

Despite his request, the father " was not entitled to have an attorney appointed to represent him at public expense in the legitimation proceedings.

Ernst v. Snow, 305 Ga. App. 194, 699 S.E.2d 401 (Ga. App., 2010)

In Re V.B. L., A Child. (Ga. App., 2010) Docket No. A10A2028,
Before granting a petition to legitimate, the court must initially determine whether the father has abandoned his opportunity interest to develop a relationship with the child. Then, depending on the nature of the putative father's relationship with the child and other surrounding circumstances, the standard for evaluating whether legitimation is appropriate is either a test of his fitness as a parent or the best interest of the child. In the Interest of M. K., 288 Ga. App. 71, 74 (2) (653 SE2d 354) (2007).

> *In In re Baby Girl Eason, 257 Ga. 292, 294-295 (1) (358 SE2d459) (1987) the Supreme Court of Georgia recognized "that there exists a continuum" regarding the interests of unwed biological fathers: ranging from those who take on parental duties and form emotional bonds with their child, and those who do not live with the mother or child, never offer to marry the mother, do not support the child, and fail to register as the father with the state. Although not addressed in Eason, another relevant factor affecting placement on the continuum would likely include whether the father's failure to support and develop a relationship with the child was attributable in some part to actions taken by the mother to impede the father's ability to learn of the child's existence.*
>
> OCGA § 19-8-12(a), while dealing specifically with adoption law, provides:
> ... (4) A biological father who is not the legal father may have an interest in his biological child. This inchoate interest is lost by failure to develop a familial bond with the child and acquires constitutional protection only if the biological father who is not the legal father develops a familial bond with the child;
> (5) The subjective intent of a biological father who is not a legal father, whether expressed or otherwise, unsupported by evidence of acts manifesting such intent, shall not preclude a determination that the biological father who is not a legal father has failed to develop a familial bond with the child; and
>
> (6) A man who has engaged in a nonmarital sexual relationship with a woman is deemed to be on notice that a pregnancy and adoption proceeding regarding a child may occur and has a duty to protect his own rights and interests in that child. He is therefore entitled to notice of an adoption proceeding only as provided in this Code section.

In re T.B.R., 304 Ga.App. 773, 697 S.E.2d 878 (Ga. App., 2010) "Thus, because the father failed to legitimate [T.B.R.], he lacked standing to challenge the termination of his parental rights." *In the Interest of J.S.* 302 Ga.App. 342, 345(2), 691 S.E. 2d 250 (2010); *In the Interest of C.G.;* 289 Ga.App. 844, 855(3), 658 S.E.2d 448 (2008); *In the Interest of L.S.T.* 286 Ga.App. 638, 639(2), 649 S.E.2d 841 (2007).

Chapter 33 Appeals

To Supreme Court	O.C.G.A. §15-2-1 to 15-2-47
To Court of Appeals	O.C.G.A. §15-3-1 to 15-3-13
From Associate Judge Rulings	O.C.G.A. §15-11-21 If a party appeals a ruling of an Associate Judge, then the rehearing request must be made in writing and within 5 days after receiving the Associate Judge's written court order. notice of the findings. After the Request is filed, then the Chief Judge reviews the case and will either grant a rehearing or deny the request. A copy of the Order shall be provided to all parties.
Discretionary Applications for Termination of Parental Rights Cases	O.C.G.A. § 5-6-35 & Court of Appeals Rule 31 a) An application for leave to appeal a final judgment in cases subject to appeal under O.C.G.A. §5-6-35 will be granted only when: 1. Reversible error appears to exist; or 2. The establishment of a precedent is desirable. b) Application for discretionary appeal pursuant to O.C.G.A. 5-6-35 should have copies of all material from the record tabbed and indexed and shall be securely bound at the top with staples or fasteners (round head or Acco). If not tabbed, indexed, and securely bound at the top, the petition is subject to dismissal or return if preparation is not according to the Court's Rules. The material must be sufficient to apprise the Court of the Appellate issues, in context, and support the arguments. Applications are limited to 30 pages in civil cases and 50 pages in criminal cases, exclusive of attached exhibits and parts of the record, and should follow the general format of briefs as to margins. c) The clerk is prohibited from receiving the application without the $80.00 filing fee or sufficient pauper's affidavit. d) Discretionary appeals must contain a stamped "filed" copy of the trial court's order from which the appeal is sought. The stamp "filed" copy of the trial court's order must contain the signature of the trial court judge. Conformed signatures will not be accepted. e) No application for discretionary appeal shall be filed under seal unless counsel has moved the Court for permission to file under seal and the Court has granted such motion. f) No extensions of time will be granted in filing discretionary applications or responses to discretionary applications. g) Responses are due within 10 days of docketing. No response is required, unless ordered by the Court. h) If the discretionary application is granted, appellant must file a noted of appeal in the trial court within 10 days of the date of the order granting the application.
Remittitur	The Appellate Court decision which should be filed with the Juvenile Court and all parties notified of the decision. If the matter is affirmed, the controversy is ended and order of the Juvenile Court remains in full force and effect as if there had not been an appeal. If the Juvenile Court order is reversed or vacated, then the status of the case reverts to the case standing prior to the Juvenile Court's order.
"Filed" Date of Juvenile Court Order	Begins 30 day time limit for Party to file Notice of Appeal

Notice of Appeal	Within 30 days of the Entry of Judgment Signed Court Order Stamped "Filed" Date
Designation of Record	Appellant designates any matter to be omitted from the record on appeal in the Notice of Appeal, then within 15 days, the appellee may file a designation of record which designates that all or part of the omitted matters be included in the record on appeal
Transcript	Appellant responsible for requesting transcript from the court reporter & paying for the transcript; Court Reporter responsible for filing the transcript within 30 days of filing the Notice for Appeal, may be extended by Court Order, may use Paupers Affidavit for fees
Costs & Collection	Juvenile Court Clerk collects, sends fee statement to parties; Pauper's Affidavit maybe used
Transmittal of Record	20 days from Notice of Appeal IF transcript already on file with the Juvenile Court when Notice filed 5 days from filing of the transcript

Notice of Appeal must contain the following and the Clerk should prepare the "record" based upon the contents of the Notice to Appeal. (O.C.G.A. §5-6-37):

1. Title Caption "In the Interest of _____, a child" and docket number;
2. Name of Appellant and name and address of Appellant's attorney;
3. A concise statement of the ruling or judgment entitling Appellant to appeal;
4. The Court appealed to (Court of Appeals or Supreme Court);
    - The appellant or the appellant's attorney determines to which court the appeal is directed;
5. A designation of the portions of the record to be omitted from the record on appeal;
    - Designation of Record;
6. Statement as to why the appellate court has jurisdiction;
7. Statement of whether or not any transcript is to be transmitted with the record;
8. Certificate of Service certifying that all parties have been served with a copy of the Notice of Appeal;
    - the appellate court will return the Record to the Clerk of Juvenile Court if a proper certificate of service is not included with the notice; the Juvenile court clerk is required to notify the party responsible for filing the certificate
9. All parties to the proceedings in the lower court shall be parties on appeal and shall be served with a copy of the Notice of Appeal in the manner prescribed by O.C.G.A. §5-6-32.

Chapter 34 Interstate Compact on the Placement of Children (ICPC) & Border Agreements

Authority	**O.C.G.A. § 39-4-1 to 39-4-10, 15-11-87, 89 & 90**
Purpose	○ To evaluate and approve placement of children who are in the temporary legal custody of DFCS with appropriate out of State individuals, where the child is to remain in the legal custody of the sending State with the receiving State providing ongoing supervision and services ○ The sending State maintains jurisdiction and maintains legal custody of the child. The sending state will continue to have financial responsibility for the child and DFCS will make foster care payments just as it would for an in state placement until the child is adopted, emancipated, or reaches the age of majority
Where ICPC Applies	The child is to remain in the legal custody of the sending State with the receiving State providing ongoing supervision and services
Where ICPC Does NOT Apply	Article III of ICPC states two situations: 1. The sending or bringing of a child into a receiving state by his parent, step-parent, grandparent, adult brother or sister, adult uncle or aunt or his legal guardian and leaving the child with any such relative or non-agency guardian in the receiving state. 2. Any placement, sending or bring of a child into a receiving state pursuant to any other interstate compact to which both parties are a party to. (applies for delinquent or residential treatment facilities)
Procedure	Article III(b) of the ICPC requires that prior to "sending, bringing, or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to possible adoption," the sending state shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice must at least contain at least the following: 1. The name, date, and place of birth of the child. 2. The identity and address or addresses of the parents or legal guardian. 3. The name and address of the person, agency or institution to or with which the sending agency proposes to send, bring, or place the child. 4. A full statement of the reasons for such a proposed action and evidence of the authority to which the placement is proposed to be made. ICPC, Article III(b)(1-4). In practicality this means that the caseworker or the judge who has made a proposed order for disposition in another state, will need to complete ICPC Form 100A and send it, along with the social history of the child, to the Compact Administrator for the State of Georgia as defined in Article VII of the ICPC. 5. The administrator reviews the information & forwards it to the Compact Administrator in the receiving state. The local child welfare agency in the receiving state conducts a study of the proposed placement, records their findings in a report to the receiving state's Compact Administrator. The child will not be "sent, brought, or cause to be sent or brought into the receiving state" until the Compact Administrator in the receiving state has notified the sending state in writing that the proposed placement does not appear to be contrary to the interests of the child. ICPC, Article III(d). The National Association for the Administrators of the Interstate Compact recommends that it should take no longer than 30 working days (6 weeks) to process such a request in the receiving state from the time that the Compact Administrator receives the request until the date that the proposed placement is approved or denied. <u>This process may take 3 to 6 months or LONGER.</u>

ICPC Border Agreements	• Georgia and Tennessee, and Alabama, and Florida, and South Carolina • Special agreements between states which provide procedures for expedited ICPC compliant home evaluations and placements of children across state lines reducing the amount time to effectuate a child's placement across state lines • Copies of the individual Border Agreements are included below

Expedited Placement Decision - Regulation 7
Expedited Placement Decision procedures are now applicable if the proposed placement is with a parent, step-parent, grandparent, adult brother or sister, adult uncle or aunt and:

a) unexpected dependency due to a sudden or recent incarceration, incapacitation or death of a parent or guardian. Incapacitation means a parent or guardian is unable to care for a child due to a medical, mental or physical condition of a parent or guardian, or
b) the child sought to be placed is four years of age or younger, including older siblings sought to be placed with the same proposed placement resource; or
c) the court finds that any child in the sibling group sought to be placed has a substantial relationship with the proposed placement resource. Substantial relationship means the proposed placement has a familial or mentoring role with the child, has spent more than cursory time with the child, and has established more than a minimal bond with the child; or
d) the child is currently in an emergency placement.

