This book was prepared for child welfare attorneys handling dependency cases in Georgia's Juvenile Courts. It reflects the Georgia juvenile code effective January 1, 2014, but does not include legislation enacted in the 2014 legislative session.
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Introduction and How to Use this Notebook

Purpose of the Georgia Juvenile Code

§ 15-11-1 The purpose of the Georgia Juvenile Code is to

- secure for each child who comes within the jurisdiction of the juvenile court such care and guidance, preferably in his or her own home, as will secure his or her moral, emotional, mental, and physical welfare as well as the safety of both the child and community.
- promote a juvenile justice system that will
  - protect the community,
  - impose accountability for violations of law,
  - provide treatment and rehabilitation, and
  - equip juvenile offenders with the ability to live responsibly and productively.
- preserve and strengthen family relationships, countenancing the removal of a child from his or her home only when state intervention is essential to protect such child and enable him or her to live in security and stability.
- guarantee due process of law in all proceedings, as required by the Constitutions of the United States and the State of Georgia
- assure fair hearings at which legal rights are recognized and enforced for every child and his or her parent and all other interested parties.
- liberally construe to reflect that the paramount child welfare policy of this state is to determine and ensure the best interests of its children.

Georgia Statutes

- All code sections in the notebook refer to the Official Code of Georgia unless otherwise stated. Georgia code sections are not preceded by O.C.G.A. in the text of this notebook.
- Unless otherwise noted, this notebook is based upon the Georgia Juvenile Code effective January 1, 2014 (sometimes referred to as “the new code” or “the code rewrite”).
- Changes were made to the Georgia Juvenile Code during the 2014 legislative session. Senate Bill 364, the technical corrections bill to the Juvenile Justice Reform Act, passed the legislature on March 20th, 2014 and will be effective upon signature by the Governor. A copy of this bill is included in Chapter 43 of this notebook. The provisions of SB 364 are not incorporated into the text of this notebook unless specifically indicated. SB 364 will become law between the publication of this edition of the notebook (March 31, 2014) and the fall 2014 updated edition.
  - SB 364 includes changes and corrections to the definitions of
    - aggravating circumstances
    - child
    - sibling
  - There are additional corrections or amendments to code sections addressing continuances, dispositions, endorsement required for filing petitions, termination of parental rights, permanent guardian duties following termination, and other sections.
• Updated **DFCS policies** reflecting the provisions of the juvenile code effective January 1, 2014 have not yet been published. Chapter 40 of this notebook includes DFCS policies existing prior to January 1, 2014.

• Updated **Juvenile Court Rules** reflecting the provisions of the juvenile code effective January 1, 2014 have not yet been published. References to the Uniform Rules for the Juvenile Courts of Georgia have been deleted from this edition of the notebook because the existing juvenile court rules reference juvenile code provisions that no longer exist.

• **Judicial orders, published cases, reference materials and other documents** that were created before January 1, 2014 and that mention Georgia’s Juvenile Code refer to juvenile court child abuse and neglect cases as “deprivation” actions. Under the previous juvenile code, children were found by courts to be “deprived.” Where this notebook quotes caselaw and other materials dated before January 1, 2014, the language used in those materials is quoted directly and is not changed to reflect the current juvenile code.

**How to Cite to this Notebook**

**Suggested citations**

• This notebook is a copyrighted work that has been produced for the purpose of improving the practice of dependency law in Georgia. This notebook may be quoted or reproduced in full or in part if
  o proper credit is given to authors, editors and publisher (The Supreme Court of Georgia Committee on Justice for Children).
  o the use of the quoted or reproduced sections does not occur in any publication or format that will be separately copyrighted or sold in any way.

• **Full notebook:**

• **Individual chapter example:**
Acronyms

• The following commonly used acronyms are used throughout this notebook without referring to or spelling out the full name that the acronym stands for.
  o APPLA: another planned permanent living arrangement
  o ASFA: Adoption and Safe Families Act of 1997
  o CAPTA: Child Abuse Prevention and Treatment Act
  o CHINS: Georgia child in need of services
  o CPS: Georgia Child Protective Services (within DFCS)
  o CWLS: Child Welfare Law Specialist
  o DFCS: Georgia Division of Family and Children Services
  o DHS: Georgia Department of Human Services
  o DJJ: Georgia Department of Juvenile Justice
  o GAL: guardian ad litem
  o ICPC: Interstate Compact on the Placement of Children
  o ICWA: Indian Child Welfare Act of 1978
  o IL: independent living
  o ILP: Independent Living Program or independent living plan
  o RE: reasonable efforts
  o SAAG: Georgia Special Assistant Attorney General
  o TPR: termination of parental rights

• Other commonly used acronyms that are generally written out in this notebook:
  o ADR: alternative dispute resolution
  o DP: due process
  o FTM: family team meeting
  o MDT: multi-disciplinary team meeting
  o TLP: transitional living plan
  o WTLP: written transitional living plan
Glossary of Terms Commonly Heard in Juvenile Court Proceedings

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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.

ABANDONMENT, § 15 -11-2(1)
Intent to forgo parental duties or relinquish parental claims evidenced by
• 6 months failure to
  o meaningfully communicate
  o maintain regular visitation
  o leave child with another person without support
  o participate in court-ordered reunification case plan
  o respond to child protective proceeding
• 3 months
  o leaving child without means to identify parent and
  o parent identity cannot be determined despite diligent search
• absence from home for period of time that creates substantial risk of serious harm to the child
• any other conduct indicating intent to forgo or relinquish parental rights

ABUSE, § 15 -11-2 (2)
• Non-accidental physical injury, unexplained physical injury resulting from acts or omissions of person responsible for child’s care
• Emotional abuse: § 15 -11-2(30)
• Sexual abuse or sexual exploitation: § 15 -11-2(69) and (70)
• Prenatal abuse: § 15 -11-2(56)
• Family violence as defined in §19-13-1: includes single act, multiple or continuing acts in child’s presence, child’s sight or child’s hearing

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 dependency, CHINS and TPR proceedings; standard is beyond a reasonable doubt in delinquency proceedings.

ADOPTION AND SAFE FAMILIES ACT OF 1997 (ASFA)
Federal law signed November 09, 1997, which significantly changed federal laws concerning foster care. Among other things, changed states’ obligations regarding reasonable efforts,
encouraged TPR if children have been in agency foster care for 15 out of 22 months, required a “permanency hearing” after a child has been in foster care for 12 out of the last 15 months, calculated time in foster care from earlier of adjudication of dependency or 60 days after child is removed from home.

ADOPTION ASSISTANCE
Monthly per diem paid to foster parents who adopt children from foster care with “special needs.”

AGgravating circumstances, § 15-11-2(5)
The parent has:
- Abandoned an infant
- Attempted, conspired to attempt, or has subjected a child or his or her sibling to death or great bodily harm
- Attempted, conspired to attempt, or has subjected a child or his or her sibling to torture, chronic abuse, sexual abuse, or sexual exploitation or
- Committed the murder or voluntary manslaughter of his or her child’s other parent or has been convicted of aiding or abetting, attempting, or soliciting the murder or voluntary manslaughter of his or her child's other parent

AnOTHER PLaNned permanent living arrangement (APPLA)
A permanency option for children when reunification with family or 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 and compelling reason why it is the most appropriate case plan.

bAbies can’t wait (BCW)
Part of the CAPTA legislation, a federally funded state program that 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 “dependent” to receive a developmental assessment and rehabilitative services as needed.

Best interest of the child, § 15-11-105
The legal standard that the judge must use in deciding disposition, custody, and other matters. What is in the best interest of the child is not always the same as the child’s wishes. It is not a standard of proof. Factors to consider in evaluating best interest are listed below. To advocate for child’s best interest, GAL shall consider, in context of child’s age and developmental needs, these factors:
1. physical safety and welfare, food, shelter, health, and clothing
2. mental and physical health of all individuals involved
3. evidence of domestic violence
4. child’s background and ties, including familial, cultural, and religious
5. child’s sense of attachments
6. least disruptive placement alternative
7. child's wishes and long-term goals
8. community ties, church, school, and friends
9. child's need for permanence, need for stability and continuity of relationships
10. uniqueness of every family and child
11. risks associated with being in substitute care
12. preferences of the persons available to care for the child
13. Any other factors considered by the GAL to be relevant and proper

BIOLOGICAL FATHER, § 15 -11-2 (6)
Male who impregnated the biological mother resulting in birth of a child, Putative father

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 dependency cases, educational plan for special needs children, Court Improvement Projects.

CAREGIVER, § 15 -11-2(8)
Person providing a residence for child or legally obligated to provide or legally obligated to secure adequate care for a child, includes parent, guardian, or legal custodian.

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 dependency proceedings; sometimes referred to as a lay guardian. §§ 15 -11-103, 104, 105, 106.

CASE PLAN, § 15 -11-2(9), §§ 15-11-200 and 201
Document developed in a dependency case by DFCS, in conjunction with parents/guardian/legal custodians and child (when appropriate), 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 dependency and allow the parent to provide a safe and stable home for the child. The initial case plan is due thirty (30) days from the date the child was removed from the home. The case plan is reviewed at each subsequent review.
- Types of Permanency Plans: 1. Reunification, 2. Adoption, 3. Permanent Guardianship, 4. 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:
- 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 and present;
- Standardized trauma screening tool;
3. Summary and recommendation for treatment and determines whether a full psychological or other specialized assessment is indicated (psycho-sexual, educational, neuropsychological).

**CHILD. § 15 -11-2 (10)**
Any individual who is
- Under the age of 18 years
- Under the age of 17 years when alleged to have committed a delinquent act
- Under the age of 22 years and in the care of DFCS
- Under the age of 23 years and eligible for and receiving independent living services through DFCS
- 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 for the purposes of enforcing orders of the court.

**CHINS (Child in Needs of Services), § 15 -11-2(11)**
A child adjudicated to be in need of care, guidance, counseling, structure, supervision, treatment, or rehabilitation and who is adjudicated to be:
- Truant
- Habitually disobedient / ungovernable
- Runaway
- A child who wanders or loiters the streets of city, highway or any public place between midnight and 5:00 A.M.
- A child who disobeys court ordered supervision
- A child who patronizes bar where alcoholic beverages sold or who possesses alcoholic beverages
- A delinquent child who is adjudicated to be in need of supervision but not treatment or rehabilitation
- Formerly UNRULY

**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.

**CLASS A DESIGNATED FELONY ACT, § 15 -11-2(12)**
List of delinquent acts committed by a child 13 years of age or older which, if committed by an adult, would be one or more of the following crimes. . . .

**CLASS B DESIGNATED FELONY ACT, § 15 -11-2(13)**
List of delinquent act committed by a child 13 years of age or older which, if committed by an adult, would be one or more of the following crimes. . . .
COMPLAINT, § 15 -11-2(14)
Initial document setting out the circumstances that resulted in a child being brought before the court.

CONCURRENT PLANNING
Case plan that 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. These cases are often referred to as Family Preservation Services cases, or FSP.

CROSSOVER YOUTH OR DUAL JURISDICTION YOUTH, § 15 -11-12
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.

CUSTODY
The right to a child’s care and control carrying with it the duty of providing food, shelter, medical care, education and discipline.

DBHDD, § 15 -11-2(18)
Department of Behavioral Health and Developmental Disabilities

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 § 15-11-630.
- 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.
- Failing to appear as required by a citation issued with regard to a violation of § 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.
DEPENDENT CHILD, § 15-11-2(22)
A child who

- has been abused or neglected and is in need of the protection of the court.
- has been placed for care or adoption in violation of law.
- is without his or her parent, guardian, or legal custodian.

DEPENDENCY 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 to determine whether the delinquent child shall be held in custody (detained) or released pending adjudication. The hearing must be held promptly and not later than: (1) two business days after child is detained without an arrest warrant; or (2) five business days if child is detained pursuant to an arrest warrant.

DEVELOPMENTAL DISABILITY, § 15-11-2(24)
Same meaning as § 37-1-1 (8), a severe, chronic disability of an individual that

- Is attributable to a significant intellectual disability, or any combination of a significant intellectual disability and physical impairments;
- Is manifested before the individual attains age 22;
- Is likely to continue indefinitely;
- Results in substantial functional limitations in three or more of the following areas of major life activities: self-care; receptive and expressive language; learning; mobility; self-direction; and capacity for independent living; and
- Reflects the person’s need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance which are of lifelong or extended duration and are individually planned and coordinated.

DEVELOPMENTAL LEVEL, § 15-11-2(25)
Child’s ability to understand and communicate; factors to consider: age, maturity, mental capacity, level of education, cultural background and degree of language acquisition.

DFCS (Department of Family and Children Services)
The department of DHS charged with delivering child protective services, family rehabilitation services, and other related services.

DHS
Department of Human Services.
DILIGENT SEARCH, § 15-11-2 (27) and § 15-11-211
A statutorily required search for relatives or others who have shown an ongoing commitment to the child. It must be filed with the court within thirty (30) days of the child being removed from home.

DIRECT CALENDARING, § 15-11-3
A single judge shall hear all successive cases or proceedings involving the same child or family, One Judge – One Family.

DISPOSITION, § 15-11-210, 212, 213
Term used to describe outcome of case or placement of child; e.g. the disposition in a dependency case may be that custody is placed with DFCS and the parent must accomplish the tasks described in the case plan.

DISPOSITION HEARING (DISPOSITIONAL), §§ 15-11-210, 212, 213
Proceeding to determine what placement is best suited to the protection and physical, mental, and moral welfare of a child adjudicated dependent, delinquent, or “child in need of services.” Disposition is held after adjudication. If not held in conjunction with an adjudication hearing, a disposition hearing must be held and completed within thirty (30) days after the conclusion of the adjudicatory hearing.

DJJ (Department of Juvenile Justice)
The state agency charged with providing for the needs of children who are adjudicated delinquent. In the disposition stage of a delinquency, 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-V (The Diagnostic and Statistical Manual of Mental Disorders)
The standard classification of mental disorders used by mental health providers in the US. The current version is the DSM-5 and is the fifth revision. This version of the diagnostic manual was published in May 2013 and contains numerous changes affecting diagnosis criteria for children. DSM-5 no longer uses the multiaxial system for diagnosis that was used in prior version of the DSM. DSM-5 groups diagnoses as either Primary or Additional and uses “V Codes” as part of Additional Diagnoses to further describe the patient.

EMANCIPATION, § 15-11-2(29) and §§15-11-720 to 728
Termination of the rights of a parent to the custody, control, services and earnings of a child. Emancipation does not terminate the legal parent-child relationship.

EMOTIONAL ABUSE, § 15-11-2(30)
Acts or omissions by caretaker of child that cause any mental injury to such child’s intellectual or psychological capacity as evidenced by an observable and significant impairment in such child’s ability to function within a child’s normal range of performance and behavior or that create a substantial risk of impairment, if the impairment or substantial risk of impairment is
diagnosed and confirmed by a licensed mental health professional or physician qualified to render such diagnosis.

**EVALUATION, § 15 -11-2(31)**
A comprehensive, individualized examination of a child by an examiner that may include the administration of one or more assessment instruments, diagnosing the type and extent of a child’s behavioral health disorders and needs, if any, making specific recommendations, and assessing a child’s legal competencies

**EXAMINER, § 15 -11-2(32)**
A licensed psychologist, psychiatrist, or clinical social worker who has expertise in child development specific to severe or chronic disability of children attributable to intellectual impairment or mental illness and has received training in forensic evaluation procedures through formal instruction, professional supervision, or both.

**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)**
Services to prevent removal of the child from the home or to return the child back to the home (formerly ongoing Child Protection Services).

**FAMILY TEAM MEETING (FTM)**
DFCS policy requires a FTM to occur within 3-9 days of the child coming into care. Participants in the FTM discuss the critical issues and circumstances which led to the child’s placement, the needs and strengths of the child and family, relative resources, placement resources, and services needed by the family.

**FICTIVE KIN, § 15 -11-2(33)**
Person who is known to child as a relative, but is not, in fact, related by blood or marriage and with whom such child has resided or had significant contact.

**FOSTER CARE, § 15 -11-2(34)**
Temporary residential care provided to a juvenile pursuant to a court order from a dependency proceeding; can include care by a non-biological foster family, group care, residential care, or institutional care.

**FOSTER CARE PER DIEM**
The amount of money paid to licensed foster parents to care for children in their home.
As of August 2013 the foster care per diem rates in Georgia were as follows:
$15.04 for a child age 0-5
$17.00 for a child age 6-12
$19.36 for a child age 13 and older
80% Foster Care Rates Monthly (for enhanced relative rate and subsidized guardianships):
$ 365.91 for a child age 0-5
$ 413.67 for a child age 6-12
$ 471.15 for a child age 13 and older

**FOSTER PARENT BILL OF RIGHTS, §§49-5-280 and 281**
Georgia law describing the rights of foster parents caring for children who have been adjudicated dependent.