Expedited Placement Decision Order - copy attached

Out of State Placement & CASA – CASA may help facilitate stable placements for children outside of Georgia. Because CASA is a national organization with branches throughout the United States, you may be able to call upon the CASA program director in the area where the child in question has been placed, to conduct a courtesy evaluation and interview, and/or serve as a liaison between the law guardian/CASA and the child protective services worker in the state serving the child.

Practice Points

- ICPC takes forever, frequent checking on the paperwork is necessary, CASA can be extremely helpful
- Whenever a child is being placed out of state, request an in Court Review **PRIOR** to the child's removal from Georgia to address any visitation issues and for the Court to receive a copy of the ICPC home evaluation

Other Resources for ICPC Information

Association for the Administrators for the ICPC
http://icpc.aphsa.org/Home/home_news.asp

IN THE JUVENILE COURT OF COUNTY
STATE OF GEORGIA

FILE NO. _____

In the Interest of:
_____, SEX: AGE: DOB:
A child under 18 years of age.

ICPC REGULATION 7 ORDER
FOR EXPEDITED PLACEMENT DECISION

The above styled matter came before the Court on _____ on the motion/petition of _____ (party making request) seeking the entry of this order for compliance with Regulation 7 of the Interstate Compact on the Placement of Children (ICPC); and the court, hearing evidence and/or the parties being in agreement, does find as follows:

A. The name and date of birth of each child noted below on this date is as follows:
_____ (Name of child, date of birth)
_____ (Name of child, date of birth)
_____ (Name of child, date of birth)

B. This court has jurisdiction over each child noted pursuant to Articles II, III and V(a) of the ICPC to invoke the Compact for the purpose of requesting one or more home study assessments and expedited placement decisions on potential resource families living in one or more receiving states.

C. Pursuant to Article III(d) of the Compact, this court may only place, or authorize the department/agency to place, each child above in an approved placement in a receiving state, including a provisional placement as authorized by Regulation 7 of the ICPC, after receipt of written notification from the receiving state that the proposed placement does not appear to be contrary to the interests of the child.

D. If any child above is placed pursuant to paragraph C above, this court will retain Article V(a) jurisdiction over that child sufficient to determine all matters in relation to the custody, supervision, care and disposition of him/her, which it would have if the child had remained in this state; and this court will not terminate jurisdiction over said child or terminate the supervisory responsibility of the department/agency having custody of the child during the period of placement in the receiving state until the child is adopted, reaches the age of majority, becomes self-supporting, or is discharged with concurrence of the appropriate authority in the receiving state.

E. This court expressly finds that its jurisdiction over said child includes the power to effect or cause the return of the child to this state or its transfer to another location or custodian pursuant to law within five (5) business days of receipt of written notification from the receiving state Compact Administrator that placement authorization will not be approved or that previous placement approval has been withdrawn by the receiving state, and that the sending state has and will continue to have financial responsibility for support and maintenance of the child during the period of placement in the receiving state.

Further, this court order provides sufficient authority and direction for the sending agency to immediately return said child(ren) within five (5) working days of receipt of written notification from the receiving state Compact Administrator that placement authorization will not be approved, or that previous placement approval has been withdrawn by the receiving state for reasons determined by the receiving state.

F. If any child noted above is sent, or allowed to go, to a provisional placement in a receiving state, this court finds that any such placement must be in compliance with Regulation 7 of the ICPC of which this court takes judicial notice, including its purpose in defining and regulating a provisional placement under the Compact.

AND THE COURT having heard testimony and argument of counsel and any unrepresented parties and reviewed documents as permitted by law and Regulation 7 of the ICPC, the undersigned makes the following findings of fact by

( ) clear and convincing evidence ( ) a preponderance of the evidence

that paragraphs 5, 6, and 7 of Regulation 7 of the ICPC apply regarding each child noted above:

G. _____ (relative's name) is the proposed placement resource in the receiving state of _____ and is the

a. ____ Mother b. _____Father c. _____Stepparent g. _____Guardian
d. ____ Grandparent e._____ Adult brother or sister f. _____Adult uncle or aunt
of _____(child noted above); and

H. Each child noted above is under the jurisdiction of the court as a result of action taken by a child welfare agency.

I. The child _____ referenced in A. meet(s) one or more of the following requirements pursuant to paragraph 5 of Regulation 7:

1. The court has the authority to determine custody and placement of each child or has delegated said authority to the child welfare agency, and each child is being considered for placement in another state with a parent, stepparent, grandparent, adult brother or sister, or adult aunt or uncle, or guardian of the child named in A, and the child in A above meets the following criteria:

a. ( ) unexpected dependency due to sudden or recent incarceration, incapacitation or death of a parent or guardian; incapacitation means a parent or guardian is unable to care for a child due to an unexpected medical, mental or physical condition of a parent or guardian, or

b. ( ) at least one of the children sought to be placed is four years of age or younger, including older siblings sought to be placed with the same proposed placement resource; or

c. ( ) the court finds that _____ (child's name), is one of the children in a sibling group sought to be placed and has a substantial relationship with the proposed placement resource; substantial relationship means the proposed placement has spent more than cursory time with the child, is known to the child, and has established more than a minimal bond with the child; or

d. ( ) the child(ren) is/are currently in an emergency placement.

J. The department/agency has provided the court with a signed statement(s) from the potential placement resource(s) or the assigned case manager in the sending state that following a conversation with the potential placement resource, the potential placement resource confirms/meets the minimum requirements as required under Paragraph 7a of Regulation 7.

K. The sending agency has completed and is prepared to send all required paperwork to the sending state ICPC office, including the statement from the prospective placement resource or the assigned case manager under Paragraph 7a of Regulation 7, ICPC 100A and ICPC Form 101.

IT IS, THEREFORE, ORDERED AND ADJUDGED AS FOLLOWS:

1. This court, having jurisdiction over the above referenced child(ren), invokes the use of the Interstate Compact on the Placement of Children and authorizes and directs this state's department/agency having custody of the child(ren) to be the sending agency in this/these matter(s) and directs it to complete, execute, and file all necessary forms and carry out and effectuate all obligations and responsibilities as the sending agency under the Compact.

2. The department/agency shall seek the following:
a. ( ) Approval for a provisional placement of each child noted above in the receiving state pending a more comprehensive home assessment of the potential placement resource by the receiving state and an expedited placement decision regarding final placement of the child(ren), or
b. ( ) A comprehensive home assessment of the potential placement resource in the receiving state and an expedited placement decision without a provisional placement of the subject child(ren), or
c. ( ) Approval for a provisional placement with a parent from whom the child was not removed and concurrence to relinquish jurisdiction upon final approval.

3. The transmission of any documentation or request for information in this case/these cases or decisions made shall be sent by overnight mail, FAX or as an attachment to an e- mail if approved by receiving state or such other equally expedient method as may in the future become available.

4. The court designates the following person to send copies of this and other orders needed to comply with Regulation 7 of the ICPC to the sending department/agency within two (2) business days of the entry of this and other orders entered in this case:
a. name_____ b. mailing address___c. e-mail address ____ d. telephone number_____e. FAX number _____

5. The person designated to receive communication regarding the progress of the ICPC process in this/these matter(s) is:
a. name_ b. mailing address____c. e-mail address__ d. telephone number____
e. FAX number____
6. The sending department/agency shall transmit, within three (3) business days of receipt of this signed order, a completed Form 100A and 101 (Request for Placement), and if not already sent, all required documentation for compliance with Regulation 7 and any supporting documentation pursuant to ICPC Article III, to the sending state Compact Administrator.
7. Within a time not to exceed two (2) business days after receipt of a complete Regulation 7 request, the sending state Compact Administrator shall transmit the complete request for the assessment and for any provisional placement to the receiving state Compact Administrator. The request shall include a copy of this Order of Compliance. In the event the sending state Compact Administrator finds that the ICPC documentation received is substantially insufficient, he or she shall specify to the sending agency what additional information is needed and request such information from the sending agency.
8. When a provisional placement sought by the sending state is approved by the receiving state for the subject child(ren), the receiving state Compact Administrator shall immediately notify the sending state Compact Administrator of that fact in writing through expedited means. Said person designated shall then seek an early hearing by this court to determine if said placement is in the best interests of the child(ren).
The person designated to receive communication in Paragraph 4 above shall maintain contact with the sending state's Compact Administrator to assist this court in determining the status of the ICPC process and shall report in writing to the court, the parties, and their counsel regarding said status no later than 7 days prior to any scheduled court hearing and provide any updates closer to the hearing date as may come to his/her attention. The sending state's Compact Administrator shall cooperate with and work with the above designated person and provide him/her with information and assistance regarding the progress of the ICPC process for the cases of the subject child(ren).
9. This case/these cases is/are continued to _____ at _____ a.m./p.m. for further hearing on the status of the ICPC process to which the parties present and their counsel are recognized to appear.

SO ORDERED this _____ day of _____, 20__.

_____
Judge

O.C.G.A. Code Sections

39-4-1 Appropriate public authorities - definition of.
As used in Article III of the Interstate Compact on the Placement of Children, the term "appropriate public authorities" means, with reference to this state, the Department of Human Resources. The department shall receive and act with reference to notices required by said Article III.

39-4-2 Appropriate authority in the receiving state - definition of.
As used in paragraph (a) of Article V of the Interstate Compact on the Placement of Children, the term "appropriate authority in the receiving state" means, with reference to this state, the Department of Human Resources.

39-4-3 Executive head - definition of.
As used in Article VII of the Interstate Compact on the Placement of Children, the term "executive head" means the Governor.

39-4-4 Provisions, scope. **TEXT of ICPC**

The Interstate Compact on the Placement of Children is enacted into law and entered into with all other jurisdictions legally joining therein in form substantially as follows:

Article I. Purpose and Policy.

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

(a) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.

(b) The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.

(c) The proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made.

(d) Appropriate jurisdictional arrangements for the care of children will be promoted.

Article II. Definitions.

As used in this compact:

(a) "Child" means a person who, by reason of minority, is legally subject to parental, guardianship or similar control.

(b) "Sending agency" means a party state, or officer or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency or other entity which sends, brings, or causes to be sent or brought any child to another party state.

(c) "Receiving state" means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.

(d) "Placement" means the arrangement for the care of a child in a family free or boarding home or in a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective or epileptic or any institution primarily educational in character, and any hospital or other medical facility.

Article III. Conditions for Placement.

(a) No sending agency shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this Article and with the applicable laws of the receiving state governing the placement of children therein.

(b) Prior to sending, bringing or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

(1) The name, date and place of birth of the child.

(2) The identity and address or addresses of the parents or legal guardian.

(3) The name and address of the person, agency or institution to or with which the sending agency proposes to send, bring, or place the child.

(4) A full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

(c) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to paragraph (b) of this Article may request of the sending agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive therefrom, such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

(d) The child shall not be sent, brought or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

Article IV. Penalty for Illegal Placement.

The sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place or care for children.

Article V. Retention of Jurisdiction.

(a) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed therein.

(b) When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of such case by the latter as agent for the sending agency.

(c) Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state; nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in paragraph (a) hereof.

Article VI. Institutional Care of Delinquent Children.

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard, prior to his being sent to such other party jurisdiction for institutional care and the court finds that:

1. Equivalent facilities for the child are not available in the sending agency's jurisdiction; and
2. Institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

Article VII. Compact Administrator.

The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities under this compact in his jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

Article VIII. Limitations.

This compact shall not apply to:

(a) The sending or bringing of a child into a receiving state by his parent, step-parent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or non-agency guardian in the receiving state.

(b) Any placement, sending or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between said states which has the force of law.

Article IX. Enactment and Withdrawal.

This compact shall be open to joinder by any state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and, with the consent of Congress, the Government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until two years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the Governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties and obligations under this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

Article X. Construction and Severability.

The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

39-4-5 Compact administrator - authorization to appoint by Governor.

The Governor is authorized to appoint a compact administrator in accordance with the terms of Article VII of the compact.

39-4-6 Agreements entered into by state officers and agencies.

The officers and agencies of this state and its subdivisions having authority to place children are empowered to enter into agreements with appropriate officers or agencies of or in other party states pursuant to paragraph (b) of Article V of the Interstate Compact on the Placement of Children.

39-4-7 Interstate jurisdictional powers of a court when placing delinquents.

Any court having jurisdiction to place delinquent children may place such a child in an institution in another state pursuant to Article VI of the Interstate Compact on the Placement of Children and shall retain jurisdiction as provided in Article V thereof.

39-4-8 Determination of financial responsibilities of child.

Financial responsibility for any child placed pursuant to the Interstate Compact on the Placement of Children shall be determined in accordance with the provisions of Article V thereof in the first instance. However, in the event of partial or complete default of performance thereunder, Articles 1 and 2 of Chapter 11 of Title 19, relating to enforcement of support obligations and other applicable provisions of law may also be invoked.

39-4-9 Applicability of Code Section 49-5-15.

Code Section 49-5-15 shall not apply to placements made pursuant to the Interstate Compact on the Placement of Children.

39-4-10 Applicability of Code Section 49-5-12.

Any requirements for visitation, inspection, or supervision of children, homes, institutions, or other agencies in another party state which may apply under Code Section 49-5-12 shall be deemed to be met if performed pursuant to an agreement entered into by appropriate officers or agencies of this state or a subdivision thereof as contemplated by paragraph (b) of Article V of the Interstate Compact on the Placement of Children.

15-11-87 Disposition of nonresident child.

(a) If the court finds that a child who has been adjudged to have committed a delinquent act or to be unruly or deprived is or is about to become a resident of another state which has adopted the Uniform Juvenile Court Act or a substantially similar act which includes provisions corresponding to this Code

section and Code Section 15-11-88, the court may defer the hearing on the need for treatment or rehabilitation and disposition and may request by any appropriate means the juvenile court of the child's residence or prospective residence to accept jurisdiction of the child.

(b) If the child becomes a resident of another state while on probation or under protective supervision under order of a court of this state, the court may request the juvenile court of the county of the state in which the child has become a resident to accept jurisdiction of the child and to continue his or her probation or protective supervision.

(c) Upon receipt and filing of an acceptance, the court of this state shall transfer custody of the child to the accepting court and cause the child to be delivered to the person designated by that court to receive custody of the child. It also shall provide that court with certified copies of the order adjudging the child to be a delinquent, unruly, or deprived child, of the order of transfer, and, if the child is on probation or under protective supervision under order of the court, of the order of disposition. It also shall provide that court with a statement of the facts found by the court of this state and any recommendations and other information it considers of assistance to the accepting court in making a disposition of the case or in supervising the child on probation or otherwise.

(d) Upon compliance with subsection (c) of this Code section the jurisdiction of the court of this state over the child is terminated.

15-11-88 Disposition of resident child received from another state.

(a) If a juvenile court of another state which has adopted the Uniform Juvenile Court Act or a substantially similar act which includes provisions corresponding to this Code section and Code Section 15-11-87 requests a court of this state to accept jurisdiction of a child found by the requesting court to have committed a delinquent act or to be an unruly or deprived child and the court of this state finds, after investigation, that the child is or is about to become a resident of the county in which the court presides, it shall promptly and not later than 14 days after receiving the request issue its acceptance in writing to the requesting court and shall direct its probation officer or other person designated by it to take physical custody of the child from the requesting court and bring the child before the court of this state or make other appropriate provisions for the child's appearance before the court.

(b) Upon the filing of certified copies of the orders of the requesting court determining that the child committed a delinquent act or is an unruly or deprived child and committing the child to the jurisdiction of a court of this state, the court of this state shall immediately fix a time for a hearing on the need for treatment or rehabilitation and disposition of the child or on the continuance of any probation or protective supervision.

(c) The hearing and notice thereof and all subsequent proceedings shall be governed by this article. The court may make any order of disposition permitted by the facts and this article. The orders of the requesting court are conclusive that the child committed the delinquent act or is an unruly or deprived child and of the facts found by the court in making the orders, subject only to Code Section 15-11-40. If the requesting court has made an order placing the child on probation or under protective supervision, a like order shall be entered by the court of this state. The court may modify or vacate the order in accordance with Code Section 15-11-40.

15-11-89 Out-of-state supervision - payment of cost.

(a) Subject to the provisions of this article governing dispositions and to the extent that funds of the county are available, the court may place a child in the custody of a suitable person in another state. On obtaining the written consent of a juvenile court of another state which has adopted the Uniform Juvenile Court Act or a substantially similar act which includes provisions corresponding to this Code section and Code Section 15-11-90, the court of this state may order that the child be placed under the supervision of a probation officer or other appropriate official designated by the accepting court. One certified copy of the order shall be sent to the accepting court and another shall be filed with the clerk of the governing authority of the county of the requesting court of this state.

(b) The reasonable cost of the supervision, including the expenses of necessary travel, shall be borne by the county of the requesting court of this state. Upon receiving a certified statement signed by the judge of the accepting court of the cost incurred by the supervision, the court of this state shall certify if it appears that the sum so stated was reasonably incurred and shall file it with the appropriate officials of the county for payment. The appropriate officials shall thereupon issue a warrant for the sum stated payable to the appropriate officials of the county of the accepting court.

15-11-89.1 Powers of out-of-state probation officers.

If a child has been placed on probation or protective supervision by a juvenile court of another state which has adopted the Uniform Juvenile Court Act or a substantially similar act which includes provisions corresponding to this Code section and the child is in this state with or without the permission of that court, the probation officer of that court or other person designated by that court to supervise or take custody of the child has all the powers and privileges in this state with respect to the child as are given by this article to like officers or persons of this state, including the rights of visitation, counseling, control, direction, taking into custody, and returning to that state.

15-11-90 Supervision under out-of-state order.

(a) Upon receiving a request from a court exercising jurisdiction over children of another state which has adopted the Uniform Juvenile Court Act or a substantially similar act which includes provisions corresponding to this Code section and Code Section 15-11-89 to provide supervision of a child under the jurisdiction of that court, a court of this state may issue its written acceptance to the requesting court and may designate its probation or other appropriate officer who is to provide supervision, stating the probable cost per day therefor.

(b) Upon the receipt and filing of a certified copy of the order of the requesting court placing the child under the supervision of the officer so designated, the officer shall arrange for the reception of the child from the requesting court, shall provide supervision pursuant to the order and this article, and shall report thereon from time to time to the requesting court, including in the report any recommendations which he or she may have.

(c) The court in this state from time to time shall certify to the requesting court the cost of supervision that has been incurred and shall request payment therefor from the appropriate officials of the county of the requesting court to the appropriate officials of the county of the accepting court.

(d) The court of this state at any time may terminate supervision by notifying the requesting court. In that case, or if the supervision is terminated by the requesting court, the probation officer supervising the child shall return the child to a representative of the requesting court authorized to receive the child.

The following information was retrieved from:
The Association of Administrators of the Interstate Compact on the Placement of Children (AAICPC)
http://icpc.aphsa.org/Home/home_news.asp

(Rev. January 2012)

GEORGIA STATE PAGE

COMPACT ADMINISTRATOR
Rachelle Carnesale, Director
Division of Family and Children Services
Georgia Department of Human Resources
Atlanta, Georgia 30303
Telephone: (404) 657-5112

ACTING DEPUTY COMPACT ADMINISTRATOR
Joann Henry, Acting ICPC Supervisor
ICPC Unit
Georgia Department of Human Resources
Atlanta, Georgia 30303
Telephone: (404) 210-6806

Address Correspondence and Telephone Calls Related To ICPC Unit:
Division of Family and Children Services
ICPC Unit (Interstate Compact on the Placement of Children)
2 Peachtree St. N.W., 18th Floor
Atlanta, Georgia 30303

All Policy Administrators handle everything according to oldest child's last name for Foster Care and Adoption (Private and Public):

Angie Edwards-Porter, (A-C), (404) 657-0673
Suzanne McClure, (D-I), (404) 657-3328
Corliss Sinclair, (J and Residentials), (404) 657-8961
Connie Daniel, (K-Q), (404) 463-0911
Patricia Nealy, (R-Z), (404) 463-2216
(CPS Clearances/Public Agencies), Fax to (404) 657-3415
Rebecca Mason, (CPS Clearances/Private Agencies), (404) 463-0942

ICPC Office Hours: Monday-Friday, 8:00 a.m. to 5:00 p.m., Eastern Standard Time.
Fax: (404) 657-3415

GENERAL INFORMATION

ICPC Code Citation. O.C.G.A. 39-4-1 through 39-4-10.