**FOSTERING CONNECTION TO SUCCESS AND INCREASING ADOPTIONS ACT (H.R. 6893)**
Federal bill signed by President Bush on October 7, 2008, that 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.

**GLOBAL ASSESSMENT OF FUNCTIONING SCALE (GAF)**
Mental health clinician’s subjective judgment of an 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 and occupational functioning on a hypothetical continuum with 100 being the highest.

**GUARDIAN AD LITEM (GAL), §§ 15 -11-2(35), 15-11-104, 105 and 106**
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, §§ 15 -11-2(36), 15-11-240 to 244**
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.

**INDIAN CHILD WELFARE ACT (ICWA)**
Federal law 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, TPR, 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**
DFCS training for foster parents and adoptive parents (formerly MAPP training).

**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. It is a 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 Living Plan (WTLP).

**INDIGENT PERSON, § 15-11-2(38)**
A person who, at the time of requesting an attorney, is unable without undue financial hardship to provide for full payment of an attorney and all other necessary expenses for representation, or a child who is a party to a dependency proceeding. To determine indigence in a delinquency proceeding, the court shall follow the standards set forth in Chapter 12 of Title 17.

**IN LOCO PARENTIS**
Latin term meaning “in the place of the parent” that refers to actions of a custodian, guardian, or other person acting in the parent’s stead.

**INTERSTATE COMPACT (ICPC), §§ 39-4-1 to 39-4-10**
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.

**KINSHIP GUARDIANSHIP - Kinship Navigator Program**
A program or service “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 CUSTODIAN, § 15 -11-2(42)**
A person to whom legal custody of a child has been given by order of a court or a public, or private agency or other private organization licensed or otherwise authorized by law to receive and provide care for a child to which legal custody of such child has been given by order of a court.

**LEGAL FATHER, § 15 -11-2(43)**
Male who has not surrendered or had terminated his rights to a child and who:
1. Has legally adopted the child
2. Was married to the biological mother at the time the child was conceived or was born, unless paternity was disproved by a final order of paternity
3. Married the legal mother of the child after the birth and acknowledged the child as his, unless paternity was disproved by a final order
4. Has been determined to be the father of a child by a final paternity order, § 19-7-40 et. seq.
5. Has legitimated the child by a final order, § 19-7-22
6. Has legitimated the child through an administrative legitimation, § 19-7-22.1

LEGAL MOTHER, § 15 -11-2 (44)
Female who is the biological or adoptive mother of a child and who has not surrendered or had her rights terminated.

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 dependency action, may be filed in juvenile court.

LONG TERM FOSTER CARE
Extended residential care provided to a juvenile who has been adjudicated dependent. 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.

MEDIATION, § 15 -11-2(45)
Procedure where a mediator facilitates communication between the parties concerning the matters in dispute and explores possible solutions to promote reconciliation, understanding and settlement.

MEDIATOR, § 15 -11-2(46)
A neutral third party who attempts to focus the attention of the parties upon their needs and interests rather than upon their rights and positions, and who lacks the authority to impose any particular agreement upon the parties or to recommend any particular disposition of the case to the court.

MENTALLY ILL, § 15 -11-2(47)
Having a disorder of thought or mood which significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life.

MEDICAID
Health insurance for low-income children, their parents or other caretaker relatives, and pregnant women.

NEGLECT, § 15 -11-2(48)
A. The failure to provide proper parental care or control, subsistence, education as required by law, or other care or control necessary for a child’s physical, mental, or emotional health or morals;
B. The failure to provide a child with adequate supervision necessary for such child's well-being; or
C. The abandonment of a child by his or her parent, guardian, or legal custodian.

NONREUNIFICATION PLAN, § 15 -11-2(48)
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. A nonreunification plan alleviates DFCS from being responsible for providing reunification services, and provides for a permanent plan for the child that is not placement in the birth family.

NUNC PRO TUNC ORDER
A Latin term meaning “now for then” that refers to an order used by the courts to protect the record. A nunc pro tunc order supplements a prior judgment or order in any matter over which the court originally had jurisdiction.

OTHER PERSONS WHO HAVE DEMONSTRATED AN ONGOING COMMITMENT TO A CHILD, § 15 -11-2(50)
Includes fictive kin and other individuals, including but not limited to neighbors, teachers, scout masters, caregivers or parents of friends of the child and with whom the child has resided or had significant contact.

PARENT, § 15 -11-2(51)
Legal father or legal mother of a child.

PARTY, § 15 -11-2(52)
A legally required participant in a court proceeding who has constitutional and statutory rights and standing to protect or enforce those rights. Under the juvenile code, parties include the state, a child, parent, guardian, legal custodian, or other person subject to any judicial proceeding; except in delinquency proceedings, when only a child and the state are parties.

PARENTIFIED CHILD
A parentified child is one who is inappropriately given the responsibility of meeting the emotional or physical needs of the parents and the other children in the home. The role reversal is common in neglectful homes with the parentified child assuming the caretaking responsibilities for the younger children and the parents. The parentified child usually has to relearn the role of a child.

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 (also referred to as a Parental Fitness Evaluation).

PARENS PATRIAE
A Latin term that comes from English law and means “the father of his country.” It is the legal doctrine under which the Crown assumed the protection of certain minors, orphans and other persons in need of protection. This phrase is used to express the historical benevolent and
rehabilitative philosophy of the juvenile court, and the state’s responsibility to care for those who cannot care for themselves.

“PER DIEM”
The amount of money paid to licensed foster parents to care for children in their home. See Foster Care Per Diem.

**PERIODIC REVIEWS, § 15-11-216**
Mandated judicial reviews of children in foster care. Reviews of children in foster care must take place at least every four months. The first periodic review that is held within seventy-five (75) days following the adjudicatory hearing must be conducted by the court. Subsequent periodic reviews may be conducted by the court or 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. Reviews of children in relative placements must be reviewed by the court every 36 months (cases prior to 2014).

**PERMANENCY PLANNING HEARING, § 15-11-2(53), §§ 15-11-230, 232**
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 planning hearing is required

- no later than thirty (30) days after DFCS has submitted a written report to the court which does not contain a plan for reunification;
- no later than nine (9) months after a child (under age seven at time of filing the petition) enters care;
- no later than twelve (12) months after a child (age seven and older at the time of filing the petition) enters care.

**PERMANENCY PLAN, § 15-11-2(53)**
A specific written plan prepared by DFCS designed to ensure that a child is reunified with his or her family or ensure that the child quickly attains a substitute long-term home when return to the child’s family is not possible or is not in the child’s best interests.

The permanency plan states the 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 permanency plan which states where the child will ultimately reside (i.e. reunification with family, guardianship, another planned permanent living arrangement, adoption).

**PERMANENT PLACEMENT, § 15-11-2(54)**
- Return of the child to the legal custody of parent
- Placement with an adoptive parent with a final adoption order
- Placement with a permanent guardian

**PERSON RESPONSIBLE FOR THE CARE OF A CHILD, § 15-11-2(55)**
- Adult member of a child’s household
- Person exercising supervision over a child for any part of the 24 hour day
• Any adult who, based on his or her relationship to the parent, guardian, legal custodian, or a member of a child’s household, has access to the child

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.

PRENATAL ABUSE, § 15-11-2(56)
Exposure to chronic or severe use of alcohol or the unlawful use of any controlled substance, which results in:
• Symptoms of withdrawal in a newborn or the presence of a controlled substance or a metabolite in a newborn's body, blood, urine, or meconium that is not the result of medical treatment, or
• Medically diagnosed and harmful effects in a newborn's physical appearance or functioning.

POWER OF ATTORNEY FOR THE CARE OF A MINOR CHILD ACT, §§ 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 Services or other agency responsible for such investigations.

PROMOTING SAFE and STABLE FAMILIES (PSSF)
Network of community based family support services; list of services and description of these services can be found at www.pssfnet.com. PSSF is a subpart of Title IV-B of the Social Security Act and provides federal funding to state child welfare agencies and eligible Indian tribes for family support, family preservation, time-limited family reunification, and adoption promotion and support.

PROTECTIVE CUSTODY
Temporary placement for a dependent child who is the subject of dependency 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;
• A facility operated by a licensed child welfare agency; or
• A licensed shelter care facility approved by the court.
These placements were formerly known as SHELTER CARE.
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. For example, 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
The registry established and maintained pursuant to §19-11-9, § 15 -11-2(60).

RELATIVE, § 15 -11-2(62)
Person related to a child by blood, marriage, or adoption, including the spouse of any of those persons even if the marriage was terminated by death or dissolution.

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 family team meeting and the RCA should be completed within 30 days of referral for the RCA to the provider. An RCA includes home evaluation / safety check, CPS history check, criminal background check, DFCS policy overview and benefits for relative caregivers. Placements with relatives may be expedited and immediate pending a full RCA if there is no CPS history. A satisfactory home safety check and a local criminal background check on all household members over 18 years is required.

RELATIVE FOSTER CARE
Residential care provided by a relative to a child who is the subject of dependency proceedings. Prior to January 1, 2014, a relative caregiver for a child in the custody of DFCS was not required to be qualified as a foster parent to receive relative caregiver subsidies.

RELATIVE CARE SUBSIDY (RCS)
ENDED 12-31-2013. A per child, monthly supplement paid by DFCS to a “fit and willing relative” who had received custody of the child following a nonreunification 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. The RCS was either a regular rate of $10.00 per diem or 80% of the foster care per diem for the child’s age. This financial subsidy is no longer offered to relatives who obtain custody of children after 1/1/14.

REASONABLE EFFORTS
Term used to describe the legal (federal and state) requirement placed on DFCS, the court, and 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. The burden to prove that RE have been made is on DFCS. § 15-11-202(f) lays out factors for the court to consider. § 15-11-203 discusses when reasonable efforts are not required.
ROOM, BOARD and WATCHFUL OVERSIGHT (RBWO)
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; rates vary per agency and placement type and fall into the following categories:

- 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)

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.

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 dependency proceedings.

SAFEKEEPING – PROTECTIVE CUSTODY
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). For example, 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.

SAFE PLACE FOR NEWBORNS ACT OF 2002, § 19-10A-1
A state law that describes how and when a new mother can safely give up her baby to the state without suffering criminal or civil penalties. 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.”

SEXUAL ABUSE, § 15 -11-2(69)
Caregiver or other person responsible for the care of a child employing, using, persuading, inducing, enticing, or coercing any child to engage in any act which involves: sexual intercourse, (genital-genital, oral-genital, anal-genital, or oral-anal), same or opposite sex; bestiality, masturbation; lewd exhibition of the genitals or pubic area of any person; flagellation or torture by or upon a person who is nude; being fettered, bound, or otherwise physically restrained on the part of a person who is nude; physical contact in an act of apparent sexual stimulation or
gratification with any person’s clothed or unclothed genitals, pubic area, or buttocks or with a female’s clothed or unclothed breasts; defecation or urination for the purpose of sexual stimulation; penetration of the vagina or rectum by any object except when done as part of a recognized medical procedure by a licensed health care professional.

**SEXUAL EXPLOITATION, § 15-11-2(70)**
Conduct by a caregiver who allows, permits, encourages, or requires a child to engage in: prostitution or sexually explicit conduct for the purpose of producing any visual or print medium depicting such conduct.

**SHELTER CARE / PROTECTIVE CUSTODY**
Temporary placement for a dependent child who is the subject of dependency 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;
- A facility operated by a licensed child welfare agency; or
- A licensed shelter care facility approved by the court.

**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 became ineligible.

**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. See CHINS.

**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) on 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.
“TARGET” CHILD in a family
Refers to one child in a family being singled out from the other children as the focus of physical or emotional abuse. If a “target” child is removed from the home, another child may become targeted in the home. This child is often alienated from the other children and caretakers.

TPR (Termination of Parental Rights)
Legal proceeding resulting in the permanent severance of the parent-child relationship.

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 See “Child in Need of Services” (CHINS).

VISITATION, § 15-11-2(75)
A period of access to a child by a parent, guardian, legal custodian, sibling, other relative, or any other person who has demonstrated an ongoing commitment to a child, in order to maintain parental and familial involvement in a child’s life when the child is not residing with that person.

WRAPAROUND SERVICES
Time limited services provided to a family by a provider under contract with DFCS. The services 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. Services include family / individual counseling, conflict resolution and assistance to the family in locating community resources.

WIC
Special Supplemental Food Program for Women, Infants, and Children, a 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)
Plan developed for children in the custody of DFCS who are fourteen (14) years and older. Plan outlines steps and goals specific to the child and in conjunction with the Independent Living Program (ILP).

YDC (Youth Development Campus)
DJJ facility for housing juveniles who are adjudicated delinquent.
Dependency Case Flowchart

**DFCS**  **Police**  **Schools**  **Parent /Relative**  **Medical Provider**  **Child**  **Other**

**Removal Authorization by Juv. Ct**

- **Complaint / Affidavit filed by next business day & Preliminary Protective Hg (within 72 hours)**

**Petition Filed (w/in 5 days)**

**Dismissal**
- Custody Returned Safety Plan
- Aftercare Services to support reunification

**Adjudicatory Hearing**
- (w/in 10 days of Petition filing)

**Dependency Ruling**
- Disposition – Case Plan & Diligent Search (w/in 30 days of removal)

**Reunification**
- Custody to DFCS

**Concurrent Case Plan**
- Reunification Efforts required

**Non-Reunification (NR) Hearing (within 30 days)**
- NR Granted reunification efforts NOT required

**Termination of Parental Rights - TPR**
- Initial 75 Day In-Court Review then w/in 4 months Additional Periodic Review (Judicial Panel or in court)

- **Permanency Plan Hearing at 9 months or 12 months from removal, then at least every 6 months thereafter**

**Post TPR Review**
- (every 6 months till adoption)

**Dependency Order continues until purpose of order accomplished**
- Reunification
- Adoption
- Permanent Guardianship
- Another Planned Permanent Living Arrangement (APPLA)
- Other Permanent Plan Approved by Court

**30 Day From Removal**
- Case Plan & Diligent Search Due
  - CCFA Due, Trauma Assessment, MH or Developmental Screen, Independent Living Plan & Written Transitional Living Plan
  - Multi-Disciplinary Team Meeting-MDT
  - Notice to child’s adult relatives about removal, how to become a placement, financial & service assistance available

**DFCS referral to Comprehensive Child & Family Assessment (CCFA)**

**DFCS – Family Team Meeting (FTM)**
- w/in 10 days of removal

**DFCS schedules physical dental screens for child w/in 10 days of removal, BCW referral**

**Custody Returned to parent Protective Order?**

**Custody to Relative or 3rd**
# Timelines for a Dependency Case

<table>
<thead>
<tr>
<th>Event</th>
<th>Timing</th>
<th>Time Waiveable?</th>
<th>O.C.G.A.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Removal Authorization / Date Entered Foster Care</td>
<td>immediate at time of removal</td>
<td>NO (IV-E required)</td>
<td>§15-11-132</td>
</tr>
<tr>
<td>Removal by law enforcement</td>
<td>Immediate notice to juvenile court</td>
<td>§15-11-133(a)(2)</td>
<td>§15-11-133(a)(2)</td>
</tr>
<tr>
<td>Sworn complaint or affidavit supporting removal</td>
<td>At least by next business after removal</td>
<td>§15-11-132(b)</td>
<td>§15-11-132(b)</td>
</tr>
<tr>
<td>Preliminary Protective Hg w/ child removed</td>
<td>72 Hours of removal – if weekend then next business day</td>
<td>NO</td>
<td>§15-11-102(a) &amp; §15-11-145(a)</td>
</tr>
<tr>
<td>Preliminary Protective Hg w/OUT child removed</td>
<td>No reference in current but some juvenile courts might schedule</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reasonable Efforts</td>
<td>At every Hearing</td>
<td>NO</td>
<td>§15-11-202</td>
</tr>
<tr>
<td>Contrary to the Welfare</td>
<td>At Preliminary Protective Hearing &amp; every other setting</td>
<td>YES, if all parties present &amp; waive</td>
<td>§15-11-134</td>
</tr>
<tr>
<td>Continued Preliminary Protective Hearing</td>
<td>Every 72 Hours from removal –</td>
<td>§15-11-110</td>
<td>§15-11-110</td>
</tr>
<tr>
<td>Petition Filing w/ child removed</td>
<td>Within 5 days of Preliminary Protective Hearing</td>
<td>Maybe w/ good cause §15-11-151</td>
<td>§15-11-102(c) &amp; §15-11-151(a)</td>
</tr>
<tr>
<td>Petition Filing w/OUT child removed or child was returned at the PPH</td>
<td>Within 30 days of Preliminary Protective Hearing</td>
<td>Maybe w/ good cause §15-11-151</td>
<td>§15-11-102(b) &amp; §15-11-151(b)</td>
</tr>
<tr>
<td>Amending the dependency petition</td>
<td>Anytime to cure defects of form &amp; prior to adjudication (may require additional service)</td>
<td>§15-11-153</td>
<td>§15-11-153</td>
</tr>
<tr>
<td>Adjudication Hg W/ Ch Removal</td>
<td>Within 10 days of Petition Filing</td>
<td>§15-11-181(a)</td>
<td>§15-11-181(a)</td>
</tr>
<tr>
<td>Adjudication Hg w/OUT child removed</td>
<td>Within 60 days of Petition Filing</td>
<td>§15-11-181(a)</td>
<td>§15-11-181(a)</td>
</tr>
<tr>
<td>Continued Adjudication Hearing w/ child removal</td>
<td>Within 60 days of removal or dismissed without prejudice</td>
<td>§15-11-181(a)</td>
<td>§15-11-181(a)</td>
</tr>
</tbody>
</table>
| service of summons timing requirements for dependency action | • Personal service at least 72 hours before adjudication  
   • Registered, certified mail at least 5 days before adjudication  
   • Publication, 4 times in 4 weeks, hearing may be held no earlier than 5 days from the last published notice | §15-11-161      | §15-11-161      |
| Disposition Hearing w/ child removed       | Within 30 days of completion of Dependency Hearing |                   | §15-11-102(c) & §15-11-210 |
| Disposition Hearing w/OUT child removed    | Within 30 days of completion of Dependency Hearing |                   | 15-11-102(b) & §15-11-210 |
| CCFA – Comprehensive Child & Family Assessment | Referral made within in 24 hours of Preliminary Protective hearing | DFCS Policy      | DFCS Policy     |
| FTM - Family Team Meeting                  | Within 3-9 days after a child enters FC    | DFCS Policy      | DFCS Policy     |
| Physical Health Screen                     | Within 10 days of a child’s entry into FC  | DFCS Policy      | DFCS Policy     |
| Dental Health Screen                       | Within 10 days of a child’s entry into FC  | DFCS Policy      | DFCS Policy     |
| Multidisciplinary Meeting (MDT)            | Within 25 days of a child’s entry into FC  | DFCS Policy      | DFCS Policy     |
| Case Plan                                  | Within 30 days of a child’s removal         | NO              | §15-11-102(c) & §15-11-200(a) |
| Initial Periodic Review – In Court         | Within 75 days of child’s removal           | §15-11-102(d) & §15-11-216 |
| Additional Periodic Review – Judicial Citizen Panel or Court | Within 4 months of the Initial 75 Day Periodic Review – approximately 195 days from removal – and at any time chosen sua sponte by the Court | §15-11-102(c), §15-11-212(d) & §15-11-216 & 217 | §15-11-102(c), §15-11-212(d) & §15-11-216 & 217 |
## Timelines for a Dependency Case

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<tr>
<td>Permanency Plan Hearing</td>
<td>1. within 30 days of DFCS submitting plan with no reunification services 2. within 9 months of removal if child under 7 years at time of petition filed 3. within 12 month of removal if child 7 years or older at time petition is filed</td>
<td></td>
<td>§15-11-102(e) &amp; §15-11-230</td>
</tr>
<tr>
<td>Permanency Plan Hearing</td>
<td>Every six month or sooner if the court directs</td>
<td></td>
<td>§15-11-102(e) &amp; §15-11-230</td>
</tr>
<tr>
<td>DFCS permanency planning report filed with the court</td>
<td>At least 5 days prior to the permanency plan hearing</td>
<td></td>
<td>§15-11-231</td>
</tr>
<tr>
<td>Supplemental Order Adopting Permanency Plan</td>
<td>Within 30 days if court determines reunification services are no longer required</td>
<td></td>
<td>§15-11-102(f)</td>
</tr>
<tr>
<td>Non-Reunification Hearing</td>
<td>within 30 days of report by DFCS that reunification plan is not appropriate</td>
<td>NO</td>
<td>§15-11-204</td>
</tr>
<tr>
<td>WTLP - Written Transitional Living Plan</td>
<td>at Case Plan if child over 14 years</td>
<td>NO</td>
<td>§15-11-201(b)(17)</td>
</tr>
<tr>
<td>Transition Plan for youth turning 18 years old or exiting foster care</td>
<td>Within 90 days child turns 18 years or within 90 days of planned exit from foster care if child remained in foster care after 18 years old</td>
<td>NO</td>
<td>§15-11-201(b)(16)</td>
</tr>
<tr>
<td>CCFA due, CCFA used during MDT &amp; case plan development</td>
<td>Within 30 days of a child’s entry into FC</td>
<td></td>
<td>DFCS Policy</td>
</tr>
<tr>
<td>Trauma Assessment – Mental Health Screen for Child 4 yrs. &amp; older</td>
<td>Discretionary and determined based on child’s needs, GAL or child attorney may also request as part of case plan</td>
<td></td>
<td>Discretionary with DFCS or part of case plan</td>
</tr>
<tr>
<td>Babies Can’t Wait Referral for child 4 years &amp; under A Developmental Assessment for purposes of a Babies Can’t Wait referral may be required</td>
<td>BCW referral immediately.</td>
<td></td>
<td>DFCS Policy</td>
</tr>
<tr>
<td>Diligent Search</td>
<td>• Initiated at outset of case &amp; continuing throughout case  • within 30 Days from Removal  • must be completed before final disposition</td>
<td>NO</td>
<td>§15-11-211</td>
</tr>
<tr>
<td>Notice by DFCS to child’s adult relatives about the child’s removal, how to become a placement resource, financial &amp; service assistance available if a placement resource</td>
<td>• within 30 Days from Removal  • Must be documented in writing &amp; filed with the court</td>
<td>NO</td>
<td>§15-11-211(d &amp; e)</td>
</tr>
<tr>
<td>Notice to Foster Parents</td>
<td>72 hours advance written notice for all hearings except the PPH</td>
<td>NO</td>
<td>§15-11-109</td>
</tr>
<tr>
<td>Termination of Parental Rights – TPR Filing</td>
<td>• Child has been in foster care 15 out of 22 months  • Court has determined parents subjected child to “aggravating circumstances”  • Parent has been convicted of certain crimes listed at §15-11-233(a)(3)</td>
<td>NO</td>
<td>§15-11-233(a)</td>
</tr>
<tr>
<td>Termination of Parental Rights – TPR Hearing &amp; Order</td>
<td>If no “just cause” TPR hearing must be held within 90 days of TPR Petition filing &amp; TPR Order must be signed within 30 days of close of evidence</td>
<td>YES, If Court makes findings on record of “just cause exception”</td>
<td>§15-11-301</td>
</tr>
</tbody>
</table>
## Timelines for a Dependency Case

<table>
<thead>
<tr>
<th>Event</th>
<th>Timing</th>
<th>Event</th>
<th>Timing</th>
</tr>
</thead>
<tbody>
<tr>
<td>TPR Reviews</td>
<td>at least every 6 months, court may schedule more frequent</td>
<td>NO</td>
<td>§15-11-322</td>
</tr>
<tr>
<td>Reinstatement of Parental Rights following TPR - Petition filing</td>
<td>• If no adoption after 3 years &amp; statutory requirements are met &lt;br&gt; • Exception to 3 year limit if DFCS or licensed agency stipulate “child is no longer likely to be adopted”</td>
<td>YES, if exception established</td>
<td>§15-11-323</td>
</tr>
<tr>
<td>Petition to Modify</td>
<td>Anytime upon filing of a petition &amp; statutory grounds</td>
<td></td>
<td>§15-11-32</td>
</tr>
<tr>
<td>Protective Order</td>
<td>Anytime upon application of a party or the court’s own motion</td>
<td></td>
<td>§15-11-29</td>
</tr>
<tr>
<td>Permanent Guardianship</td>
<td>Anytime following judicial finding that reunification services would be detrimental or living parent consents</td>
<td></td>
<td>§15-11-240</td>
</tr>
<tr>
<td>Probate Court Transfer</td>
<td>Juvenile Court shall hold hearing within 30 days of receipt of case from probate court</td>
<td></td>
<td>§15-11-14</td>
</tr>
<tr>
<td>Mediation referral</td>
<td>Anytime during a proceedings</td>
<td></td>
<td>§15-11-20</td>
</tr>
<tr>
<td>Mediation Process</td>
<td>Should be scheduled as soon as practicable &amp; within 30 days of mediation referral</td>
<td></td>
<td>§15-11-23</td>
</tr>
<tr>
<td>Legitimation</td>
<td>• Anytime during the pendency of a dependency proceeding &lt;br&gt; • if TPR filed then w/in 30 of service of TPR</td>
<td></td>
<td>§15-11-11 &amp; §15-11-283</td>
</tr>
<tr>
<td>Visitation – Parent</td>
<td>DFCS policy within 1st week &amp; bi monthly &amp; case plan provisions</td>
<td></td>
<td>§15-11-112</td>
</tr>
<tr>
<td>Visitation – Sibling</td>
<td>Case plan provisions to consider sibling visitation when siblings not placed together</td>
<td></td>
<td>§15-11-135(e) &amp; §15-11-201(b)(7)</td>
</tr>
<tr>
<td>Visitation reviewed &amp; possible modification of visitation terms – determine progress on case plan</td>
<td>Within 30 days of court finding “lack of substantial progress towards completion of case plan”</td>
<td></td>
<td>15-11-112(c)</td>
</tr>
<tr>
<td>Placement with Siblings</td>
<td>Case plan provisions to ensure reasonable efforts to place siblings together &amp; exceptions</td>
<td></td>
<td>§15-11-201(b)(11)</td>
</tr>
<tr>
<td>Educational Stability</td>
<td>Case plan provisions to promote educational stability for foster children</td>
<td></td>
<td>§15-11-201(b)(12)</td>
</tr>
<tr>
<td>Change of Placement Notification</td>
<td>• not less than 5 days in advance of proposed placement change, except if emergency &lt;br&gt; • if emergency then notice within 24 hours &lt;br&gt; • hearing to be held within 5 days of notice</td>
<td></td>
<td>§15-11-215</td>
</tr>
<tr>
<td>IEP - Individualized Educational Plan</td>
<td>Ongoing depending on the need of the child</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Emancipation</td>
<td>• petition may be filed at 16 years with statutory grounds or &lt;br&gt; • by operation of law – 18 years, marries or active duty military or emancipation order</td>
<td></td>
<td>§15-11-720</td>
</tr>
<tr>
<td>Parental Notification Act</td>
<td>• hearing within 3 days of petition filings &lt;br&gt; • court order with 24 hours</td>
<td></td>
<td>§15-11-684</td>
</tr>
</tbody>
</table>
### Timelines for a Dependency Case

<table>
<thead>
<tr>
<th>Event</th>
<th>Timing</th>
<th>Event</th>
<th>Timing</th>
</tr>
</thead>
<tbody>
<tr>
<td>DFCS emergency care &amp; supervision without court order as a result of caretaker emergency</td>
<td>Cannot exceed 7 days, then DFCS must begin dependency process</td>
<td>§15-11-130</td>
<td></td>
</tr>
<tr>
<td>Physician exercising emergency protective custody</td>
<td>• Physician to notify DFCS as soon as possible</td>
<td>§15-11-131</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Not later than 24 hours, physician to contact juvenile court, or law enforcement</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Within 6 hours of notice to DFCS, then DFCS take physical custody</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Discovery &amp; Reciprocal Discovery Responses</td>
<td>• Request shall be complied with</td>
<td>§15-11-170(d)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Promptly</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Not later than 5 days after request is received or</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• 72 hours prior to any hearing</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Immigration Issues</td>
<td>ongoing, must complete before 18th birthday, in ILP &amp; WTLP, youth must achieve SIJS before 18 years old to receive continued ILP services</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Internet Resources:

- [www.childwelfare.net](http://www.childwelfare.net)
- [www.gaccchildlaw.org](http://www.gaccchildlaw.org)
- [http://w2.georgiacourts.org/cj4c/](http://w2.georgiacourts.org/cj4c/) check for webcasts of Georgia Child Welfare Legal Academy & Appellate Case Summaries
# Chapter 1 Preliminary Protective Hearing (PPH)

*Contribution by Mary Hermann, JD, CWLS*

<table>
<thead>
<tr>
<th>Authority</th>
<th>§ 15-11-102</th>
<th>Timing of PPH</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 15-11-113</td>
<td>Establish date child entered foster care</td>
<td></td>
</tr>
<tr>
<td>§ 15-11-132</td>
<td>Order of Removal</td>
<td></td>
</tr>
<tr>
<td>§ 15-11-133</td>
<td>Removal authorization and who may remove</td>
<td></td>
</tr>
<tr>
<td>§ 15-11-134</td>
<td>Order of Removal and Contrary to welfare</td>
<td></td>
</tr>
<tr>
<td>§ 15-11-135</td>
<td>Foster care authorized and siblings together</td>
<td></td>
</tr>
<tr>
<td>§ 15-11-145, 146</td>
<td>PPH timing, elements, participant</td>
<td></td>
</tr>
</tbody>
</table>

## Authority

<table>
<thead>
<tr>
<th>Purpose</th>
</tr>
</thead>
<tbody>
<tr>
<td>Court determines:</td>
</tr>
<tr>
<td>§ 15-11-102</td>
</tr>
<tr>
<td>Promptly and no later than 72 hours after the child placed in foster care (removal).</td>
</tr>
<tr>
<td>If not held within 72 hours then remedy is to start over with new safekeeping; dismissal without prejudice.</td>
</tr>
<tr>
<td>§ 15-11-113</td>
</tr>
<tr>
<td>Order of Removal, §15-11-132</td>
</tr>
<tr>
<td>Order directing the child be taken into custody may be issued orally or electronically or telephonically.</td>
</tr>
<tr>
<td>Written order shall include court’s findings of fact supporting the necessity for removal and designate child’s legal custodian.</td>
</tr>
<tr>
<td>§ 15-11-134</td>
</tr>
<tr>
<td>Order of Removal and Contrary to welfare</td>
</tr>
<tr>
<td>§ 15-11-135</td>
</tr>
<tr>
<td>Foster care authorized and siblings together</td>
</tr>
<tr>
<td>§ 15-11-145, 146</td>
</tr>
<tr>
<td>PPH timing, elements, participant</td>
</tr>
</tbody>
</table>