Statutory Penalties Under Article IV. A person or an association in violation of adoption provisions provided in Code Section 19-8 shall be fined not more than $10,000 or imprisoned for not more than then years, or both, in the discretion of the Court.

Age of Majority. 18 years. O.C.G.A 39-1-1. Under Juvenile Court Code Act- under 17 years for the unruly child. O.C.G.A. 15-11-2.

Court Jurisdiction: Juvenile Court, unruly, delinquent, deprived (which includes abandoned, neglected and dependent children) and termination of parental rights. O.C.G.A 15-11-5.

Superior Court: Domestic relations, O.C.G.A. 19-1-1; 19-9-3; adoption. O.C.G.A. 19-8-2. Juvenile Court and Superior Court have concurrent jurisdiction over juveniles who are alleged to have committed capital crimes and in a custody controversy except where Superior Court has exclusive jurisdiction O.C.G.A. 15-11-5.

SPECIAL INFORMATION

Custody Investigations, Divorce Cases and Those Unrelated to the ICPC. Send requests for investigations in divorce matters between parents to county Departments of Family and Children Services, with a copy to ICPC office. If divorce matter involves possible placement with a third party, send request to ICPC Office for forwarding. Send requests for home evaluations involving disputes which are not divorce matters to ICPC Office, even if sending agency does not consider it an ICPC matter. Include court order; fees are not charged.

REQUIREMENTS

Reports. Quarterly unless otherwise requested.

Licensing Requirements. Childcare institutions, child placing agencies, maternity homes, and family foster homes must be licensed or approved annually by the Department of Human Resources. O.C.G.A. 45-5-8. A license to a child welfare agency is deemed to be approval of all foster family homes and foster homes which are approved, supervised and used by the agency O.C.G.A 49-5-8.

PLACEMENTS

Adoption. Georgia recognizes both voluntary relinquishments and court ordered termination of parental rights. The rights of the biological father who is not also the legal father must be addressed if the adoption is to be finalized in Georgia. Under Georgia law the biological father whether known or unknown has the right to notice concerning the placement of his child (O.C.G.A. 19-8-12). A form 413, background information and approved 100-A must be attached to the adoption petition when filed.

Agency Adoptive Placements. (O.C.G.A. 19-8-4). An agency must be licensed for adoptive placements by the Department of Human Resources in order to operate within the State. An agency licensed in another state must work with an agency licensed in Georgia in order to place a child with a Georgia family. Home studies and placement supervision must be done by the agency licensed in Georgia. An interstate package on a child to be placed in Georgia must include a complete social and medical history on the child and birth family, certified copies of release or TPR court order, and birth certificate. If the family home study was not completed by the Georgia state agency (County Department of Family and Child Services) a copy of the home study must be included in the package.

Independent Adoptive Placements. (O.C.G.A. 18-8-5). A parent may arrange an adoption providing an agency is named. Notice of revocation to the agent must be given within 10 days of the parent's release of the child. Payment of medical and legal expenses on behalf of the mother and child is permitted but any other financial assistance paid directly or indirectly, is considered an inducement. Advertisements are prohibited and this includes any private means such as oral statements that a person, or an association of any kind, will arrange for or cause children to be adopted. Violation of the provisions is a felony. (O.C.G.A. 19-8-24).

Adoption Petitions. Petitioner must be a resident of the state for six months immediately preceding the filing of the petition. (O.C.G.A. 19-8-2). All petitions are filed with the Superior Court in the county of the petitioner's residence or at the court's discretion in the county of the child's domicile or in a county where a licensed child-placing agency having custody of the child is located. (O.C.G.A. 19-8-1). Minimum time between the filing of petition and adjudication is sixty days. (O.C.G.A. 19-8-14).

Residential Placements.
-Placement Requiring Interstate Approval: ICPC approval required after acceptance by the placement facility.
-Requirements for Placements: Form ICPC-100A, court document, child summary, and any other pertinent information for approval and supervision.
-Approval of Facilities: Childcare institutions, group homes and residential treatment facilities are licensed by the Department of Human Resources.
-Rate setting: Placement facilities set their own rates.
-Monitoring of the Child: Responsibility rests with sending agency and the placement Facility.
-Philosophy for the Placement of Non-Resident Youth: Placement must comply with ICPC requirements and be in the best interest on the child.

Requirements for Foster Care Placement. Foster homes must be approved in accordance with Georgia foster home standards. Placements must comply with ICPC requirements.

PAYMENTS

TANF Payments. Payments are provided for children placed from the other states, if TANF eligibility requirements are met. TANF child-only grants are available for children placed with relatives, and it does not look at the relative's income when making an eligibility decision.

Medicaid Payments. Medicaid payments on behalf on children placed from other states will be made if the children are eligible for TANF. The sending agency is responsible for medical expenses not covered by Medicaid.

Foster Care Payment. When sending a child to another state, Georgia rates are paid unless an exception is approved by the Division of Family and Children Services.

Special Education Payments. Children placed from other state may attend public school education programs; fees are not charged.

Enhanced Relative Rate Payments. A funding source specific to Georgia children, whether they are placed in Georgia or in another state. The rate is paid at 80% of the foster care per diem rate.

USEFUL TELEPHONE NUMBERS

Adoptions Assistance:
Adrian Owens, (404) 657-3558

ICAMA (Interstate Compact on Adoption and Medical Assistance):
Kalean Thompkins, (404) 463-3957

ICJ (Interstate Compact on Juveniles):
Cindy Pittman, (404) 508-6556

Regulation No. 2
Public Court Jurisdiction Cases: Placements for Public Adoption or Foster Care in Family Settings and/or with Parents, Relatives
Regulation No. 2, as adopted on May 25, 1977 by the Association of Administrators of the Interstate Compact on the Placement of Children, was repealed April 1999 and is replaced by the following:
The following regulation, adopted by the Association of Administrators of the Interstate Compact on the Placement of Children, is declared to be in effect on and after October 1, 2011. Words and phrases used in this regulation have the same meanings as in the Compact, unless the context clearly requires another meaning. If a court or other competent authority invokes the Compact, the court or other competent authority is obligated to comply with Article V (Retention of Jurisdiction) of the Compact.
1. Intent of Regulation No. 2: The intent of this regulation is to provide at the request of a sending agency, a home study and placement decision by a receiving state for the proposed placement of a child with a proposed caregiver who falls into the category of: placement for public adoption, or foster care and/or with parents, or relatives.
2. Regulation No. 2 does apply to cases involving children who are under the jurisdiction of a court for abuse, neglect or dependency, as a result of action taken by a child welfare agency: The court has the authority to determine supervision, custody and placement of the child or has delegated said authority to the child welfare agency, and the child is being considered for placement in another state.
(a) Children not yet placed with prospective placement resource: This Regulation covers consideration of a placement resource where the child has not yet been placed in the home. ICPC Regulation No. 7 Expedited Home Study can be used instead of Regulation No. 2 for this category when requirements are met for an expedited home study request.
(b) Change of status for children who have already been placed with ICPC approval: This regulation is used when requesting a new home study on the current approved placement resource. This might include an upgrade from unlicensed relative to licensed foster home or to adoption home placement category (see Regulation No. 3 section 2(a) Types of Placement Categories).
(c) Child already placed without ICPC approval, except when the child has relocated with the caregiver to the receiving state pursuant to Regulation 1: When a child has been placed in a receiving state prior to ICPC approval, the case is considered a violation of ICPC and the placement is made with the sending state bearing full liability and responsibility for the safety of the child. The receiving state may request immediate removal of the child until the receiving state has made a decision per ICPC. The receiving state is permitted to proceed, but not required to proceed with the home study/ICPC decision process, as long as the child is placed in violation of ICPC. The receiving state may choose to open the case for ICPC courtesy supervision but is not required to do so, as is required under ICPC Regulation No. 1 Relocation of Family Unit Cases.
3. Placements made without ICPC protection: Regulation No. 2 does not apply to:
(a) A placement with a parent from whom the child was not removed: When the court places the child with a parent from whom the child was not removed, and the court has no evidence that the parent is unfit, does not seek any evidence from the receiving state that the parent is either fit or unfit, and the court relinquishes jurisdiction over the child immediately upon placement with the parent, the receiving state shall have no responsibility for supervision or monitoring for the court having made the placement.
(b) Sending court makes parent placement with courtesy check: When a sending court/agency seeks an independent (not ICPC-related) courtesy check for placement with a parent from whom the child was not removed, the responsibility for credentials and quality of the courtesy check rests directly with the sending court/agency and the person or party in the receiving state who agree to conduct the courtesy check without invoking the protection of the ICPC home study process. This would not prohibit a sending state from requesting an ICPC.
4. Definitions and placement categories: (See Regulation No. 3)
5. Sending state case documentation required with ICPC-100A request: The documentation provided with a request for prompt handling shall be current and shall include:
(1) confirming the potential placement resource is interested in being a placement resource for the child and is willing to cooperate with the ICPC process.
(2) including the name and correct physical and mailing address of the placement resource and all available telephone numbers and other contact information for the potential placement resource.
(3) describing the number and type of bedrooms in the home of the placement resource to accommodate

the child under consideration and the number of people, including children, who will be residing in the home.
(4) confirming the potential placement resource acknowledges that he/she has sufficient financial resources or will access financial resources to feed, clothe, and care for the child, including child care, if needed.
(5) that the placement resource acknowledges that a criminal records and child abuse history check will be completed for any persons residing in the home required to be screened under the law of the receiving state.
(a) A Form ICPC-100A fully completed.
(b) A Form ICPC-100B if the child is already placed without prior approval in the receiving state. The receiving state is not obligated to provide supervision until the placement has been approved with an ICPC-100A signed by the receiving state ICPC office, unless provisional approval has been granted.
(c) A copy of the current court order pursuant to which the sending agency has authority to place the child or, if authority does not derive from a court order, a statement of the basis on which the sending agency has authority to place the child and documentation that supervision is on-going.
(d) Signed statement required from assigned sending agency case manager:
(e) A current case history for the child, including custodial and social history, chronology of court involvement, social dynamics and a description of any special needs of the child.
(f) Any child previously placed with placement resource in sending state: If the placement resource had any child placed with them in the sending state previously, the sending agency shall provide all relevant information regarding said placement to the receiving state, if available.
(g) Service (case) Plan: A copy of the child's case/service/permanency plan and any supplements to that plan, if the child has been in care long enough for a permanency plan to be required.
(h) Title IV-E Eligibility verification: An explanation of the current status of the child's Title IV-E eligibility under the Federal Social Security Act and Title IV-E documentation, if available. Documentation must be provided before placement is approved.
(i) Financial/Medical Plan: A detailed plan of the proposed method for support of the child and provision of medical services.
(j) A copy of the child's Social Security card or official document verifying correct Social Security Number, if available, and a copy of the child's birth certificate, if available.