## Pleading

### Order of Removal

- **Complaint, §15-11-2(14)**
  - Initial document setting out the circumstances that resulted in a child being brought before the court
  - Police report may be attached
  - Authorization for protective custody / safekeeping, date and time of removal, may be in complaint or in a separate document
  - Important because the date and time of removal begins timelines for the case
- **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
<table>
<thead>
<tr>
<th><strong>Removal of Child Authorized</strong></th>
<th><strong>§15-11-133</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• Juvenile court order of removal</td>
</tr>
<tr>
<td></td>
<td>o Law enforcement if child in imminent danger of abuse or neglect</td>
</tr>
<tr>
<td></td>
<td>o Immediately deliver child to medical facility and contact juvenile court</td>
</tr>
<tr>
<td></td>
<td>o Give notice to legal guardians that child removed</td>
</tr>
<tr>
<td></td>
<td>o Promptly contact juvenile court intake and DFCS</td>
</tr>
<tr>
<td></td>
<td>• Juvenile court intake officer determination if child should be released, remain in protective custody, or brought before the court</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Jurisdiction</strong></th>
<th><strong>§ 15-11-10(1)(C)</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• Child under 18 years alleged to be a dependent in the state</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Venue</strong></th>
<th><strong>§ 15-11-125</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• A proceeding may be commenced</td>
</tr>
<tr>
<td></td>
<td>o in the county where child legally resides <strong>or</strong></td>
</tr>
<tr>
<td></td>
<td>o in the county of child’s presence at commencement of action if the child is present without a custodian or the acts underlying the dependency occurred in that county.</td>
</tr>
<tr>
<td></td>
<td>• Transfer of Venue</td>
</tr>
<tr>
<td></td>
<td>o Venue may be transferred to child’s county of legal residence for the convenience of parties.</td>
</tr>
<tr>
<td></td>
<td>o 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.</td>
</tr>
<tr>
<td></td>
<td><strong>15-11-105(h)</strong></td>
</tr>
<tr>
<td></td>
<td>• if change of venue then GAL shall forward pertinent information to next GAL appointed</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Standard of Proof</strong></th>
<th><strong>§ 15-11-146(a)</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• Probable cause to believe child is dependent</td>
</tr>
<tr>
<td></td>
<td>• Reasonable grounds exist to believe that the allegations in the complaint are true</td>
</tr>
<tr>
<td></td>
<td>• Hearsay evidence allowed</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Parties and Right to Be Present, Heard and Present Evidence</strong></th>
<th><strong>§ 15-11-2(51), (52)</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• <strong>Party</strong> is defined at §15-11-2 (52) as state, a child, parent, guardian, legal custodian, or other person subject to any judicial proceeding except in delinquency then only a child and the state shall be a party</td>
</tr>
<tr>
<td></td>
<td>• <strong>Parent</strong> is defined at §15-11-2 (51) as legal father or legal mother of a child.</td>
</tr>
<tr>
<td></td>
<td>• Biological/Putative father issue</td>
</tr>
<tr>
<td></td>
<td>• Does the putative father to legitimize before he has right to participate or have an attorney appointed?</td>
</tr>
</tbody>
</table>
| § 15-11-19 | • Party has right to be present, heard, present evidence, cross examine witnesses, examine pertinent court files and records, and appeal orders of the court.  
• “Party” includes child, except court may exclude child if not in the child’s best interest to be present.  
Party shall be advised of these rights at that person’s first appearance. |
| Notice to Parties §15-11-132(d) | • DFCS shall promptly notify parent, guardian or legal custodian of the allegations on which removal was based, and the time and place for the preliminary protective hearing  
• “Reasonable notice” may be by phone, note on door, oral notice |
| §15-11-145 | • Requires notice to child, parent, guardian, legal custodian  
• If no notice is given and parent, guardian, legal custodian does not appear at hearing or waive appearance, he or she can file affidavit stating those facts and have a rehearing of the PPH. |
| Right to Participate in Preliminary Protective Hearing § 15-11-145(d) | • The following have the right to participate in the PPH:  
  o child’s parent, guardian or legal custodian  
  o child’s attorney  
  o GAL, child (unless court determines not in child’s best interest)  
  o attorney for parents  
  o assigned DFCS caseworker  
  o attorney for DFCS (SAAG)  
• Alleged dependent child may be excluded from hearing if court hears evidence and finds child’s presence will be harmful to child and not in child’s best interest. |
| Others May Participate § 15-11-145(e) | • If in child’s best interest then others may attend PPH: relatives, others with ongoing commitment to child, DFCS employees, advocate requested by legal custodians and others with knowledge or an interest in child’s welfare. |
| Beginning of Preliminary Protective Hearing § 15-11-145(e) | • Court shall inform parties of contents and nature of complaint in understandable terms, due process rights, right to court appointed attorney. |
| Right to Attorney Timing of Appointment § 15-11-103 Child and Party | • All parties, including the child, have a right to counsel at all stages of the proceedings.  
• Party defined at § 15-11-2 (52) as state, a child, parent, guardian, legal custodian, or other person subject to any judicial proceeding, except in delinquency proceedings; then only a child and the state are parties. |
- Parent defined at § 15-11-2 (51) as legal father or legal mother of a child.
- Child Attorney should be appointed “as soon as practicable to ensure adequate representation” and before the first hearing that may substantially affect the interests of the child.
  - Child attorney has “attorney-client” duty.
  - Child attorney representation continues through appeals or until excused by court.
  - Child’s right to attorney cannot be waived.
- Party should be advised of right to counsel prior to any hearing:
  - Party has right to obtain or employ attorney
  - If indigent, right to appointed counsel
  - Can waive right to attorney
- 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 (2009)).
- Putative Father issue – is he a “party”? 
- Inquiry about incarcerated parents; transport to hearings?

<table>
<thead>
<tr>
<th>Right to GAL and GAL Best Interest Advocacy Considerations</th>
<th>§ 15-11-104</th>
</tr>
</thead>
<tbody>
<tr>
<td>- GAL shall be appointed</td>
<td>- May be child’s attorney unless or until a conflict of interest between the attorney’s duty to the child and the attorney’s “considered opinion” of the child’s best interest as a GAL</td>
</tr>
<tr>
<td>- CASA may serve as GAL</td>
<td>- CASA appointment § 15-11-106</td>
</tr>
<tr>
<td>§ 15-11-105</td>
<td>- Procedure for removal of GAL for cause § 15-11-104 (h)</td>
</tr>
</tbody>
</table>

To advocate for the child’s best interest, GAL shall consider factors such as the following, in the context of child’s age and developmental needs:
- Physical safety and welfare, food, shelter, health, clothing
- Mental and physical health of all individuals involved
- Evidence of domestic violence
- Child’s background and ties, including familial, cultural, religious
- Child’s sense of attachments
- Least disruptive placement alternative
- Child's wishes and long-term goals
- Community ties, church, school, friends
- Child's need for permanence, stability, and continuity of relationships
- Uniqueness of every family and child
<table>
<thead>
<tr>
<th>Minimum Duties of GAL</th>
<th>§ 15-11-105(c)</th>
</tr>
</thead>
<tbody>
<tr>
<td>o Risks associated with being in substitute care</td>
<td></td>
</tr>
<tr>
<td>o Preferences of the persons available to care for the child</td>
<td></td>
</tr>
<tr>
<td>o Any other factors considered by the GAL to be relevant and proper</td>
<td></td>
</tr>
</tbody>
</table>

Minimum duties of GAL, unless child’s circumstances make these unreasonable (must be performed in a developmentally appropriate manner):

- Maintain regular and sufficient in-person contact with the child, in a manner appropriate to his or her developmental level
- Meet with and interview child prior to all hearings and reviews
- Determine child’s needs, circumstances and views
- Make independent factual determination of the case
- Consult with child’s attorney
- Communicate with health, mental health, and other professionals
- Review case study and educational, medical, psychological, and other relevant reports
- Review all court-related documents
- Attend all court hearings and other proceedings to advocate for the child's best interests
- Advocate for timely court hearings to obtain permanency for the child
- Protect the cultural needs of the child
- Contact the child prior to any proposed placement changes
- Contact the child after placement changes
- Request a judicial citizen review panel or judicial review of the case
- Attend citizen panel review hearings, and if unable to attend, send panel a letter stating the child’s status since the last citizen panel review and an assessment of the DFCS permanency and treatment plans
- Provide written reports to the court and the parties on the child's best interests, including recommendations regarding placement, updates on child's adjustment to placement, DFCS's and respondent's compliance with prior court orders and treatment plans, child's participation during visits, and any other recommendations based on the best interests of the child
- When appropriate, encourage settlement and the use of alternative forms of dispute resolution and participate in such processes to the extent permitted
- Monitor compliance with the case plan and all court orders.

GAL Participation and Access to § 15-11-105 (d), (e)

- GAL shall receive all notices of hearings, reviews, panels, case plan formulation meetings, and shall be served pleadings in the same manner as a party.
### Records

**GAL Confidentiality Required**

- GAL shall have access to all records and information relevant to the child’s case except
  - § 19-7-5, Child Abuse Reporting Statute
  - § 49-4A, Juvenile Justice authorizing statute
  - Article 11, Office of the Child Advocate for the Protection of Children authorizing statute

#### § 15-11-105 (f), (g)

- All information acquired by GAL is confidential except as directed by court:
  - Misdemeanor if violated
  - Maintain confidential records require by § 37-3-166, Hospitalization and Treatment of Alcoholics and Drug Dependent Individual, clinical records; when release permitted; scope of privileged communications; liability for disclosure; notice to sheriff of discharge
  - § 37-4-125 – Services for Developmentally Disabled, clinical records, release, privilege

### Contrary to the Welfare finding required

#### § 15-11-134

- Order authorizing removal of a child or continuing out-of-home placement shall contain individualized, written findings of fact stating that
  - child’s continuation in home would be contrary to the child’s welfare or
  - return of the child would be contrary to the child’s welfare.

### RE for Sibling Joint Placement or Frequent Visitation

#### § 15-11-135(e)

- Siblings shall be placed together unless DFCS provides written explanation of why co-placement is not appropriate.
- If siblings are not placed together, DFCS must provide frequent sibling visits or ongoing interactions, or must document why contact would be contrary to the safety or well-being of the siblings.

#### § 15-11-201(b)(11)

- If siblings are removed, case plan must include statement that RE have been made and are required to be made while siblings are in care
  - to place siblings in the same placement unless DFCS documents that joint placement would be contrary to the safety or well-being of any of the siblings, and
  - to maintain frequent visitation or other ongoing interaction between siblings not placed together, unless DFCS documents that such frequent visitation or other ongoing interaction would be contrary to the safety or well-being of any of the siblings.

### Educational Stability Assurance

#### § 15-11-201(b)(12) Educational Stability

- Statement required in case plan ensuring the educational stability of the dependent child while in foster care, including an assurance
<table>
<thead>
<tr>
<th>Required Statement Required in Case Plan</th>
</tr>
</thead>
<tbody>
<tr>
<td>that</td>
</tr>
<tr>
<td>o the placement of dependent child in foster care considers the appropriateness of the current educational setting and the proximity to the school in which the child was enrolled at the time of placement,</td>
</tr>
<tr>
<td>o the state agency has coordinated with appropriate local educational agencies to ensure that the dependent child remains in the school in which the child was enrolled at the time of placement, or</td>
</tr>
<tr>
<td>o if remaining in the home school is not in the best interests of the dependent child, 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 dependent child provided to the new school.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Decisions at Preliminary Protective Hearing</th>
</tr>
</thead>
<tbody>
<tr>
<td>• NO probable cause &amp; NO protection needed (\rightarrow) dismiss complaint &amp; return child</td>
</tr>
<tr>
<td>• YES probable cause &amp; NO protection needed (\rightarrow) petition issue &amp; return child pending adjudication</td>
</tr>
<tr>
<td>• YES probable cause, YES protection needed (\rightarrow) petition issue, custody to DFCS</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Preliminary Protective Hearing Court Findings Required to Remove</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 15-11-146 (c), (d), (e), (f)</td>
</tr>
<tr>
<td>• Child and case specific written finding of fact supporting:</td>
</tr>
<tr>
<td>o Continuation in the home would be contrary to the child’s welfare</td>
</tr>
<tr>
<td>o Removal is in the child’s best interest</td>
</tr>
<tr>
<td>o RE</td>
</tr>
<tr>
<td>▪ Prevent or eliminate removal</td>
</tr>
<tr>
<td>▪ Make return to home possible</td>
</tr>
<tr>
<td>▪ If RE were not provided but court finds RE would not prevent removal then court may find DFCS used RE</td>
</tr>
<tr>
<td>o DFCS to present evidence outlining RE</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>RE Required at Each Stage</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 15-11-202(a)</td>
</tr>
<tr>
<td>• Except where § 15-11-203 applies, RE shall be made to preserve or reunify families</td>
</tr>
<tr>
<td>o to prevent removal, prior to placement, or</td>
</tr>
<tr>
<td>o to eliminate the need for removal and reunify.</td>
</tr>
<tr>
<td>§ 15-11-202(b)</td>
</tr>
<tr>
<td>• Type of RE based on child’s health and safety, which is of “paramount concern.”</td>
</tr>
<tr>
<td>§ 15-11-202(c)</td>
</tr>
<tr>
<td>• Appropriate services may be provided by DFCS or in the community.</td>
</tr>
<tr>
<td>§ 15-11-202(d)</td>
</tr>
<tr>
<td>❖ The court shall review the appropriateness of DFCS’s RE at each</td>
</tr>
</tbody>
</table>
stage of the dependency proceedings.

<table>
<thead>
<tr>
<th>DFCS has burden of showing Reasonable Efforts</th>
</tr>
</thead>
<tbody>
<tr>
<td>§15-11-202(e)(1)</td>
</tr>
<tr>
<td>• DFCS has the burden of demonstrating that</td>
</tr>
<tr>
<td>o DFCS has made RE to prevent placement</td>
</tr>
<tr>
<td>o There are no appropriate services or efforts which could allow the child to safely remain in the home given the family’s particular circumstances so the absence of RE was justifiable</td>
</tr>
<tr>
<td>o RE to prevent placement and to reunify are not required because of the existence of one or more of the circumstances listed in O.C.G.A. §15-11-203 (aggravating circumstances)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>RE Considerations by Court</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 15-11-202(f), (g), (h)</td>
</tr>
<tr>
<td>• Court considerations in RE determination: whether services to the child and family were</td>
</tr>
<tr>
<td>o relevant to the safety and protection child.</td>
</tr>
<tr>
<td>o adequate to meet the needs child and family.</td>
</tr>
<tr>
<td>o culturally and linguistically appropriate.</td>
</tr>
<tr>
<td>o available and accessible.</td>
</tr>
<tr>
<td>o consistent and timely.</td>
</tr>
<tr>
<td>o realistic under the circumstances.</td>
</tr>
<tr>
<td>• If no RE found by court, child may still be adjudicated dependent and removed.</td>
</tr>
<tr>
<td>• Court may determine no RE justified because of an immediate threat of harm to child.</td>
</tr>
</tbody>
</table>

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<thead>
<tr>
<th>Concurrent RE Authorized</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 15-11-202(i)</td>
</tr>
<tr>
<td>• Concurrent RE authorized — reunification and other permanent placement</td>
</tr>
</tbody>
</table>

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<thead>
<tr>
<th>RE in Every Order</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 15-11-202(j)</td>
</tr>
<tr>
<td>• Order placing or continuing DFCS custody of child shall contain written findings of facts stating</td>
</tr>
<tr>
<td>o child’s continuation in or return home would be contrary to the child’s welfare.</td>
</tr>
<tr>
<td>o whether RE determination have been made to prevent or eliminate the need for out-of-home placement, unless court determines RE are not required or that RE may cease.</td>
</tr>
<tr>
<td>o whether RE should continue to be made to prevent or eliminate the need for placement.</td>
</tr>
</tbody>
</table>
### When RE Not Required

<table>
<thead>
<tr>
<th>Permanency Plan Hearing Required within 30 days</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 15-11-203</td>
</tr>
<tr>
<td>- Court may direct that RE to eliminate the need for placement <strong>shall not be required or shall cease</strong> if the court determines and makes written findings of fact that a parent</td>
</tr>
<tr>
<td>o has subjected this child to aggravated circumstances, § 15-11-2(5).</td>
</tr>
<tr>
<td>o has been convicted of the murder of another child of the parent.</td>
</tr>
<tr>
<td>o has been convicted of the voluntary manslaughter of another child of the parent.</td>
</tr>
<tr>
<td>o has been convicted of aiding or abetting, attempting, conspiring, or soliciting to commit murder or voluntary manslaughter of another child of the parent.</td>
</tr>
<tr>
<td>o has been convicted of committing a felony assault that results in serious bodily injury to the child or another child of the parent.</td>
</tr>
<tr>
<td>o has been convicted of rape, sodomy, aggravated sodomy, child molestation, aggravated child molestation, incest, sexual battery, or aggravated sexual battery of the child or another child of the parent.</td>
</tr>
<tr>
<td>o is required to register as a sex offender and that preservation of a parent-child relationship is not in the child’s best interests.</td>
</tr>
<tr>
<td>o has had an involuntary termination of parental rights to a sibling of the child and the circumstances leading to such termination of parental rights to that sibling have not been resolved.</td>
</tr>
<tr>
<td>- Permanency plan hearing required within 30 days and RE to finalize permanency considered.</td>
</tr>
<tr>
<td>- See chapter 12 on nonreunification and chapter 11 on permanency plan hearings.</td>
</tr>
</tbody>
</table>

### Foster Care Prior to Dependency Hearing

| §15-11-135 |
| - Foster care prior to dependency hearing is allowed if |
| o required to protect child, |
| o no legal guardian able to care for child, or |
| o court authorizes care and licensed foster home or facility is used. |

### Establish Date Child entered Foster Care

<p>| §15-11-113 |
| - Whichever date is earlier: |
| o first judicial finding that child has been subjected to abuse or neglect, or |
| o 60 days from removal. |
| - Essential finding to dependent child’s eligibility for IV-E funding for episode of foster care |</p>
<table>
<thead>
<tr>
<th>Religious, nonmedical healing exception to dependency</th>
<th>§15-11-107 Religious, nonmedical healing</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Cannot be sole basis for dependency unless life-threatening or will result in serious disability; affidavit of attending physician required.</td>
<td></td>
</tr>
<tr>
<td>• Life-threatening or serious disability exception, court may order medical evaluation of child and treatment.</td>
<td></td>
</tr>
<tr>
<td>• Placement of child pending any continuances or adjudication</td>
<td></td>
</tr>
<tr>
<td>• Petition Issue? Custody pending next hearing</td>
<td></td>
</tr>
<tr>
<td>• 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 and services in the case plan and defines what issues must be remedied to achieve reunification</td>
<td></td>
</tr>
<tr>
<td>• Contrary to the welfare—case specific findings required</td>
<td></td>
</tr>
<tr>
<td>• Visitation between child and parent, child and other family (sibling)</td>
<td></td>
</tr>
<tr>
<td>• Resources to be explored, home evaluations, service needs of family</td>
<td></td>
</tr>
<tr>
<td>• Immediate service needs of child or family (medical, educational, psychological)</td>
<td></td>
</tr>
<tr>
<td>• Would DFCS services expedite reunification? If so, which services are needed and for how long?</td>
<td></td>
</tr>
<tr>
<td>• Forensic evaluation, psych evaluation, medical exam</td>
<td></td>
</tr>
<tr>
<td>• Absent parents, name and whereabouts, legal status, check birth certificate and paternity documents at Georgia Office of Vital Records</td>
<td></td>
</tr>
<tr>
<td>• Should CASA be appointed? § 15-11-104, 106.</td>
<td></td>
</tr>
<tr>
<td>• Is father putative or legal? – is legitimation needed? DNA Testing?</td>
<td></td>
</tr>
<tr>
<td>• Child Support O.C.G.A. § 15-11-212(a)(7)</td>
<td></td>
</tr>
<tr>
<td>• Is poverty or homelessness an issue? Is this maltreatment or neglect?</td>
<td></td>
</tr>
<tr>
<td>• 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 and for how long? Is further in-court review needed to confirm these services?</td>
<td></td>
</tr>
<tr>
<td>• Are the reasons for removal sufficiently articulated to direct case plan goals?</td>
<td></td>
</tr>
<tr>
<td>• Are there barriers to reunification that were not part of the reasons for removal?</td>
<td></td>
</tr>
<tr>
<td>• Identify extended family, begin process of “diligent search” for relatives or individuals who have demonstrated and ongoing commitment to the child</td>
<td></td>
</tr>
</tbody>
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<table>
<thead>
<tr>
<th>Important Considerations</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Placement of child</td>
</tr>
<tr>
<td>• Release of information for child to child’s attorney</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Documents/Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Placement of child</td>
</tr>
<tr>
<td>• Release of information for child to child’s attorney</td>
</tr>
<tr>
<td>Needed Issues to Investigate</td>
</tr>
<tr>
<td>-----------------------------</td>
</tr>
</tbody>
</table>
| • Release of information for parent or guardian  
• Police reports and bond conditions for parent or perpetrator  
• What witnesses need to be subpoenaed  
• Prior history with DFCS or court  
• Photos, medical reports, school records  
• Did parent make statements? To whom?  
• Who is perpetrator? Does she or he have further access to child?  
• Psych evaluations and records  
• If forensic interview has been done, then need report and copy of video  
• When is the Family Team meeting?  
• What evaluations or assessments are needed for the child? Family?  
• Have physical and dental screens been scheduled?  
• Is a trauma assessment indicated?  
• 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.” (Language under the juvenile code effective 1/1/14 would be “…to a dependency complaint filed at Juvenile Court.”) | • If DFCS asks for a dismissal, then there should be testimony or written statement entered into evidence stating why 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.  
• Will a Child Protective Services (CPS) case be opened? What are the expectations for services to family and parent compliance; CPS may be referred to as family preservation services  
• 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 | • If probable cause granted, then all parties should receive notice of the next court date and date of FTM  
• Visitation between parent and child, date and time  
• Referrals and services to be received pending next hearing  
• Between PPH and next hearing the court, attorneys and parties (including the child) should have clear directions as what is going to happen next and who is responsible | • A diligent search shall be initiated at the outset of a dependency |
<table>
<thead>
<tr>
<th>Outset of Case and Notice to Relatives or Others with Ongoing Relationship</th>
</tr>
</thead>
<tbody>
<tr>
<td>- case and shall be a continuing DFCS duty.</td>
</tr>
<tr>
<td>- Completed diligent search required before final disposition.</td>
</tr>
<tr>
<td>- Diligent search and notices to relatives shall be written and filed with court within 30 days of child’s removal.</td>
</tr>
<tr>
<td>- A diligent search shall include at a minimum:</td>
</tr>
<tr>
<td>- Interviews with the child’s parent, before and after removal</td>
</tr>
<tr>
<td>- Interviews with the child</td>
</tr>
<tr>
<td>- Interviews with identified relatives throughout the case</td>
</tr>
<tr>
<td>- Interviews with any other person who is likely to have information about the identity or location of the person being sought</td>
</tr>
<tr>
<td>- Comprehensive searches of data bases available to DFCS including, but not limited to, searches of employment, residence, utilities, vehicle registration, child support enforcement, law enforcement, corrections records and any other records likely to result in identifying or locating the person being sought</td>
</tr>
<tr>
<td>- Appropriate inquiry during the course of hearings in the case</td>
</tr>
<tr>
<td>- Any other reasonable means likely to identify relatives or other persons who have demonstrated an ongoing commitment to the child</td>
</tr>
<tr>
<td>- Notice to all adult relatives of the child identified in a diligent search are required to be provided with notice</td>
</tr>
<tr>
<td>- specifying that child has been or is being removed from parental custody.</td>
</tr>
<tr>
<td>- explaining the options a 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.</td>
</tr>
<tr>
<td>- describing the process for becoming an approved foster family home and the additional services and supports available for children placed in approved foster homes.</td>
</tr>
<tr>
<td>- describing any financial assistance for which a relative may be eligible.</td>
</tr>
<tr>
<td>- Exception: Notice may not be required if there is family or domestic violence (Family Violence Exception)</td>
</tr>
<tr>
<td>- Accurint searches are frequently conducted by DFCS. GAL, child attorney and parent attorney should request to view the searches.</td>
</tr>
<tr>
<td>- Paternity documentation should be obtained from the State Office of Vital Records because children born in Georgia after 2005 may have an executed paternity acknowledgement and administrative legitimation with their birth certificates; this is different from the Putative Father Registry.</td>
</tr>
</tbody>
</table>
| Waiver | • Parents or legal guardian may waive PPH, and stipulate to RE and contrary to the welfare ruling in the court order  
• Order must contain case-specific findings of reasonable efforts and 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 and 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, (2009). |
| Continuance Issues | § 15-11-110  
• No continuance if contrary to child’s interest.  
• Court to consider and give substantial weight to the child’s need for prompt resolution of custody status, stable environment, and damage to child of prolonged temporary placements.  
• Showing of good cause and only for time necessary based on evidence presented on the record.  
• Stipulation of parties or need for discovery is not good cause.  
• If no objection to continuance then consent.  
Practice Note: Need to state specific reasons for continuance on the record and in continuance order.  
• Case should be active even during the continuance period:  
  o Further investigation  
  o Necessary witness  
  o Begin services to allow child to return home  
  o Home evaluation of relative |
| Court Considerations for Best Interest of Child | §15-11-26. Court Considerations for Best Interest of Child  
Court to consider all factors affecting the child’s best interest in the context of child’s age and developmental needs, including following 20 factors:  
1. Physical safety and welfare, food, shelter, health and clothing  
2. Love, affection, bonding, and emotional ties existing between child and parent or person available to care for the child  
3. Sibling bond, including half siblings and step siblings  
4. Child’s need for permanence, need for stability and continuity of relationships  
5. Child’s attachments, child’s sense of security and familiarity, and continuity of affection for the child  
6. Parental capacity  
7. Home environment of each parent or person available to care for |
<table>
<thead>
<tr>
<th><strong>Practice Notes</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>- Is mediation available?</td>
</tr>
<tr>
<td>- Identify what actions should be taken by each party pending adjudication.</td>
</tr>
<tr>
<td>- Should child be present at next hearing?</td>
</tr>
<tr>
<td>- <strong>Court of Inquiry issues? § 15-11-7</strong></td>
</tr>
<tr>
<td>- Drug screen for parents?</td>
</tr>
<tr>
<td>- Parents may waive PPH in an effort to work with DFCS and court to obtain services or correct problem in anticipation the case may move more quickly toward reunification or to avoid court of inquiry issue.</td>
</tr>
<tr>
<td>- Parent may want to avoid being called for purposes of cross examination and making incriminating statements.</td>
</tr>
<tr>
<td>- Will parents submit to drug screen, psych evaluation or parenting assessments?</td>
</tr>
<tr>
<td>- <strong>§ 15-11-17(c)</strong> requires all hearings to be recorded by stenographic notes, electronic or mechanical recording</td>
</tr>
<tr>
<td>- CPS Alert is available 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 and a nationwide CPS Alert is initiated, FCS Policy 2104.40 &amp; 2104.41, and form CPS 31.</td>
</tr>
<tr>
<td>- Some courts use scheduling orders</td>
</tr>
</tbody>
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<thead>
<tr>
<th><strong>One Judge – One Family</strong></th>
<th><strong>§ 15-11-3</strong></th>
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<tbody>
<tr>
<td></td>
<td>- A single judge shall hear all successive cases or proceedings involving the same child or family.</td>
</tr>
<tr>
<td></td>
<td>- Direct calendaring</td>
</tr>
</tbody>
</table>

such child considering the promotion of the child's nurturance and safety rather than superficial or material factors

8. Stability of the family unit and community support systems
9. Mental and physical health of all individuals involved
10. Home, school and community record; history of child, child’s special needs
11. Community ties, church, school and friends
12. Child's background and ties, including familial, cultural and religious
13. The least disruptive placement alternative
14. Uniqueness of every family and child
15. Risks associated with being in substitute care
16. Child's wishes and long-term goals
17. Preferences of the persons available to care for the child
18. Evidence of family violence, substance abuse, criminal history, or sexual, mental, or physical child abuse
19. Recommendation by a court appointed custody evaluator or GAL
20. Any other factors considered by the court to be relevant and proper to its determination
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." McDaniels 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.oids.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” (Language under the juvenile code effective 1/1/14 would be “…to a dependency 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

Code Sections

§ 15-11-2 Definitions
§ 15-11-2 (2) ’Abuse’ means: (A) Any nonaccidental physical injury or physical injury which is inconsistent with the explanation given for it suffered by a child as the result of the acts or omissions of a person responsible for the care of a child; (B) Emotional abuse; (C) Sexual abuse or sexual exploitation; (D) Prenatal abuse; or (E) The commission of an act of family violence as
defined in Code Section 19-13-1 in the presence of a child. An act includes a single act, multiple acts, or a continuing course of conduct. As used in this subparagraph, the term 'presence' means physically present or able to see or hear.

§ 15-11-2 (14) 'Complaint' is the initial document setting out the circumstances that resulted in a child being brought before the court.

§ 15-11-2 (22) 'Dependent child' means a child who: (A) Has been abused or neglected and is in need of the protection of the court; (B) Has been placed for care or adoption in violation of law; or (C) Is without his or her parent, guardian, or legal custodian. (23) 'Detention assessment' shall have the same meaning as set forth in Code Section 49-4A-1.

§ 15-11-2 (30) 'Emotional abuse' means acts or omissions by a person responsible for the care of a child that cause any mental injury to such child's intellectual or psychological capacity as evidenced by an observable and significant impairment in such child's ability to function within a child's normal range of performance and behavior or that create a substantial risk of impairment, if the impairment or substantial risk of impairment is diagnosed and confirmed by a licensed mental health professional or physician qualified to render such diagnosis.

§ 15-11-2 (33) 'Fictive kin' means a person who is known to a child as a relative, but is not, in fact, related by blood or marriage to such child and with whom such child has resided or had significant contact.

§ 15-11-2 (38) 'Indigent person' means a person who, at the time of requesting an attorney, is unable without undue financial hardship to provide for full payment of an attorney and all other necessary expenses for representation or a child who is a party to a dependency proceeding. To determine indigence in a delinquency proceeding, the court shall follow the standards set forth in Chapter 12 of Title 17.

§ 15-11-2 (42) 'Legal custodian' means: (A) A person to whom legal custody of a child has been given by order of a court; or (B) A public or private agency or other private organization licensed or otherwise authorized by law to receive and provide care for a child to which legal custody of such child has been given by order of a court.

§ 15-11-2 (43) 'Legal father' means a male who has not surrendered or had terminated his rights to a child and who: (A) Has legally adopted a child; (B) Was married to the biological mother of a child at the time such child was conceived or was born, unless paternity was disproved by a final order pursuant to Article 3 of Chapter 7 of Title 19; (C) Married the legal mother of a child after such child was born and recognized such child as his own, unless paternity was disproved by a final order pursuant to Article 3 of Chapter 7 of Title 19; (D) Has been determined to be the father of a child by a final paternity order pursuant to Article 3 of Chapter 7 of Title 19; (E) Has legitimated a child by a final order pursuant to Code Section 19-7-22; or (F) Has legitimated a child pursuant to Code Section 19-7-22.1. (44) 'Legal mother' means the female who is the biological or adoptive mother of a child and who has not surrendered or had terminated her rights to such child.
§ 15-11-2 (48) 'Neglect' means: (A) The failure to provide proper parental care or control, subsistence, education as required by law, or other care or control necessary for a child's physical, mental, or emotional health or morals; (B) The failure to provide a child with adequate supervision necessary for such child's well-being; or (C) The abandonment of a child by his or her parent, guardian, or legal custodian.

§ 15-11-2 (50) 'Other persons who have demonstrated an ongoing commitment to a child' includes fictive kin and other individuals, including but not limited to neighbors, teachers, scout masters, caregivers, or parents of friends of such child and with whom such child has resided or had significant contact. (51) 'Parent' means either the legal father or the legal mother of a child.

§ 15-11-2 (52) 'Party' means the state, a child, parent, guardian, legal custodian, or other person subject to any judicial proceeding under this chapter; provided, however, that for purposes of Article 6 of this chapter, only a child and the state shall be a party.

§ 15-11-2 (56) 'Prenatal abuse' means exposure to chronic or severe use of alcohol or the unlawful use of any controlled substance, as such term is defined in Code Section 16-13-21, which results in: (A) Symptoms of withdrawal in a newborn or the presence of a controlled substance or a metabolite thereof in a newborn's body, blood, urine, or meconium that is not the result of medical treatment; or (B) Medically diagnosed and harmful effects in a newborn's physical appearance or functioning.

§ 15-11-2 (69) 'Sexual abuse' means a caregiver or other person responsible for the care of a child employing, using, persuading, inducing, enticing, or coercing any child to engage in any act which involves: (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) The 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 clothed or unclothed genitals, pubic area, or buttocks or with a female's clothed or unclothed breasts; (H) Defecation or urination for the purpose of sexual stimulation; or (I) Penetration of the vagina or rectum by any object except when done as part of a recognized medical procedure by a licensed health care professional.

15-11-19. Party right to participate
(a) A party has the right to be present, to be heard, to present evidence material to the proceedings, to cross-examine witnesses, to examine pertinent court files and records, and to appeal the orders of the court; provided, however, that the court shall retain the discretion to exclude a child from any part or parts of any proceeding under Article 3 of this chapter if the court determines that it is not in such child's best interests to be present. An attorney for an excluded child shall not be excluded from the proceedings. (b) A person afforded rights under this chapter shall be advised of such rights at that person's first appearance before the court.
§ 15-11-102. Time Frames for Hearing Types  *(emphasis added for PPH)*
(a) A preliminary protective hearing shall be held promptly and no later than 72 hours after a child is placed in foster care, provided that, if the 72 hour time frame expires on a weekend or legal holiday, such hearing shall be held on the next day which is not a weekend or legal holiday. (b) If a child was not taken into protective custody or is released from foster care at a preliminary protective hearing, the following time frames apply: (1) A petition for dependency shall be filed within 30 days of the child's preliminary protective hearing; (2) Summons shall be served at least 72 hours before the dependency adjudication hearing; (3) The dependency adjudication hearing shall be held no later than 60 days after the filing of a petition for dependency; and (4) If the child's dispositional hearing is not held in conjunction with the dependency adjudication hearing, it shall be held and completed within 30 days after the conclusion of the dependency adjudication hearing. (c) If a child is not released from foster care at the preliminary protective hearing, the following time frames apply: (1) A petition for dependency shall be filed within five days of the child's preliminary protective hearing; (2) Summons shall be served at least 72 hours before the dependency adjudication hearing; (3) The dependency adjudication hearing shall be held no later than ten days after the filing of a petition for dependency; (4) DFCS shall submit to the court its written report within 30 days of the date a child who is placed in the custody of DFCS is removed from the home and at each subsequent review of the disposition order. If the DFCS report does not contain a plan for reunification services, a nonreunification hearing shall be held no later than 30 days from the time the report is filed; and (5) If a dispositional hearing is not held in conjunction with the dependency adjudication hearing, it shall be held and completed within 30 days after the conclusion of the dependency adjudication hearing. (d) An initial periodic review hearing shall be held within 75 days following a child's removal from his or her home. An additional periodic review shall be held within four months following such initial review. (e) Permanency plan hearings shall be held no later than 30 days after DFCS has submitted a written report to the court which does not provide a plan for reunification services or: (1) For children under seven years of age at the time a petition for dependency is filed, no later than nine months after such child is considered to have entered foster care, whichever comes first. Thereafter a permanency plan hearing shall be held every six months while such child continues in DFCS custody or more frequently as deemed necessary by the court until the court determines that such child's permanency plan and goal have been achieved; or (2) For children seven years of age and older at the time a petition is filed, no later than 12 months after such child is considered to have entered foster care, whichever comes first. Thereafter a permanency plan hearing shall be held every six months while such child continues in DFCS custody or more frequently as deemed necessary by the court until the court determines that such child's permanency plan and goal have been achieved. (f) A supplemental order of the court adopting a child's permanency plan shall be entered within 30 days after the court has determined that reunification efforts need not be made by DFCS.