6. Methods for transmission of documents: Some or all documents may be communicated by express mail or any other recognized method for expedited communication, including FAX and/or electronic transmission, if acceptable by both sending and receiving state. The receiving state shall recognize and give effect to any such expedited transmission of an ICPC-100A and/or supporting documentation, provided that it is legible and appears to be a complete representation of the original. However, the receiving state may request and shall be entitled to receive originals or duly certified copies of any legal documents if it considers them necessary for a legally sufficient record under its laws. All such transmissions must be sent in compliance with state laws and/or regulations related to the protection of confidentiality.

7. Safe and Timely Interstate Home Study Report to be completed within sixty (60) calendar days. This report is not equivalent to a placement decision.
(a) Timeframe for completion of Safe and Timely Interstate Home Study Report: As quickly as possible, but not more than sixty (60) calendar days after receiving a home study request, the receiving state shall, directly or by contract, complete a study of the home environment for purposes of assessing the safety and suitability of the child being placed in the home. The receiving state shall return to the sending state a report on the results of the home study that shall address the extent to which placement in the home would meet the needs of the child. This report may, or may not, include a decision approving or denying permission to place the child. In the event the parts of the home study involving the education and training of the placement resource remain incomplete, the report shall reference such items by including an anticipated date of completion.
(b) Receiving state placement decision may be postponed: If the receiving state cannot provide a decision regarding approval or denial of the placement at the time of the safe and timely home study report, the receiving state should provide the reason for delay and an anticipated date for a decision regarding the request. Reasons for delay may be such factors as receiving state requires all relatives to be licensed as a foster home therefore ICPC office cannot approve an unlicensed relative placement request until the family has met licensing requirements. If such condition must be met before approval, a

reasonable date for compliance shall be set forth in the receiving state transmittal accompanying the initial home study, if possible.

8. Decision by receiving state to approve or deny placement resource (100A).

(a) Timeframe for final decision: Final approval or denial of the placement resource request shall be provided by receiving state Compact Administrator in the form of a signed ICPC-100A, as soon as practical but no later than one hundred and eighty (180) calendar days from receipt of the initial home study request. This six (6)-month window is to accommodate licensure and/or other receiving state requirements applicable to foster or adoption home study requests.

(b) Expedited communication of decision: If necessary or helpful to meet time requirements, the receiving state ICPC office may communicate its determination pursuant to Article III(d) to the sending agency's state Compact Administrator by FAX or other means of facsimile transmission or electronic transmission, if acceptable to both receiving and sending state. However, this may not be done before the receiving state Compact Administrator has actually recorded the determination on the ICPC-100A. The written notice (the completed ICPC-100A) shall be mailed, sent electronically, if acceptable, or otherwise sent promptly to meet Article III(d) written notice requirements. The receiving state home study local agency shall not send the home study and/or recommendation directly to the sending state local agency without approval from the sending and receiving state ICPC offices.

(c) Authority of receiving state to make final decision: The authority of the receiving state is limited to the approval or denial of the placement resource. The receiving state may decline to provide a favorable determination pursuant to Article III(d) of the Compact if the receiving state Compact Administrator finds that based on the home study, the proposed caregiver would be unable to meet the individual needs of the child, including the child's safety, permanency, health, well-being, and mental, emotional and physical development.

(d) Authority of sending court/placing agency: When the receiving state has approved a placement resource, the sending court/placing agency has the final authority to determine whether to use the approved placement resource in the receiving state. The receiving state ICPC-100A approval expires six months from the date the 100A was signed by receiving state.

9. Reconsideration of an ICPC denial: (requested by the sending ICPC Office)

(a) Sending state may request reconsideration of the denial within 90 days from the date 100A denying placement is signed by receiving state. The request can be with or without a new home study, see items 9(a)(1) and 9(a)(2) below. After 90 days there is nothing that precludes the sending state from requesting a new home study.

(1) Request reconsideration without a new home study: The sending ICPC office can request that the receiving state ICPC office reconsider the denial of placement of the child with the placement resource. If the receiving state ICPC office chooses to overturn the denial it can be based on review of the evidence presented by the sending ICPC office and any other new information deemed appropriate. A new 100A giving an approval without a new home study will be signed.

(2) Request new home study re-examining reasons for original denial: A sending ICPC office may send a new ICPC home study request if the reason for denial has been corrected; i.e., move to new residence with adequate bedrooms. The receiving state ICPC office is not obligated to activate the new home study request, but it may agree to proceed with a new home study to reconsider the denial decision if it believes the reasons for denial have been corrected. This regulation shall not conflict with any appeal process otherwise available in the receiving state.

(b) Receiving state decision to reverse a prior denied placement**:** The receiving state ICPC office has 60 days from the date formal request to reconsider denial has been received from the sending state ICPC office. If the receiving state ICPC administrator decides to change the prior decision denying the placement, an ICPC transmittal letter and the new 100A shall be signed reflecting the new decision.

10. Return of child to sending state/Receiving state requests to return child to sending state:

11. Supervision for approved placement should be conducted in accordance with ICPC Regulation No. 11

12. Words and phrases used in this regulation have the same meanings as in the Compact, unless the context clearly requires another meaning.

(a) Request to return child to sending state at time of ICPC denial of placement: If the child is already residing in the receiving state with the proposed caregiver at the time of the above decision, and the receiving state Compact Administrator has denied the placement based on 8(c) then the receiving state Compact Administrator may request the sending state to arrange for the return of the child as soon as

possible or propose an alternative placement in the receiving state as provided in Article V(a) of the ICPC. That alternative placement resource must be approved by the receiving state before placement is made. Return of the child shall occur within five (5) working days from the date of notice for removal unless otherwise agreed upon between the sending and receiving state ICPC offices.
(b) Request to return child to sending state after receiving state ICPC had previously approved placement: Following approval and placement of the child, if the receiving state Compact Administrator determines that the placement no longer meets the individual needs of the child, including the child's safety, permanency, health, well-being, and mental, emotional, and physical development, then the receiving state Compact Administrator may request that the sending state arrange for the return of the child as soon as possible or propose an alternative placement in the receiving state as provided in Article V(a) of the ICPC. That alternative placement resource must be approved by the receiving state before placement is made. Return of the child shall occur within five (5) working days from the date of notice for removal unless otherwise agreed upon between the sending and receiving state ICPC offices. The receiving state request for removal may be withdrawn if the sending state arranges services to resolve the reason for the requested removal and the receiving and the sending state Compact Administrators mutually agree to the plan.
13. This regulation is adopted pursuant to Article VII of the Interstate Compact on the Placement of Children by action of the Association of Administrators of the Interstate Compact on the Placement of Children at its annual meeting, April 30–May 1, 2011.

Regulation No. 3 Definitions and Placement Categories: Applicability and Exemptions
This Regulation No. 3 is adopted pursuant to Article VII of the Interstate Compact on the Placement of Children.
1. Intent of Regulation No. 3: To provide guidance in navigating the ICPC regulations and to assist its users in understanding which interstate placements are governed by, and which are exempt from, the ICPC.
(a) Nothing in this regulation shall be construed to alter the obligation of a receiving state to supervise and report on the placement; nor to alter the requirement that the placement resource(s) comply with the licensing and other applicable laws of the receiving state after placement of the child in the receiving state.
(b) Age restrictions: The ICPC Articles and Regulations do not specify an age restriction at time of placement, but rather use the broad definition of "child." The sending state law may permit the extension of juvenile court jurisdiction and foster care maintenance payments to eligible youth up to age 21. Consistent with Article V, such youth should be served under ICPC if requested by the sending agency and with concurrence of the receiving state.
2. Placement categories requiring compliance with ICPC: Placement of a child requires compliance with the Compact if such placement is made under one of the following four types of placement categories:
(a) Four types of placement categories:
(1) Adoptions: Placement preliminary to an adoption (independent, private or public adoptions)
(2) Licensed or approved foster homes (placement with related or unrelated caregivers)
(3) Placements with parents and relatives when a parent or relative is not making the placement as defined in Article VIII (a) "Limitations"
(4) Group homes/residential placement of all children, including adjudicated delinquents in institutions in other states as defined in Article VI and Regulation No. 4.
(b) Court involvement and court jurisdiction legal status**:** The above placement categories may involve placement by persons and/or agencies that at the time of placement may not have any court involvement (i.e., private/independent adoptions and residential placements). Where there is court jurisdiction with an open court case for dependency, abandonment, abuse and/or neglect, the case is considered a public court jurisdiction case, which requires compliance with ICPC Article III (see Regulations No. 1, No. 2, No. 7 and No. 11) note exemption for selected "parent" cases as described below in Section 3, "cases that are exempt from ICPC regulations. In most public court jurisdiction cases the court has taken guardianship and legal custody away from the "offending" caregiver and has given it to a third party at the