15-11-103.  Child attorney appointment and other parties rights to attorney
(a) A child and any other party to a proceeding under this article shall have the right to an attorney at all stages of the proceedings under this article. (b) The court shall appoint an attorney for an alleged dependent child. The appointment shall be made as soon as practicable to ensure adequate representation of such child and, in any event, before the first court hearing that may substantially affect the interests of such child. (c) A child's attorney owes to his or her client the duties imposed by the law of this state in an attorney-client relationship. (d) If an attorney has
been appointed to represent a child in a prior proceeding under this chapter, the court, when possible, shall appoint the same attorney to represent such child in any subsequent proceeding. (e) An attorney appointed to represent a child in a dependency proceeding shall continue the representation in any subsequent appeals unless excused by the court. (f) Neither a child nor a representative of a child may waive a child's right to an attorney in a dependency proceeding. (g) A party other than a child shall be informed of his or her right to an attorney prior to any hearing. A party other than a child shall be given an opportunity to: (1) Obtain and employ an attorney of such party's own choice; (2) Obtain a court appointed attorney if the court determines that such party is an indigent person; or (3) Waive the right to an attorney.

15-11-104. GAL appointment required, dual role GAL and child attorney allowed
(a) The court shall appoint a guardian ad litem for an alleged dependent child. (b) An attorney for an alleged dependent child may serve as such child's guardian ad litem unless or until there is conflict of interest between the attorney's duty to such child as such child's attorney and the attorney's considered opinion of such child's best interests as guardian ad litem. (c) A party to the proceeding, the employee or representative of a party to the proceeding, or any other individual with a conflict of interest shall not be appointed as guardian ad litem. (d) A court shall appoint a CASA to act as guardian ad litem whenever possible, and a CASA may be appointed in addition to an attorney who is serving as a guardian ad litem. (e) A lay guardian shall not engage in activities which could reasonably be construed as the practice of law. (f) Before the appointment as a guardian ad litem, such person shall have received training appropriate to the role as guardian ad litem which is administered or approved by the Office of the Child Advocate for the Protection of Children. For attorneys, preappointment guardian ad litem training shall be satisfied within the attorney's existing continuing legal education obligations and shall not require the attorney to complete additional training hours in addition to the hours required by the State Bar of Georgia. (g) Any volunteer guardian ad litem 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. (h) The court may remove a guardian ad litem from a case upon finding that the guardian ad litem acted in a manner contrary to a child's best interests, has not appropriately participated in the case, or if the court otherwise deems continued service as inappropriate or unnecessary. (i) A guardian ad litem shall not engage in ex parte contact with the court except as otherwise provided by law. (j) The court, a child, or any other party may compel a guardian ad litem for a child to attend a trial or hearing relating to such child and to testify, if appropriate, as to the proper disposition of a proceeding. (k) The court shall ensure that parties have the ability to challenge recommendations made by the guardian ad litem or the factual basis for the recommendations in accordance with the rules of evidence applicable to the specific proceeding. (l) A guardian ad litem's report shall not be admissible into evidence prior to the disposition hearing except in accordance with the rules of evidence applicable to the specific proceeding. (m) A guardian ad litem who is not also serving as attorney for a child may be called as a witness for the purpose of cross-examination regarding the guardian ad litem's report even if the guardian ad litem is not identified as a witness by a party.
15-11-105. **GAL best interest advocacy elements**

(a) A guardian ad litem shall advocate for a child's best interests in the proceeding for which the guardian ad litem has been appointed. (b) In determining a child's best interests, a guardian ad litem shall consider and evaluate all of the factors affecting the best interests of a child in the context of a child's age and developmental needs. Such factors shall include: (1) The physical safety and welfare of such child, including food, shelter, health, and clothing; (2) The mental and physical health of all individuals involved; (3) Evidence of domestic violence in any current, past, or considered home for such child; (4) Such child's background and ties, including familial, cultural, and religious; (5) Such child's sense of attachments, including his or her sense of security and familiarity and continuity of affection for the child; (6) The least disruptive placement alternative for such child; (7) The child's wishes and long-term goals; (8) The child's community ties, including church, school, and friends; (9) The child's need for permanence, including his or her need for stability and continuity of relationships with a parent, siblings, and other relatives; (10) The uniqueness of every family and child; (11) The risks attendant to entering and being in substitute care; (12) The preferences of the persons available to care for such child; and (13) Any other factors considered by the guardian ad litem to be relevant and proper to his or her determination. (c) Unless a child's circumstances render the following duties and responsibilities unreasonable, a guardian ad litem shall at a minimum: (1) Maintain regular and sufficient in-person contact with the child and, in a manner appropriate to his or her developmental level, meet with and interview such child prior to custody hearings, adjudication hearings, disposition hearings, judicial reviews, and any other hearings scheduled in accordance with the provisions of this chapter; (2) In a manner appropriate to such child's developmental level, ascertain such child's needs, circumstances, and views; (3) Conduct an independent assessment to determine the facts and circumstances surrounding the case; (4) Consult with the child's attorney, if appointed separately, regarding the issues in the proceeding; (5) Communicate with health care, mental health care, and other professionals involved with such child's case; (6) Review case study and educational, medical, psychological, and other relevant reports relating to such child and the respondents; (7) Review all court related documents; (8) Attend all court hearings and other proceedings to advocate for such child's best interests; (9) Advocate for timely court hearings to obtain permanency for such child; (10) Protect the cultural needs of such child; (11) Contact the child prior to any proposed change in such child's placement; (12) Contact the child after changes in such child's placement; (13) Request a judicial citizen review panel or judicial review of the case; (14) Attend citizen panel review hearings concerning such child and if unable to attend the hearings, forward to the panel a letter setting forth such child's status during the period since the last citizen panel review and include an assessment of the DFCS permanency and treatment plans; (15) Provide written reports to the court and the parties on the child's best interests, including, but not limited to, recommendations regarding placement of such child, updates on such child's adjustment to placement, DFCS's and respondent's compliance with prior court orders and treatment plans, such child's degree of participation during visitations, and any other recommendations based on the best interests of the child; (16) When appropriate, encourage settlement and the use of any alternative forms of dispute resolution and participate in such processes to the extent permitted; and (17) Monitor compliance with the case plan and all court orders. (d)(1) Except as provided in Article 11 of this chapter, a guardian ad litem shall receive notices, pleadings, or other documents required to be provided to or served upon a party and shall be notified of all court hearings, judicial reviews, judicial citizen review panels, and other significant changes of circumstances of a child's case which he or she is
appointed to the same extent and in the same manner as the parties to the case are notified of such matters. (2) A guardian ad litem shall be notified of the formulation of any case plan of a child's case which he or she is appointed and may be given the opportunity to be heard by the court about such plans. (e) Upon presentation of an order appointing a guardian ad litem, such guardian ad litem shall have access to all records and information relevant to a child's case to which he or she is 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 11 of this chapter or provided under Chapter 4A of Title 49. (f) All records and information acquired or reviewed by a guardian ad litem during the course of his or her appointment shall be deemed confidential and shall not be disclosed except as ordered by the court. (g) Except as provided in Code Section 49-5-41, regarding access to records, any guardian ad litem who discloses confidential information obtained during the course of his or her appointment, in violation of law, shall be guilty of a misdemeanor. A guardian ad litem 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. (h) In the event of a change of venue, the original guardian ad litem shall, as soon as possible, communicate with the appointed guardian ad litem in the new venue and shall forward all pertinent information to the new guardian ad litem.

15-11-106. CASA – role & appointment
(a)(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 dependency 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 and Code Sections 15-11-104 and 15-11-105. (b) The role of a CASA in juvenile court dependency proceedings shall be to advocate for the best interests of the child. (c) In addition to the reasons stated in subsection (h) of Code Section 15-11-104, the court may discharge a CASA upon finding that the CASA has acted in a manner contrary to the mission and purpose of the affiliate court appointed special advocate program.

15-11-107. Religious, non-medical healing exception to dependency
(a) A parent, guardian, or legal custodian's reliance on prayer or other religious nonmedical means for healing in lieu of medical care, in the exercise of religious beliefs, shall not be the sole basis for considering his or her child to be a dependent child; provided, however, that the religious rights of a parent, guardian, or legal custodian shall not limit the access of a child to medical care in a life-threatening situation or when the condition will result in serious disability. (b) In order to make a determination as to whether a child is in a life-threatening situation or that a child's condition will result in serious disability, the court may order a medical evaluation of a child. (c) If the court determines, on the basis of any relevant evidence before the court, including the court ordered medical evaluation and the affidavit of the attending physician, that a child is in a life-threatening situation or that a child's condition will result in serious disability,
the court may order that medical treatment be provided for such child. (d) A child whose parent, guardian, or legal custodian inhibits or interferes with the provision of medical treatment in accordance with a court order shall be considered to be a dependent child and the court may find the parent, guardian, or legal custodian in contempt and enter any order authorized by and in accordance with the provisions of Code Section 15-11-31.

15-11-109. Notice & Opportunity to be heard to foster parent, relative caregiver
(a) In advance of each hearing or review, DFCS shall give written notice of the date, time, place, and purpose of the review or hearing, including the right to be heard, to the caregiver of a child, the foster parent of a child, any preadoptive parent, or any relative providing care for a child. The written notice shall be delivered to the recipient at least 72 hours before the review or hearing, except in the case of preliminary protective hearings or emergency hearings when such notice is not possible, by United States mail, e-mail, or hand delivery. (b) Notice of a hearing or review shall not be construed to require a legal custodian, foster parent, preadoptive parent, or relative caring for a child to be made a party to the hearing or review solely on the basis of such notice and opportunity to be heard.

15-11-110. Continuance requirements
(a) Upon request of an attorney for a party, the court may continue any hearing under this article beyond the time limit within which the hearing is otherwise required to be held; provided, however, that no continuance shall be granted that is contrary to the interests of the child. In considering a child's interests, the court shall give substantial weight to a child's need for prompt resolution of his or her custody status, the need to provide a child with a stable environment, and the damage to a child of prolonged temporary placements. (b) Continuances shall be granted only upon a showing of good cause and only for that period of time shown to be necessary by the evidence presented at the hearing on the motion. Whenever any continuance is granted, the facts proved which require the continuance shall be entered in the court record. (c) A stipulation between attorneys or the convenience of the parties shall not constitute good cause. Except as otherwise provided by judicial rules governing attorney conflict resolution, a pending criminal prosecution or family law matter shall not constitute good cause. The need for discovery shall not constitute good cause. (d) In any case in which a child or his or her parent, guardian, or legal custodian is represented by an attorney and no objection is made to an order continuing any such hearing beyond the time limit, the absence of such an objection shall be deemed a consent to the continuance; provided, however, that even with consent, the court shall decide whether to grant the continuance in accordance with subsection (a) of this Code section.

15-11-111. At Any Hearing Juvenile Court May Order
(a) At any hearing held with respect to a child, the court in its discretion, and based upon the evidence, may enter an order: (1) Accepting or rejecting any DFCS report; (2) Ordering an additional evaluation; or (3) Undertaking such other review as it deems necessary and appropriate to determine the disposition that is in the child's best interests. (b) The court's order: (1) May incorporate all or part of the DFCS report; and (2) Shall include findings of fact which reflect the court's consideration of the oral and written testimony offered by all parties, as well as nonparties, who are required to be provided with notice and a right to be heard in any hearing to be held with respect to a child, and DFCS.
15-11-113. **Date entered foster established**
When a child is alleged to be a dependent child, the date such child is considered to have entered foster care shall be the date of the first judicial finding that such child has been subjected to child abuse or neglect or the date that is 60 days after the date on which such child is removed from his or her home, whichever is earlier.

15-11-125. **Venue**
(a) A proceeding under this article may be commenced: (1) In the county in which a child legally resides; or (2) In the county in which a child is present when the proceeding is commenced if such child is present without his or her parent, guardian, or legal custodian or the acts underlying the dependency allegation are alleged to have occurred in that county. (b) For the convenience of the parties, the court may transfer the proceeding to the county in which a child legally 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.

§ 15-11-132. **Order of removal and PPH notice**
(a) The facts supporting the issuance of an order of removal may be relayed orally, including telephonically, to the judge or a designated juvenile court intake officer, and the order directing that a child be taken into custody may be issued orally or electronically. (b) When a child is taken into custody under exceptional circumstances, an affidavit or sworn complaint containing the information previously relayed orally, including telephonically, shall be filed with the clerk of the court the next business day, and a written order shall be issued if not previously issued. The written order shall include the court's findings of fact supporting the necessity for such child's removal from the custody of his or her parent, guardian, or legal custodian in order to safeguard such child's welfare and shall designate a child's legal custodian. (c) The affidavit or sworn complaint filed after a child has been placed shall indicate whether the child was released to such child's parent, guardian, or legal custodian or remains removed. (d) DFCS shall promptly notify the parent, guardian, or legal custodian of the nature of the allegations forming the basis for taking a child into custody and, if such child is not released, of the time and place of the preliminary protective hearing.

§ 15-11-133. **Removal authorized and who may remove**
(a) A child may be removed from his or her home, without the consent of his or her parents, guardian, or legal custodian: (1) Pursuant to an order of the court under this article; or (2) By a law enforcement officer or duly authorized officer of the court if a child is in imminent danger of abuse or neglect if he or she remains in the home. (b) Upon removing a child from his or her home, a law enforcement officer or duly authorized officer of the court shall: (1) Immediately deliver such child to a medical facility if such child is believed to suffer from a serious physical condition or illness which requires prompt treatment, and, upon delivery, shall promptly contact DFCS; (2) Bring such child immediately before the juvenile court or promptly contact a juvenile court intake officer; and (3) Promptly give notice to the court and such child's parents, guardian, or legal custodian that such child is in protective custody, together with a statement of the reasons for taking such child into protective custody. (c) The removal of a child from his or her home by a law enforcement officer shall not be deemed an arrest. (d) A law enforcement officer removing a child from his or her home has all the privileges and immunities of a law enforcement officer making an arrest. (e) A law enforcement officer shall promptly contact a
juvenile court intake officer for issuance of a court order once such officer has taken a child into protective custody and delivered such child to a medical facility. (f) A juvenile court intake officer shall immediately determine if a child should be released, remain in protective custody, or be brought before the court upon being contacted by a law enforcement officer, duly authorized officer of the court, or DFCS that a child has been taken into protective custody.

§ 15-11-134. **Contrary to the Welfare required finding**
(a) Any order authorizing the removal of a child from his or her home shall be based on a finding by the court that continuation in his or her home would be contrary to his or her welfare. (b) Any order continuing a child's placement outside of the physical custody of his or her parent, guardian, or legal custodian shall be based on a finding by the court that return of such child to such custody would be contrary to his or her welfare. (c) Findings under this Code section shall be made on an individualized case-by-case basis and shall be documented in the court's written order.

§ 15-11-135. **Foster care authorized prior to petition**
(a) A child taken into custody shall not be placed in foster care prior to the hearing on a petition for dependency unless: (1) Foster care is required to protect the child; (2) The child has no parent, guardian, or legal custodian or other person able to provide supervision and care and return him or her to the court when required; or (3) An order for the child's foster care has been made by the court. (b) No child alleged to be or adjudicated as a dependent child shall be detained in any jail, adult lockup, or adult detention facility, nor shall a child be detained in a secure residential facility or nonsecure residential facility unless a child is also alleged to have committed a delinquent act or adjudicated to be a delinquent child and the court determines that the requirements for detention under Article 6 of this chapter are met. (c) An alleged dependent child may be placed in foster care only in: (1) A licensed or approved foster home or a home approved by the court which may be a public or private home or the home of the child's noncustodial parent or of a relative; (2) A facility operated by a licensed child welfare agency; or (3) A licensed shelter care facility approved by the court. (d) The actual physical placement of a child pursuant to this Code section shall require the approval of the judge of the juvenile court or his or her designee. (e) In any case in which a child is taken into protective custody of DFCS, such child shall be placed together with his or her siblings who are also in protective custody or DFCS shall include a statement in its report and case plan of continuing efforts to place the siblings together or why such efforts are not appropriate. If siblings are not placed together, DFCS shall provide for frequent visitation or other ongoing interaction between siblings, unless DFCS documents that such frequent visitation or other ongoing interaction would be contrary to the safety or well-being of any of the siblings.

§ 15-11-145. **PPH elements, timing, notice, participants**
(a) If an alleged dependent child is removed from his or her home and is not returned home, the preliminary protective hearing shall be held promptly and not later than 72 hours after such child is placed in foster care; provided, however, that if the 72 hour time frame expires on a weekend or legal holiday, the hearing shall be held on the next day which is not a weekend or legal holiday. (b) Reasonable oral or written notice of the preliminary protective hearing, stating the time, place, and purpose of the hearing, shall be given to the child who is a party in such hearing and, if such person can be found, to his or her parent, guardian, or legal custodian. (c) If an
alleged dependent child's parent, guardian, or legal custodian has not been notified of the preliminary protective hearing and did not appear or waive appearance at such hearing and thereafter files an affidavit showing such facts, the court shall rehear the matter without unnecessary delay and shall order such child's release unless it appears from such hearing that such child's foster care is warranted or required. (d) The following persons shall have the right to participate in the preliminary protective hearing: (1) A child's parent, guardian, or legal custodian, unless such person cannot be located or fails to appear in response to the notice; (2) A child's attorney and guardian ad litem if a guardian ad litem has been appointed; (3) A child who was removed from his or her home, unless the court finds, after considering evidence of harm to such child that will result from such child's presence at the proceeding, that being present is not in such child's best interests; (4) A parent's attorney if an attorney has been retained or appointed; (5) The assigned DFCS caseworker; and (6) The attorney for DFCS. (e) The court may allow the following parties to be present at the preliminary protective hearing, if the court finds it is in the best interests of the child: (1) Any relative or other persons who have demonstrated an ongoing commitment to a child with whom a child might be placed; (2) DFCS employees involved in the case; (3) An advocate as requested by an alleged dependent child's parent, guardian, or legal custodian; and (4) Other persons who have knowledge of or an interest in the welfare of the child who is alleged to be dependent. (f) At the commencement of a preliminary protective hearing, the court shall inform the parties of: (1) The contents of the complaint in terms understandable to the parties; (2) The nature of the proceedings in terms understandable to the parties; and (3) The parties' due process rights, including the parties' right to an attorney and to an appointed attorney if they are indigent persons, the right to call witnesses and to cross-examine all witnesses, the right to present evidence, and the right to a trial by the court on the allegations in the complaint or petition. (g) If a child is not released at the preliminary protective hearing, a petition for dependency shall be made and presented to the court within five days of such hearing.

§ 15-11-146. PPH court findings of fact required
(a) At the preliminary protective hearing, the court shall determine: (1) Whether there is probable cause to believe a child is a dependent child; and (2) Whether protective custody of a child is necessary to prevent abuse or neglect pending the hearing on the dependency petition. (b) The court: (1) On finding that the complainant has not proved either of the required elements prescribed in subsection (a) of this Code section, shall dismiss the case and shall return the child before the court to his or her parent, guardian, or legal custodian; (2) On finding that the complainant has not met the burden of proving that protective custody is necessary, shall return the child before the court to his or her parent, guardian, or legal custodian pending the hearing on the dependency petition; or (3) On finding that the complainant has met the burden prescribed in subsection (a) of this Code section, may place the child before the court in the temporary custody of DFCS pending the hearing on the dependency petition. (c) A court's order removing a child from his or her home shall be based upon a finding that: (1) Continuation in his or her home would be contrary to such child's welfare; and (2) Removal is in such child's best interests. (d) The court shall make written findings as to whether DFCS has made reasonable efforts to prevent or eliminate the need for removal of a child from his or her home and to make it possible for such child to safely return home. If the court finds that no services were provided but that reasonable services would not have eliminated the need for protective custody, the court shall consider DFCS to have made reasonable efforts to prevent or eliminate the need for protective custody. The court shall include in the written findings a brief description of what preventive
and reunification efforts were made by DFCS. (e) In determining whether a child shall be removed or continued out of his or her home, the court shall consider whether reasonable efforts can prevent or eliminate the need to separate the family. The court shall make a written finding in every order of removal that describes why it is in the best interests of the child that he or she be removed from his or her home or continued in foster care. (f) To aid the court in making the required written findings, DFCS shall present evidence to the court outlining the reasonable efforts made to prevent taking a child into protective custody and to provide services to make it possible for such child to safely return to his or her home and why protective custody is in the best interests of the child.
## Chapter 2  
### Adjudication—Formal Hearing

**Contribution by Mary Hermann, JD, CWLS**

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### Purpose

Court determines:
- Whether there is clear and convincing evidence the child is presently “dependent”
- Whether continued protective custody is necessary
- Written, case-specific findings of fact of the cause of dependency
- Parent-child visitation and sibling contact if not placed together
- RE and continued contrary to the welfare
- Hearing dates for disposition, reviews and case plan contents

### Pleadings

**§15-11-150**
- Anyone with actual knowledge of the abuse, neglect or abandonment or is informed or believes to be true may file petition

**§15-11-152, Contents of petition required**
- “Plainly and with particularity”
- Verified by petitioner
- May rely on information and belief
- Jurisdiction – factual basis
- Best interest of child and public
- Child’s name, DOB and residence
- Whether child taken into protective custody
- Name and address of parents, guardian or legal custodian; if unknown, then adult relative residing within county or nearest to court

### Timing to File Dependency Petition

**§15-11-151**
- If child removed, petition must be filed within 5 days from preliminary protective hearing.
- If child not removed, petition must be filed within 30 days from preliminary protective hearing.
- Court may extend time to file petition if good cause shown.
- Dismissal without prejudice if petition is not filed timely.
- The cure for late filing is to start over with new safekeeping, See *In the Interest of E.C.*, 291 Ga. App. 440 (2008), holding a dismissal without prejudice is remedy when petition is not filed
within 5 days of the deprivation probable cause hearing.

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>§ 15-11-10(1)(C)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• Child under 18 years alleged to be a dependent in the state.</td>
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<tr>
<td></td>
<td>• Petition must state factual basis of jurisdiction.</td>
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<tr>
<td></td>
<td>§ 15-11-10(1)(G)</td>
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<tr>
<td></td>
<td>• Child remaining in foster care after 18 years old or</td>
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<td></td>
<td>• Child is 18 years or older and receiving independent living services.</td>
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<tr>
<td></td>
<td>• Limited jurisdiction to review the status of the child and the services provided to the child for independent living or foster care.</td>
</tr>
<tr>
<td></td>
<td>§ 15-11-12 Dual Jurisdiction Child</td>
</tr>
<tr>
<td></td>
<td>• Child may be delinquent and dependent or dependent and CHINS if a “factual basis” established.</td>
</tr>
<tr>
<td></td>
<td>• If the delinquent and dependency case or CHINS and dependency cases are consolidated the dependency time lines apply to the consolidated court action.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Venue and Change of Venue</th>
<th>§ 15-11-125</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• A proceeding may be commenced</td>
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<tr>
<td></td>
<td>o in the county where child legally resides or</td>
</tr>
<tr>
<td></td>
<td>o in the county of child’s presence at commencement of action if the child is present without a custodian or the acts underlying the dependency occurred in that county.</td>
</tr>
<tr>
<td></td>
<td><strong>Transfer of Venue</strong></td>
</tr>
<tr>
<td></td>
<td>• Venue may be transferred to child’s county of legal residence for the convenience of parties.</td>
</tr>
<tr>
<td></td>
<td>• 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.</td>
</tr>
<tr>
<td></td>
<td>§ 15-11-105(h)</td>
</tr>
<tr>
<td></td>
<td>• If change of venue, GAL shall forward pertinent information to next GAL appointed.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Timing of Dependency Hearing Provisional Hearing Requirements</th>
<th>§ 15-11-181(a)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• If child removed: within 10 days of petition filing.</td>
</tr>
<tr>
<td></td>
<td>• If child not removed: within 60 days of petition filing.</td>
</tr>
<tr>
<td></td>
<td>• If no adjudication within 60 days of removal then possible dismissal without prejudice.</td>
</tr>
<tr>
<td></td>
<td>• Time limit for adjudication hearing may be waived to be set at same time as disposition hearing, if waiver on record and good cause shown</td>
</tr>
<tr>
<td></td>
<td>o Parent request for attorney appointment implies waiver of time limit waiver</td>
</tr>
</tbody>
</table>
|                                                            | **Practice Point:** request may be made to continue adjudication to cure cause of removal or dependency, or to set up a guardianship or other alternative custody. **Continuance** rules would apply, so make sure on
§ 15-11-163 Provisional Hearing
- The court may conduct a provisional hearing and issue an interlocutory order if one party is before the court and service by publication is required for the other party and
  - child is present at the provisional hearing.
  - summons to published party states final hearing date, time, location.
  - served party is required to appear at provisional hearing.
- Provisional hearing findings will become final if published party does not appear at calendared final hearing.

§ 15-11-153
- Anytime prior to adjudication to
  - cure defects of form.
  - add new allegations or requests.
- If amended after initial service, additional service required to parties and attorneys.
- If amended and child removed, court may delay adjudication for 10 days from the original hearing date.

§ 15-11-3
- A single judge shall hear all successive cases or proceedings involving the same child or family.
- Direct calendaring

§ 15-11-181(b)
- Parties to the proceeding: child’s parent, guardian or legal custodian, child’s attorney, GAL, child (unless court determines not in child’s best interest), attorney for parents, assigned DFCS caseworker, attorney for DFCS (SAAG)
- Alleged dependent child, except child may be excluded from hearing if harmful to child and not in child’s best interest § 15-11-181(b)(3)
- Party defined at § 15-11-2(52) as state, a child, parent, guardian, legal custodian, or other person subject to any judicial proceeding, except in delinquency proceedings; then only a child and the state are parties.
- Parent defined at § 15-11-2(51) as legal father or legal mother of a child.
- Biological/putative father issue

§ 15-11-181(c)
If in child’s best interest, others may attend adjudication: relatives, others with ongoing commitment to child, DFCS employees, advocate requested by legal custodians, and others with knowledge or an interest in child’s welfare.
<table>
<thead>
<tr>
<th>Right to Be Present, Heard and Present Evidence</th>
<th>§ 15-11-19</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Party has right to be present, heard, present evidence, cross examine witnesses, examine pertinent court files and records, and appeal orders of the court.</td>
<td></td>
</tr>
<tr>
<td>• “Party” includes child, except court may exclude child if not in the child’s best interest to be present.</td>
<td></td>
</tr>
<tr>
<td>• Party shall be advised of these rights at that person’s first appearance.</td>
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</tbody>
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<table>
<thead>
<tr>
<th>Summons and Service</th>
<th>§ 15-11-160</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Copy of dependency petition (except publication)</td>
<td></td>
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<tr>
<td>• The court shall direct the issuance of a summons to</td>
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<tr>
<td>o a child if 14 years of age or older</td>
<td></td>
</tr>
<tr>
<td>o child's parent, guardian, or legal custodian</td>
<td></td>
</tr>
<tr>
<td>o child's attorney and child's guardian ad litem</td>
<td></td>
</tr>
<tr>
<td>o any other persons who appear to the court to be proper or necessary parties to the proceeding</td>
<td></td>
</tr>
<tr>
<td>• Summons must provide notice of a party’s right to counsel.</td>
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<tr>
<td>• Party other than child may waive summons by written stipulation or voluntary appearance at hearing.</td>
<td></td>
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</tbody>
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<table>
<thead>
<tr>
<th>Personal, Certified Mail, and Publication</th>
<th>§ 15-11-161</th>
</tr>
</thead>
<tbody>
<tr>
<td>• If party is in Georgia and can be found, then personal service ASAP and at least 72 hours before the adjudication hearing. § 15-11-161(a).</td>
<td></td>
</tr>
<tr>
<td>• If party is in Georgia and cannot be found but address is known or can be known with due diligence, must be served at least 5 days before the adjudication hearing by registered or certified mail or statutory overnight delivery, return receipt requested. § 15-11-161(b).</td>
<td></td>
</tr>
<tr>
<td>• If party is outside Georgia with known address or known with due diligence, then must be served at least 5 days before the adjudication hearing by personal service or by registered or certified mail or statutory overnight delivery, return receipt requested. § 15-11-161(c).</td>
<td></td>
</tr>
<tr>
<td>• If, after due diligence, whereabouts of a party are unknown, then service by publication; hearing shall be no earlier than 5 days after final publication. § 15-11-161(d).</td>
<td></td>
</tr>
<tr>
<td>• Publication shall be 1 time per week for 4 weeks in legal organ of county where dependency pending § 15-11-161(e)</td>
<td></td>
</tr>
<tr>
<td>• <strong>Party</strong> is defined at § 15-11-2(52) as state, a child, parent, guardian, legal custodian, or other person subject to any judicial proceeding except in delinquency proceedings; then only a child and the state are parties.</td>
<td></td>
</tr>
<tr>
<td>• <strong>Parent</strong> is defined at § 15-11-2 (51) as legal father or legal mother of a child.</td>
<td></td>
</tr>
<tr>
<td><strong>Notice to Non-Parties: Foster Parent, Relative Caregiver</strong></td>
<td></td>
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<tr>
<td>---------------------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>§ 15-11-109</td>
<td></td>
</tr>
<tr>
<td>• Notice of hearing or review must be given to foster parents of the child, pre-adoptive parents or relatives caring for the child.</td>
<td></td>
</tr>
<tr>
<td>• Notice is for opportunity to be heard but does not compel attendance.</td>
<td></td>
</tr>
<tr>
<td>• Written notice (mail, hand delivery or email) and 72 hours in advance, date, time, place, purpose of hearing and notice of their right to be heard – exception: preliminary protective hearing.</td>
<td></td>
</tr>
<tr>
<td>• Not a party to the dependency action; only right to attendance and opportunity to be heard.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Willful Failure to Appear</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 15-11-162</td>
</tr>
<tr>
<td>• If parent, guardian, or legal custodian willfully fails to appear after being ordered to appear, then Rule Nisi and contempt and bench warrant may occur.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Standard of Proof and Evidence</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 15-11-180</td>
</tr>
<tr>
<td>• Clear and convincing evidence of dependency</td>
</tr>
<tr>
<td>• Petitioner has burden of proof</td>
</tr>
<tr>
<td>§ 15-11-181(d)</td>
</tr>
<tr>
<td>• Title 24 Rules of Evidence Apply, §§ 24-1-103 to 24-10-1003</td>
</tr>
<tr>
<td>• Only privilege exclusions from dependency actions:</td>
</tr>
<tr>
<td>○ Attorney-party communication</td>
</tr>
<tr>
<td>○ Priest, rabbi or ordained minister – communicant</td>
</tr>
</tbody>
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<table>
<thead>
<tr>
<th><strong>Child and Party</strong></th>
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</thead>
<tbody>
<tr>
<td>§ 15-11-103 Child and Party</td>
</tr>
<tr>
<td>• All parties, including the child, have a right to counsel at all stages of the proceedings.</td>
</tr>
<tr>
<td>• Party defined at § 15-11-2(52) as state, a child, parent, guardian, legal custodian, or other person subject to any judicial proceeding, except in delinquency proceedings; then only a child and the state are parties.</td>
</tr>
<tr>
<td>• Parent defined at § 15-11-2(51) as legal father or legal mother of a child.</td>
</tr>
<tr>
<td>• Child Attorney should be appointed “as soon as practicable to ensure adequate representation” and before the first hearing that may substantially affect the interests of the child.</td>
</tr>
<tr>
<td>○ Child attorney has “attorney-client” duty.</td>
</tr>
<tr>
<td>○ Child attorney representation continues through appeals or until excused by court.</td>
</tr>
<tr>
<td>○ Child’s right to attorney cannot be waived.</td>
</tr>
<tr>
<td>• Party should be advised of right to counsel prior to any hearing:</td>
</tr>
<tr>
<td>○ Party has right to obtain or employ attorney</td>
</tr>
<tr>
<td>○ If indigent, right to appointed counsel</td>
</tr>
<tr>
<td>○ Can waive right to attorney</td>
</tr>
</tbody>
</table>
- 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 (2009)]).
- Putative Father issue – is he a “party”?
- Inquiry about incarcerated parents; transport to hearings?