time placement of the child is made with an alternative caregiver. However, in select cases identified below, the sending court may not have taken guardianship or legal custody away from the parent/guardian, when the ICPC-100A requesting permission to place is sent to the receiving state. Those cases are identified on the ICPC-100A with the legal status of "court jurisdiction only" as explained below.
(c) Court jurisdiction only: The sending court has an open abuse, neglect or dependency case that establishes court jurisdiction with the authority to supervise, remove and/or place the child. Although the child is not in the guardianship/custody of an agency or the court at the time of completing ICPC-100A, the agency or the court may choose to exert legal authority to supervise and or remove and place the child and therefore is the sending agency. As the sending agency/court it would have specified legal responsibilities per ICPC Article V, including the possible removal of the child if placement in the receiving state disrupts or the receiving state requests removal of the child. There are several possible situations where "court jurisdiction only" might be checked as the "legal status" on the ICPC-100A:
(1) Residential placement (Regulation No. 4): The court has jurisdiction, but in some situations, such as with some probation (delinquent) cases, guardianship remains with the parent/relative, but the court/sending agency is seeking approval to place in a receiving state residential treatment program, and has authority to order placement and removal.
(2) Contingency/concurrent request in cases where removal may become necessary (Regulations No. 2 or No. 7): The child may be in the custody of the offending parent or relative while the public agency tries to bring the family into compliance with court orders and or agency service (case) plan. (Some states call this an order of "protective supervision" or "show cause.") The court may have requested an ICPC home study on a possible alternative caregiver in a receiving state. It is understood at time of placement the court would have guardianship/legal custody and Article V would be binding.
(3) Parent/relative relocated to receiving state (Regulation No. 1): If the sending court selects to invoke ICPC Article V and to retain court jurisdiction even though the family/relative has legal guardianship/custody and has moved to the receiving state, then the sending court may request a home study on the parent/relative who has moved with the child to the receiving state. By invoking ICPC the sending court is bound under Article V. If the receiving state determines the placement to be contrary to the interests of the child, the sending court must order removal of the child and their return to the sending state or utilize an alternative approved placement resource in the receiving state. The ICPC-100A must be signed by the sending judge or authorized agent of the public agency on behalf of the sending court in keeping with ICPC Article V.
3. Placements made without ICPC protection:
(a) A placement with a parent from whom the child was not removed: When the court places the child with a parent from whom the child was not removed, and the court has no evidence that the parent is unfit, does not seek any evidence from the receiving state that the parent is either fit or unfit, and the court relinquishes jurisdiction over the child immediately upon placement with the parent. Receiving state shall have no responsibility for supervision or monitoring for the court having made the placement.
(b) Sending court makes parent placement with courtesy check: When a sending court/agency seeks an independent (not ICPC related) courtesy check for placement with a parent from whom the child was not removed, the responsibility for credentials and quality of the "courtesy check" rests directly with the sending court/agency and the person or party in the receiving state who agree to conduct the "courtesy" check without invoking the protection of the ICPC home study process. This would not prohibit a sending state from requesting an ICPC. (c) Placements made by private individuals with legal rights to place: Pursuant to Article VIII (a), this Compact does not apply to the sending or bringing of a child into a receiving state by the child's parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or the child's non-agency guardian and leaving the child with any such parent, relative or non-agency guardian in the receiving state, provided that such person who brings, sends, or causes a child to be sent or brought to a receiving state is a person whose full legal right to plan for the child: (1) has been established by law at a time prior to initiation of the placement arrangement, and (2) has not been voluntarily terminated, or diminished or severed by the action or order of any court.
(d) Placements handled in divorce, paternity or probate courts: The compact does not apply in court cases of paternity, divorce, custody, and probate pursuant to which or in situations where children are being placed with parents or relatives or non-relatives.
(e) Placement of children pursuant to any other Compact: Pursuant to Article VIII (b), the Compact does not apply to any placement, sending or bringing of a child into a receiving state pursuant to any other

interstate Compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between said states which has the force of law.
(Note: source of definition is identified right after the word prior to the actual definition.)
4. Definitions: The purpose of this section is to provide clarification of commonly used terms in ICPC. Some of these words and definitions can also be found in the Interstate Compact on the Placement of Children, ICPC Regulations, Interstate Compact on Juveniles, and federal statutes and regulations.
(1) Adoption: the method provided by state law that establishes the legal relationship of parent and child between persons who are not so related by birth or some other legal determination, with the same mutual rights and obligations that exist between children and their birth parents. This relationship can only be termed adoption after the legal process is complete (see categories or types of ICPC adoptions below).
(2) Adoption categories:
(a) Independent adoption: adoptions arranged by a birth parent, attorney, other intermediary, adoption facilitator or other person or entity as defined by state law.
(b) Private agency adoption: an adoption arranged by a licensed agency whether domestic or international that has been given legal custody or responsibility for the child including the right to place the child for adoption.
(c) Public adoption: Adoptions for public court jurisdiction cases.
(3) Adoption home study: (definition listed under "home studies")
(4) Adjudicated delinquent: a person found to have committed an offense that, if committed by an adult, would be a criminal offense.
(5) Adjudicated status offender: a person found to have committed an offense that would not be a criminal offense if committed by an adult.
(6) Age of majority: the legally defined age at which a person is considered an adult with all the attendant rights and responsibilities of adulthood. The age of majority is defined by state laws, which vary by state and is used in Article V, "...reaches majority, becomes self- supporting or is discharged with the concurrence of the appropriate authority in the receiving state" (see definition below of "child" as it appears in Article II).
(7) Approved placement: the receiving state Compact Administrator has determined that "the proposed placement does not appear to be contrary to the interests of the child."
(8) Boarding home: as used in Article II (d) of the ICPC, means the home of a relative or unrelated individual whether or not the placement recipient receives compensation for care or maintenance of the child, foster care payments, or any other payments or reimbursements on account of the child's being in the home of the placement recipient (has same meaning as family free).
(9) Case history: an organized record concerning an individual, their family and environment that includes social, medical, psychological and educational history and any other additional information that may be useful in determining appropriate placement.
(10) Case plan: (see "service plan" definition)
(11) Central Compact office: the office that receives ICPC placement referrals from sending states and sends ICPC placement referrals to receiving states. In states that have one central Compact office that services the entire state, the term "central Compact office" has the same meaning as "central state Compact office" as described in Regulation No. 5 of the ICPC. In states in which ICPC placement referrals are sent directly to receiving states and received directly from sending states by more than one county or other regional area within the state, the "central Compact office" is the office within each separate county or other region that sends and receives ICPC placement referrals.
(12) Certification: to attest, declare or swear to before a judge or notary public.
(13) Child: a person, who by reason of minority, is legally subject to parental guardianship or similar control.
(14) Child welfare caseworker: a person assigned to manage the cases of dependency children who are in the custody of a public child welfare agency and may include private contract providers of the responsible state agency.
(15) Concurrence to discharge: is when the receiving ICPC office gives the sending agency written permission to terminate supervision and relinquish jurisdiction of its case pursuant to Article V leaving the custody, supervision and care of the child with the placement resource.
(16) Concurrence: is when the receiving and sending Compact Administrator agree to a specific action

pursuant to ICPC, i.e., decision as to providers.
(17) Conditions for placement: as established by Article III apply to any placement as defined in Article II(d) and regulations adopted by action of the Association of Administrators of the Interstate Compact on the Placement of Children.
(18) Courtesy: consent or agreement between states to provide a service that is not required by ICPC.
(19) Courtesy check: Process that does not involve the ICPC, used by a sending court to check the home of a parent from whom the child was not removed.
(20) Court jurisdiction only cases: The sending court has an open abuse, neglect or dependency case that establishes court jurisdiction with the authority to supervise and/or remove and place the child for whom the court has not taken guardianship or legal custody.
(21) Custody: (see physical custody, see legal custody)
(22) Emancipation: the point at which a minor becomes self-supporting, assumes adult responsibility for his or her welfare, and is no longer under the care of his or her parents or child placing agency, by operation of law or court order.
(23) Emergency placement: a temporary placement of 30 days or less in duration.
(24) Family free: as used in Article II (d) of the ICPC means the home of a relative or unrelated individual whether or not the placement recipient receives compensation for care or maintenance of the child, foster care payments, or any other payments or reimbursements on account of the child's being in the home of the placement recipient (has same meaning as boarding home).
(25) Family unit: a group of individuals living in one household.
(26) Foster care: If 24-hour-a-day care is provided by the child's parent(s) by reason of a court-ordered placement (and not by virtue of the parent-child relationship), the care is foster care. In addition to the federal definition (45 C.F.R. § 1355.20 "Definitions") this includes 24-hour substitute care for children placed away from their parents or guardians and for whom the state agency has placement and care responsibility. This includes, but is not limited to, placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions and pre-adoptive homes. A child is in foster care in accordance with this definition regardless of whether the foster care facility is licensed and payments are made by the state or local agency for the care of the child, whether adoption subsidy payments are being made prior to the finalization of an adoption, or whether there is federal matching of any payments that are made.
(27) Foster home study: (see definition under home studies)
(28) Foster parent: a person, including a relative or non-relative, licensed to provide a home for orphaned, abused, neglected, delinquent or disabled children, usually with the approval of the government or a social service agency.
(29) Guardian [see ICPC Regulation No. 10 section 1(a)]: a public or private agency, organization or institution that holds a valid and effective permanent appointment from a court of competent jurisdiction to have custody and control of a child, to plan for the child, and to do all other things for or on behalf of a child for which a parent would have authority and responsibility for doing so by virtue of an unrestricted parent-child relationship. An appointment is permanent for the purposes of this paragraph if the appointment would allow the guardianship to endure until the child's age of majority without any court review, subsequent to the appointment, of the care that the guardian provides or the status of other permanency planning that the guardian has a professional obligation to carry out.
(30) Home Study (see Safe and Timely Interstate Placement of Foster Children Act of 2006):
an evaluation of a home environment conducted in accordance with applicable requirements of the state in which the home is located, to determine whether a proposed placement of a child would meet the individual needs of the child, including the child's safety, permanency, health, well-being, and mental, emotional and physical development.
(a) Adoption home study: a home study conducted for the purpose of placing a child for adoption with a placement resource. The adoption home study is the assessment and evaluation of a prospective adoptive parent(s).
(b) Foster home study: a home study conducted for the purpose of placing a child with a placement resource who is required to be licensed or approved in accordance with federal and/or receiving state law.
(c) *Interstate home study* (see Federal Safe and Timely Act): a home study conducted by a state at the request of another state, to facilitate an adoptive or foster care placement in the state of a child in foster care under the responsibility of the state [see foster care definition(s)].

(d) Parent home study: applies to the home study conducted by the receiving state to determine whether a parent placement meets the standards as set forth by the requirements of the receiving state.
(e) Relative home study: a home study conducted for the purpose of placing a child with a relative. Such a home study may or may not require the same level of screening as required for a foster home study or an adoptive home study depending upon the applicable law and/or requirements of the receiving state.
(f) Non-relative home study: a home study conducted for the purpose of placing a child with a non-relative of the child. Such a home study may or may not require the same level of screening as required for a foster home study or an adoptive home study depending upon the applicable law and/or requirements of the receiving state.
(g) Safe and Timely Interstate Home Study Report (see Federal Safe and Timely Act): an interstate home study report completed by a state if the state provides to the state that requested the study, within 60 days after receipt of the request, a report on the results of the study. The preceding sentence shall not be construed to require the state to have completed, within the 60-day period, the parts of the home study involving the education and training of the prospective foster or adoptive parents.
(31) ICPC: The Interstate Compact on the Placement of Children is a Compact between states and parties pursuant to law, to ensure protection and services to children who are placed across state lines.
(32) Independent adoption entity: any individual authorized in the sending state to place children for adoption other than a state, county or licensed private agency. This could include courts, private attorneys and birth parents.
(33) Intrastate: existing or occurring within a state (34) Interstate: involving, connecting or existing between two or more states. (35) Interstate home study: (see definition under Home studies)
(36) Jurisdiction: the established authority of a court to determine all matters in relation to the custody, supervision, care and disposition of a child.
(37) Legal custody: court-ordered or statutory right and responsibility to care for a child either temporarily or permanently.
(38) Legal guardianship (see 45 C.F.R. § 1355.20 "Definitions"): a judicially created relationship between child and caretaker that is intended to be permanent and self- sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person, and decision-making. The term legal guardian means the caretaker in such a relationship.
(39) Legal risk placement (legal risk adoption): a placement made preliminarily to an adoption where the prospective adoptive parents acknowledge in writing that a child can be ordered returned to the sending state or the birth mother's state of residence, if different from the sending state, and a final decree of adoption shall not be entered in any jurisdiction until all required consents or termination of parental rights are obtained or are dispensed with in accordance with applicable law.
(40) Member state: a state that has enacted this Compact (see also definition of state).
(41) Non-agency guardian [see ICPC Regulation No. 10 section 1(b)]: an individual holding a currently valid appointment from a court of competent jurisdiction to have all of the authority and responsibility of a guardian as defined in ICPC Regulation No. 10 section 1(a).
(42) Non-custodial parent: a person who, at the time of the commencement of court proceedings in the sending state, does not have sole legal custody of the child or physical custody of a child.
(43) Non-offending parent: the parent who is not the subject of allegations or findings of child abuse or neglect.
(44) Non-relative: a person not connected to the child by blood, marriage or adoption, or otherwise defined by the sending or receiving state.
(45) Parent: a biological, adoptive parent or legal guardian as determined by applicable state law and is responsible for the care, custody and control of a child or upon whom there is legal duty for such care.
(46) Parent home study: (see definition under home studies)
(47) Physical custody: Person or entity with whom the child is placed on a day-to-day basis.
(48) Placement (see ICPC Article II (d) "Definitions"): the arrangement for the care of a child in a family free, in a boarding home or in a child-caring agency or institution, but does not include any institution caring for the mentally ill, mentally defective or epileptic, or any institution primarily educational in character, and any hospital or other medical facility.
(49) Placement resource: the person(s) or facility with whom the child has been or may be placed by a parent or legal custodian; or, placed by the court of jurisdiction in the sending state; or, for whom placement is sought in the receiving state.

(50) Progress report: (see "supervision report" definition)
(51) Provisional approval: an initial decision by the receiving state that the placement is approved subject to receipt of required additional information before final approval is granted.
(52) Provisional denial: the receiving state cannot approve a provisional placement pending a more comprehensive home study or assessment process due to issues that need to be resolved.
(53) Provisional placement: a determination made in the receiving state that the proposed placement is safe and suitable and, to the extent allowable, the receiving state has temporarily waived its standards or requirements otherwise applicable to prospective foster or adoptive parents so as to not delay the placement. Completion of the receiving state requirements regarding training for prospective foster or adoptive parents shall not delay an otherwise safe and suitable placement.
(54) Public child-placing agency: any government child welfare agency or child protection agency or a private entity under contract with such an agency, regardless of whether they act on behalf of a state, county, municipality or other governmental unit and which facilitates, causes or is involved in the placement of a child from one state to another.
(55) Receiving state (see ICPC Article II (c) "Definitions"): the state to which a child is sent, brought or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.
(56) Relative: a birth or adoptive brother, sister, stepparent, stepbrother, stepsister, uncle, aunt, first cousin, niece, nephew, as well as relatives of half blood or marriage and those denoted by the prefixes of grand and great, including grandparent or great grandparent, or as defined in state statute for the purpose of foster and or adoptive placements.
(57) Non-relative: a person not connected to the child by blood, marriage or adoption. (58) Relative home study: (see definition under home studies) (59) Relocation: the movement of a child or family from one state to another.
(*60) Residential facility or residential treatment center or group home:* a facility providing a level of 24-hour, supervised care that is beyond what is needed for assessment or treatment of an acute condition. For purposes of the Compact, residential facilities do not include institutions primarily educational in character, hospitals or other medical facilities (as used in Regulation 4, they are defined by the receiving state).
(61) Return: the bringing or sending back of a child to the state from which they came.
(62) Sending agency: (see ICPC Article II (b) "Definitions"): a party state, officer or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency or other entity having legal authority over a child who sends, brings, or causes to be sent or brought any child to another party state.
(63) Sending state: the state where the sending agency is located, or the state in which the court holds exclusive jurisdiction over a child, which causes, permits or enables the child to be sent to another state.
(64) Service (case) plan: a comprehensive individualized program of action for a child and his/her family establishing specific goals and objectives and deadlines for meeting these goals and objectives.
(65) State: a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern Marianas Islands, and any other territory of the United States.
(66) State court: a judicial body of a state that is vested by law with responsibility for adjudicating cases involving abuse, neglect, deprivation, delinquency or status offenses of individuals who have not attained the age of eighteen (18) or as otherwise defined by state law.
(67) Stepparent: a man or woman married to a parent of a child at the time of the intended placement or as otherwise defined by the sending and/or receiving state laws, rules and/or regulations.
(68) *Supervision:* monitoring of the child and the child's living situation by the receiving state after a child has been placed in a receiving state pursuant to a provisional approval or an approved placement under Article III(d) of the ICPC or pursuant to a child's relocation to a receiving state in accordance with Regulation No. 1 of the ICPC.
(69) *Supervision report*: provided by the supervising case worker in the receiving state; a written assessment of a child's current placement, school performance and health and medical status, a description of any unmet needs and a recommendation regarding continuation of the placement.
(70) *Timely Interstate Home Study:* (see definition under home studies)
(71) *Visit*: as defined in Regulation No. 9.

Regulation No. 7 Expedited Placement Decision
The following regulation adopted by the Association of Administrators of the Interstate Compact on the Placement of Children as Regulation No. 7, Priority Placement, as first adopted in 1996, is amended to read as follows:
1. Words and phrases used in this regulation shall have the same meanings as those ascribed to them in the Interstate Compact on the Placement of Children (ICPC). A word or phrase not appearing in ICPC shall have the meaning ascribed to it by special definition in this regulation or, where not so defined, the meaning properly ascribed to it in common usage.
2. This regulation shall hereafter be denoted as Regulation No. 7 for Expedited Placement Decision.
3. Intent of Regulation No. 7: The intent of this regulation is to expedite ICPC approval or denial by a receiving state for the placement of a child with a parent, stepparent, grandparent, adult uncle or aunt, adult brother or sister, or the child's guardian, and to:
(a) Help protect the safety of children while minimizing the potential trauma to children caused by interim or multiple placements while ICPC approval to place with a parent or relative is being sought through a more comprehensive home study process.
(b) Provide the sending state court and/or sending agency with expedited approval or denial. An expedited denial would underscore the urgency for the sending state to explore alternative placement resources.
4. This regulation shall not apply if:
(a) the child has already been placed in violation of the ICPC in the receiving state, unless a visit has been approved in writing by the receiving state Compact Administrator and a subsequent order entered by the sending state court authorizing the visit with a fixed return date in accordance with Regulation 9.
(b) the intention of the sending state is for licensed or approved foster care or adoption. In the event the intended placement [must be parent, stepparent, grandparent, adult aunt or uncle, adult brother or sister, or guardian as per Article VIII(a)] is already licensed or approved in the receiving state at the time of the request, such licensing or approval would not preclude application of this regulation.
(c) the court places the child with a parent from whom the child was not removed, the court has no evidence the parent is unfit, does not seek any evidence from the receiving state the parent is either fit or unfit, and the court relinquishes jurisdiction over the child immediately upon placement with the parent.
5. Criteria required before Regulation No. 7 can be requested: Cases involving a child who is under the jurisdiction of a court as a result of action taken by a child welfare agency, the court has the authority to determine custody and placement of the child or has delegated said authority to the child welfare agency, the child is no longer in the home of the parent from whom the child was removed, and the child is being considered for placement in another state with a parent, stepparent, grandparent, adult uncle or aunt, adult brother or sister, or the child's guardian, must meet at least one of the following criteria in order to be considered a Regulation No. 7 case:
(a) unexpected dependency due to a sudden or recent incarceration, incapacitation or death of a parent or guardian. Incapacitation means a parent or guardian is unable to care for a child due to a medical, mental or physical condition of a parent or guardian, or
(b) the child sought to be placed is four years of age or younger, including older siblings sought to be placed with the same proposed placement resource; or
(c) the court finds that any child in the sibling group sought to be placed has a substantial relationship with the proposed placement resource. Substantial relationship means the proposed placement has a familial or mentoring role with the child, has spent more than cursory time with the child, and has established more than a minimal bond with the child; or
(d) the child is currently in an emergency placement.
6. Provisional approval or denial:
(a) Upon request of the sending agency and agreement of the receiving state to make a provisional determination, the receiving state may, but is not required to, provide provisional approval or denial for the child to be placed with a parent or relative, including a request for licensed placement if the receiving state has a separate licensing process available to relatives that includes waiver of non-safety issues. Upon receipt of the documentation set forth in Section 7 below, the receiving state shall expedite provisional determination of the appropriateness of the proposed placement resource by:
(1) performing a physical "walk through" by the receiving state's caseworker of the prospective placement's home to assess the residence for risks and appropriateness for placement of the child,

(2) searching the receiving state's child protective services data base for prior reports/investigations on the prospective placement as required by the receiving state for emergency placement of a child in its custody,
3) performing a local criminal background check on the prospective placement,
(4) undertaking other determinations as agreed upon by the sending and receiving state Compact Administrators, and
(5) providing a provisional written report to the receiving state Compact Administrator as to the appropriateness of the proposed placement.
(b) A request by a sending state for a determination for provisional approval or denial shall be made by execution of an Order of Compliance by the sending state court that includes the required findings for a Regulation No. 7 request and a request for provisional approval or denial.
(c) Determination made under a request for provisional approval or denial shall be completed within seven (7) calendar days of receipt of the completed request packet by the receiving state Compact Administrator. A provisional approval or denial shall be communicated to the sending state Compact Administrator by the receiving state Compact Administrator in writing. This communication shall not include the signed Form 100A until the final decision is made pursuant to Section 9 below.
(d) Provisional placement, if approved, shall continue pending a final approval or denial of the placement by the receiving state or until the receiving state requires the return of the child to the sending state pursuant to paragraph 12 of this regulation.
(e) If provisional approval is given for placement with a parent from whom the child was not removed, the court in the sending state may direct its agency to request concurrence from the sending and receiving state Compact Administrators to place the child with the parent and relinquish jurisdiction over the child after final approval is given. If such concurrence is not given, the sending agency shall retain jurisdiction over the child as otherwise provided under Article V of the ICPC.
(f) A provisional denial means that the receiving state cannot approve a provisional placement pending the more comprehensive home study or assessment process due to issues that need to be resolved.
7. Sending agency steps before sending court enters Regulation No. 7 Order of Compliance: In order for a placement resource to be considered for an ICPC expedited placement decision by a receiving state, the sending agency shall take the following minimum steps prior to submitting a request for an ICPC expedited placement decision:
(a) Obtain either a signed statement of interest from the potential placement resource or a written statement from the assigned case manager in the sending state that following a conversation with the potential placement resource, the potential placement resource confirms appropriateness for the ICPC expedited placement decision process. Such statement shall include the following regarding the potential placement resource:
(1) s/he is interested in being a placement resource for the child and is willing to cooperate with the ICPC process.
(2) s/he fits the definition of parent, stepparent, grandparent, adult brother or sister, adult aunt or uncle, or his or her guardian, under Article VIII(a) of the ICPC.
(3) the name and correct address of the placement resource, all available telephone numbers and other contact information for the potential placement resource, and the date of birth and social security number of all adults in the home.
(4) a detail of the number and type of rooms in the residence of the placement resource to accommodate the child under consideration and the number of people, including children, who will be residing in the home.
(5) s/he has financial resources or will access financial resources to feed, clothe and care for the child.
(6) if required due to age and/or needs of the child, the plan for child care, and how it will be paid for.
(7) s/he acknowledges that a criminal records and child abuse history check will be completed on any persons residing in the home required to be screened under the law of the receiving state and that, to the best knowledge of the placement resource, no one residing in the home has a criminal history or child abuse history that would prohibit the placement.
(8) whether a request is being made for concurrence to relinquish jurisdiction if placement is sought with a parent from whom the child was not removed.
The sending agency shall submit to the sending state court: (1) the signed written statement noted in 7a, above, and (2) a statement that based upon current information known to the sending agency, that it is

unaware of any fact that would prohibit the child being placed with the placement resource and that it has completed and is prepared to send all required paperwork to the sending state ICPC office, including the ICPC-100A and ICPC Form 101.

8. Sending state court orders: The sending state court shall enter an order consistent with the Form Order for Expedited Placement Decision adopted with this modification of Regulation No. 7 subject to any additions or deletions required by federal law or the law of the sending state. The order shall set forth the factual basis for a finding that Regulation No. 7 applies to the child in question, whether the request includes a request for a provisional approval of the prospective placement and a factual basis for the request. The order must also require completion by the sending agency of ICPC Form 101 for the expedited request.

9. Time frames and methods for processing of ICPC expedited placement decision:

(a) Expedited transmissions: The transmission of any documentation, request for information under paragraph 10, or decisions made under this regulation shall be by overnight mail, facsimile transmission, or any other recognized method for expedited communication, including electronic transmission, if acceptable. The receiving state shall recognize and give effect to any such expedited transmission of an ICPC-100A and/or supporting documentation provided it is legible and appears to be a complete representation of the original. However, the receiving state may request and shall be entitled to receive originals or duly certified copies if it considers them necessary for a legally sufficient record under its laws. Any state Compact Administrator may waive any requirement for the form of transmission of original documents in the event he or she is confident in the authenticity of the forms and documents provided.

(b) Sending state court orders to the sending state agency: The sending state court shall send a copy of its signed order of compliance to the sending state agency within two (2) business days of the hearing or consideration of the request. The order shall include the name, mailing address, e-mail address, telephone number and FAX number of the clerk of court or a designated court administrator of the sending state court exercising jurisdiction over the child.

(c) Sending agency sends ICPC request to sending state ICPC office: The sending state court shall direct the sending agency to transmit to the sending state Compact Administrator within three (3) business days of receipt of the signed Order of Compliance, a completed ICPC-100A and Form 101, the statement required under Paragraph 7 above and supporting documentation pursuant to ICPC Article III.

(d) Sending State ICPC office sends ICPC Request to Receiving State ICPC office: Within two (2) business days after receipt of a complete Regulation 7 request, the sending state Compact Administrator shall transmit the complete request for the assessment and for any provisional placement to the receiving state Compact Administrator. The request shall include a copy of the Order of Compliance rendered in the sending state.

(e) Timeframe for receiving state ICPC office to render expedited placement decision: no later than twenty (20) business days from the date that the forms and materials are received by the receiving state Compact Administrator, the receiving state Compact Administrator shall make his or her determination pursuant to Article III(d) of the ICPC and shall send the completed 100-A to the sending state Compact Administrator by expedited transmission.

(f) Timeframe for receiving state ICPC office to send request packet to receiving local agency: The receiving state Compact Administrator shall send the request packet to the local agency in the receiving state for completion within two (2) business days of receipt of the completed packet from the sending state Compact Administrator.

(g) Timeframe for receiving state local agency to return completed home study to central office: The local agency in the receiving state shall return the completed home study to the receiving state Compact Administrator within fifteen (15) business days (including date of receipt) of receipt of the packet from the receiving state Compact Administrator.

(h) Timeframe for receiving state ICPC Compact Administrator to return completed home study to sending state: Upon completion of the decision process under the timeframes in this regulation, the receiving state Compact Administrator shall provide a written report, a 100A approving or denying the placement, and a transmittal of that determination to the sending state Compact Administrator as soon as possible, but no later than three (3) business days after receipt of the packet from the receiving state local agency and no more than twenty (20) business days from the initial date that the complete documentation and forms were received by the receiving state Compact Administrator from the sending state Compact Administrator.

10. Recourse if sending or receiving state determines documentation is insufficient:

(a) In the event the sending state Compact Administrator finds that the ICPC request documentation is substantially insufficient, s/he shall specify to the sending agency what additional information is needed and request such information from the sending agency.
(b) In the event the receiving state Compact Administrator finds that the ICPC request documentation is substantially insufficient, he or she shall specify what additional information is needed and request such information from the sending state Compact Administrator. Until receipt of the requested information from the sending state Compact Administrator, the receiving state is not required to continue with the assessment process.
(c) In the event the receiving state Compact Administrator finds that the ICPC request documentation is lacking needed information but is otherwise sufficient, s/he she shall specify what additional information is needed and request such information from the sending state Compact Administrator. If a provisional placement is being pursued, the provisional placement evaluation process shall continue while the requested information is located and provided.
(d) Failure by a Compact Administrator in either the sending state or the receiving state to make a request for additional documentation or information under this paragraph within two (2) business days of receipt of the ICPC request and accompanying documentation by him or her shall raise a presumption that the sending agency has met its requirements under the ICPC and this regulation.
11. Failure of receiving state ICPC office or local agency to comply with ICPC Regulation No. 7: Upon receipt of the Regulation No. 7 request, if the receiving state Compact Administrator determines that it will not be possible to meet the timeframes for the Regulation No. 7 request, whether or not a provisional request is made, the receiving state Compact Administrator shall notify the sending state Compact Administrator as soon as practical and set forth the receiving state's intentions in completing the request, including an estimated time for completion or consideration of the request as a regular ICPC request. Such information shall also be transmitted to the sending agency by the sending state Compact Administrator for it to consider other possible alternatives available to it.
If the receiving state Compact Administrator and/or local state agency in the receiving state fail(s) to complete action for the expedited placement request as prescribed in this regulation within the time period allowed, the receiving state shall be deemed to be out of compliance with this regulation and the ICPC. If there appears to be a lack of compliance, the sending state court that sought the provisional placement and expedited placement decision may so inform an appropriate court in the receiving state, provide that court with copies of relevant documentation and court orders entered in the case, and request assistance. Within its jurisdiction and authority, the requested court may render such assistance, including the holding of hearings, taking of evidence, and the making of appropriate orders, for the purpose of obtaining compliance with this regulation and the ICPC.
12. Removal of a child: Following any approval and placement of the child, if the receiving state Compact Administrator determines that the placement no longer meets the individual needs of the child, including the child's safety, permanency, health, well-being, and mental, emotional, and physical development, then the receiving state Compact Administrator may request the sending state Compact Administrator arrange for the immediate return of the child or make alternative placement as provided in Article V (a) of the ICPC. The receiving state request for removal may be withdrawn if the sending state arranges services to resolve the reason for the requested removal and the receiving and sending state Compact Administrators mutually agree to the plan. If no agreement is reached, the sending state shall expedite return of the child to the sending state within five (5) business days unless otherwise agreed in writing between the sending and receiving state Compact Administrators.
13. This regulation as first effective October 1, 1996, and readopted pursuant to Article VII of the Interstate Compact on the Placement of Children by action of the Association of Administrators of the Interstate Compact on the Placement of Children at its annual meeting of April 1999, is amended pursuant to Article VII of the Interstate Compact on the Placement of Children by action of the Association of Administrators of the Interstate Compact on the Placement of Children at its annual meeting of May 1, 2011; the regulation, as amended was approved on May 1, 2011 and is effective as of October 1, 2011.

ICPC Border Agreements

Georgia and Tennessee
Georgia and Alabama
Georgia and Florida
Georgia and South Carolina