<table>
<thead>
<tr>
<th>Right to GAL and GAL Best Interest Advocacy Considerations</th>
<th>§ 15-11-104</th>
</tr>
</thead>
<tbody>
<tr>
<td>• GAL shall be appointed</td>
<td></td>
</tr>
<tr>
<td>• May be child’s attorney unless or until a conflict of interest between the attorney’s duty to the child and the attorney’s “considered opinion” of the child’s best interest as a GAL</td>
<td></td>
</tr>
<tr>
<td>• CASA may serve as GAL</td>
<td></td>
</tr>
<tr>
<td>• Procedure for removal of GAL for cause § 15-11-104(h)</td>
<td></td>
</tr>
<tr>
<td>• CASA appointment § 15-11-106</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>§ 15-11-105</th>
</tr>
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<tbody>
<tr>
<td>• To advocate for the child’s best interest, GAL shall consider factors such as the following, in the context of child’s age and developmental needs:</td>
</tr>
<tr>
<td>o Physical safety and welfare, food, shelter, health, clothing</td>
</tr>
<tr>
<td>o Mental and physical health of all individuals involved</td>
</tr>
<tr>
<td>o Evidence of domestic violence</td>
</tr>
<tr>
<td>o Child's background and ties, including familial, cultural, religious</td>
</tr>
<tr>
<td>o Child’s sense of attachments</td>
</tr>
<tr>
<td>o Least disruptive placement alternative</td>
</tr>
<tr>
<td>o Child's wishes and long-term goals</td>
</tr>
<tr>
<td>o Community ties, church, school, friends</td>
</tr>
<tr>
<td>o Child's need for permanence, stability, and continuity of relationships</td>
</tr>
<tr>
<td>o Uniqueness of every family and child</td>
</tr>
<tr>
<td>o Risks associated with being in substitute care</td>
</tr>
<tr>
<td>o Preferences of the persons available to care for the child</td>
</tr>
<tr>
<td>o Any other factors considered by the GAL to be relevant and proper</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Minimum Duties of GAL</th>
<th>§ 15-11-105(c)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minimum duties of GAL, unless child’s circumstances make these unreasonable (must be performed in a developmentally appropriate manner):</td>
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<tr>
<td>• Maintain regular and sufficient in-person contact with the child, in a manner appropriate to his or her developmental level</td>
<td></td>
</tr>
<tr>
<td>• Meet with and interview child prior to all hearings and reviews</td>
<td></td>
</tr>
<tr>
<td>• Determine child’s needs, circumstances and views</td>
<td></td>
</tr>
</tbody>
</table>
- Make independent factual determination of the case
- Consult with child’s attorney
- Communicate with health, mental health, and other professionals
- Review case study and educational, medical, psychological, and other relevant reports
- Review all court-related documents
- Attend all court hearings and other proceedings to advocate for the child's best interests
- Advocate for timely court hearings to obtain permanency for the child
- Protect the cultural needs of the child
- Contact the child prior to any proposed placement changes
- Contact the child after placement changes
- Request a judicial citizen review panel or judicial review of the case
- Attend citizen panel review hearings, and if unable to attend, send panel a letter stating the child’s status since the last citizen panel review and an assessment of the DFCS permanency and treatment plans
- Provide written reports to the court and the parties on the child's best interests, including recommendations regarding placement, updates on child's adjustment to placement, DFCS's and respondent's compliance with prior court orders and treatment plans, child's participation during visits, and any other recommendations based on the best interests of the child
- When appropriate, encourage settlement and the use of alternative forms of dispute resolution and participate in such processes to the extent permitted
- Monitor compliance with the case plan and all court orders.

### GAL Participation and Access to Records

**§ 15-11-105 (d), (e)**
- GAL shall receive all notices of hearings, reviews, panels, case plan formulation meetings, and shall be served pleadings in the same manner as a party.
- GAL shall have access to all records and information relevant to the child’s case except
  - § 19-7-5, Child Abuse Reporting Statute
  - § 49-4A, Juvenile Justice authorizing statute
  - Article 11, Office of the Child Advocate for the Protection of Children authorizing statute

### GAL Confidentiality Required

**§ 15-11-105 (f), (g)**
- All information acquired by GAL is confidential except as directed by court:
  - Misdemeanor if violated
  - Maintain confidential records require by § 37-3-166, Hospitalization and Treatment of Alcoholics and Drug
<table>
<thead>
<tr>
<th>RE Required at Each Stage</th>
<th>§ 15-11-202(a)</th>
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<tbody>
<tr>
<td></td>
<td>• Except where § 15-11-203 applies, RE shall be made to preserve or reunify families</td>
</tr>
<tr>
<td></td>
<td>o to prevent removal, prior to placement, or</td>
</tr>
<tr>
<td></td>
<td>o to eliminate the need for removal and reunify.</td>
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</table>

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<thead>
<tr>
<th>RE Required at Adjudication</th>
<th>§ 15-11-202(b)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• Type of RE based on child's health and safety, which is of “paramount concern.”</td>
</tr>
</tbody>
</table>

| § 15-11-202(c) | Appropriate services may be provided by DFCS or in the community. |

| § 15-11-202(d) | The court shall review the appropriateness of DFCS's RE at each stage of the dependency proceedings. |

<table>
<thead>
<tr>
<th>RE Considerations by Court</th>
<th>§ 15-11-202(e)(2)</th>
</tr>
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<tbody>
<tr>
<td>At the adjudication hearing:</td>
<td></td>
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<tr>
<td>• DFCS has the burden of demonstrating that</td>
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</tr>
<tr>
<td>o DFCS has made RE to eliminate the need for removal and to reunify at the earliest possible time or</td>
<td></td>
</tr>
<tr>
<td>o RE to prevent placement and to reunify are not required because of the existence of one or more of the circumstances stated in §15-11-203.</td>
<td></td>
</tr>
</tbody>
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<table>
<thead>
<tr>
<th>Concurrent RE authorized</th>
<th>§ 15-11-202(f), (g), (h)</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Court considerations in RE determination: whether services to the child and family were</td>
<td></td>
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<tr>
<td>o relevant to the safety and protection child.</td>
<td></td>
</tr>
<tr>
<td>o adequate to meet the needs child and family.</td>
<td></td>
</tr>
<tr>
<td>o culturally and linguistically appropriate.</td>
<td></td>
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<tr>
<td>o available and accessible.</td>
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</tr>
<tr>
<td>o consistent and timely.</td>
<td></td>
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<tr>
<td>o realistic under the circumstances.</td>
<td></td>
</tr>
<tr>
<td>• If no RE found by court, child may still be adjudicated dependent and removed.</td>
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</tr>
<tr>
<td>• Court may determine no RE justified because of an immediate threat of harm to child.</td>
<td></td>
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<thead>
<tr>
<th>RE in Every Order</th>
<th>§ 15-11-202(i)</th>
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</thead>
<tbody>
<tr>
<td>Concurrent RE authorized — reunification and other permanent placement</td>
<td></td>
</tr>
</tbody>
</table>

<p>| § 15-11-202(j) | Order placing or continuing DFCS custody of child shall contain written findings of facts stating |</p>
<table>
<thead>
<tr>
<th><strong>When RE Not Required</strong></th>
<th><strong>§ 15-11-203</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Permanency Plan Hearing Required within 30 Days</strong></td>
<td>- Court may direct that RE to eliminate the need for placement <strong>shall not be required or shall cease</strong> if the court determines and makes written findings of fact that a parent</td>
</tr>
<tr>
<td></td>
<td>- has subjected this child to aggravated circumstances, <strong>§ 15-11-2(5).</strong></td>
</tr>
<tr>
<td></td>
<td>- has been convicted of the murder of another child of the parent.</td>
</tr>
<tr>
<td></td>
<td>- has been convicted of the voluntary manslaughter of another child of the parent.</td>
</tr>
<tr>
<td></td>
<td>- has been convicted of aiding or abetting, attempting, conspiring, or soliciting to commit murder or voluntary manslaughter of another child of the parent.</td>
</tr>
<tr>
<td></td>
<td>- has been convicted of committing a felony assault that results in serious bodily injury to the child or another child of the parent.</td>
</tr>
<tr>
<td></td>
<td>- has been convicted of rape, sodomy, aggravated sodomy, child molestation, aggravated child molestation, incest, sexual battery, or aggravated sexual battery of the child or another child of the parent.</td>
</tr>
<tr>
<td></td>
<td>- is required to register as a sex offender and that preservation of a parent-child relationship is not in the child's best interests.</td>
</tr>
<tr>
<td></td>
<td>- has had an involuntary termination of parental rights to a sibling of the child and the circumstances leading to such termination of parental rights to that sibling have not been resolved.</td>
</tr>
<tr>
<td></td>
<td>- Permanency plan hearing required within 30 days and RE to finalize permanency considered.</td>
</tr>
<tr>
<td></td>
<td>- See chapter 12 on nonreunification hearing and chapter 11 on permanency plan hearings.</td>
</tr>
</tbody>
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<thead>
<tr>
<th><strong>Visitation Shall Be Ordered By the Court</strong></th>
<th><strong>§ 15-11-112(a)</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>- Court shall order reasonable visitation, shall specify frequency, duration, and whether supervised or unsupervised, consistent with age and developmental needs of child.</td>
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<thead>
<tr>
<th></th>
<th><strong>§ 15-11-112(b)</strong></th>
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<tbody>
<tr>
<td></td>
<td>- Visitation presumed unsupervised unless court determines unsupervised visitation is not in the child’s best interest.</td>
</tr>
</tbody>
</table>
§ 15-11-112(c)  
- Visitation terms may be modified by the court for lack of substantial progress on case plan.

§ 15-11-181(e)  
- Findings of fact whether child is dependent
- Written and case specific required

§ 15-11-181(f)  
- If no finding of dependency then dismissal of petition and discharge child from foster care
- Court may impose conditions under protective order. § 15-11-29.

§ 15-11-181(g)  
- Disposition may be held either immediately after adjudication or postponed.
- Disposition to be held within 30 days of completion of the adjudication hearing. § 15-11-210(a).

§ 15-11-181(h)  
- Court to make specific finding as to whether dependency was the result of substance abuse of caretakers.

§ 15-11-181(i)  
- If disposition held immediately following adjudication, court shall schedule
  - First periodic review
  - Permanency plan hearing

§ 15-11-190 and 191  
- Following dependency adjudication or admission, the court may order a written social study and report be made by a person designated by the court.
- Social study shall include factual discussion of
  - plan for reunification, or if reunification fails, plan for child’s permanency.
  - visitation plan.
  - sibling issues, relationship between siblings, visits, co-placements, maintaining or developing sibling bond, efforts to place together.
  - relative placement options.
  - current caregiver’s ability to provide permanency if reunification fails.

Social Study Ordered following Adjudication and Contents  
- Parents or legal custodian may negotiate a stipulation to certain facts in the petition which would result in a finding of dependency.
- A particular disposition may also be negotiated
- Court must approve stipulation and will require presentation of a prima facie case on the record with competent evidence.
- 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, (2009).

- Stipulated facts **must** address all risk and safety factors to the child so that an adequate **case plan** will be developed.
- Possible to stipulate to some facts and have a hearing on other facts
- The court findings of facts control the **case plan; the case plan, once adopted by the court, controls** the direction of the case, when and how a the child is reunified with parent, or other permanency options
- Could child be returned to the parents with DFCS services, possibly under a **protective order**? § 15-11-29 provides court supervision of parental or custodian compliance with safety plan or case plan.

- The dependency orders obtained through stipulation are usually not appealed by the parents. In TPR cases, the state frequently presents prior **unappealed deprivation orders** (now called dependency orders) to meet the first and second elements of parental misconduct or inability in TPR analysis (*the child is presently deprived and lack of proper parental care or control is the cause of the deprivation*) (language is from cases and analysis predating the juvenile code effective 1/1/14). When stipulating to a dependency 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 and the resulting dependency order will **not** be used in any subsequent TPR action between the same parties. Below in the “Practice Notes” is further clarification of the limitations of using the unappealed dependency order.

**Important Considerations**

- Petition sustained or stipulated or dismissed
- If petition sustained, who gets custody? Is **disposition** now or later?
- If petition sustained but child goes home, are there conditions to the child returning home? § 15-11-29 **protective order**. Is the court going to review compliance with the protective order?
- If petition sustained, what are the options for custody other than DFCS?
- Court order **must** contain specific finding of facts supporting finding of dependency with specific conclusions of law; orders which do not contain specific findings of fact and conclusions of law are subject to being vacated and remanded by the Georgia Court of Appeals.
- What specific actions must parent take to have child returned?
What actions are necessary to move the child to permanency?

- Reasons for removal—identify issues (drugs, mental health, neglect, physical abuse, sexual abuse, abandonment) — specific findings
- Contrary to the welfare — specific findings
- Visitation between child and parent, child and other family (sibling)
- Relative resources to be explored, home evaluation
- Immediate service needs of child or family (medical, educational)
- Would DFCS services expedite return? If so, which services are needed and for how long?
- Absent parents, name and whereabouts, legal status
- Does Father need to legitimate? DNA Testing
- Should a CASA be appointed? § 15-11-104(d)
- Is poverty or homelessness an issue? Is this maltreatment or neglect?
- If perpetrator is unknown, identity of perpetrator may be condition precedent to return of child to home.
- If dependency is the result of parental drug or alcohol abuse, 6 consecutive months of random clean screens may be ordered by the court as a condition precedent to returning child home. § 15-11-212(f). This is discretionary for the court but DFCS policy requires 6 months clean screens; court may override DFCS policy.
- Reasons for removal, the articulated risk of harm the child would be subject to if returned 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 and another hearing should be held to consider the newly identified risks to the child. Due process requires that the parent be given notice and an opportunity to be heard.
- Set disposition hearing date.

<table>
<thead>
<tr>
<th>Discovery Available to Any Party Upon Written Request</th>
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<tbody>
<tr>
<td>§15-11-170(a)</td>
</tr>
<tr>
<td>- Upon written request to the party having actual custody, control, or possession of the material to be produced, any party shall have full access to the following for inspection, copying, or photographing:</td>
</tr>
<tr>
<td>- Names and telephone numbers of each witness likely to be called to testify</td>
</tr>
<tr>
<td>- Formal written statement of child or witness</td>
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<td>- Scientific or other report</td>
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<td>- Drug screen</td>
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<td>- Case plan</td>
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<td>- Visitation schedule</td>
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<tr>
<td>- Photographs</td>
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<tr>
<td>- Copies of police incident reports</td>
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<tr>
<td>Discovery Requires Court Order or Written Consent of Person Permitting Access to Protected Information</td>
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<tr>
<td>§ 15-11-170(b)</td>
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<tr>
<td>§ 15-11-170(e)</td>
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</table>
| Or Denial of Consent to Discoverable Information | - An order granting discovery shall require reciprocal discovery and court may deny, limit, or condition discovery response upon a sufficient showing that disclosure of the information would  
  - jeopardize the safety of a party, witness, or confidential informant.  
  - create a substantial threat of physical or economic harm to a witness or other person.  
  - endanger the existence of physical evidence.  
  - disclose privileged information.  
  - impede criminal prosecution of a minor who is being prosecuted as an adult or the prosecution of an adult charged with an offense arising from the same event. |
| Deposition of Child | § 15-11-170(f)  
  - No deposition of child except by court order. |
| Sanction for Failure to Comply with Discovery | § 15-11-170(g)  
  - If a party fails to comply with a discovery order, court may grant a continuance, prohibit the use of the evidence during hearings, or enter other order the court deems just. |
| Court May Order Disclosure | § 15-11-170(h)  
  - Court has authority to order disclosure of any information deemed necessary for proper adjudication. |
| Restriction on Use of Discovery | § 15-11-170(i)  
  - Information obtained through discovery shall only be used during pending case and use may be further limited by court. |
| Religious, Nonmedical Healing Exception to Dependency | §15-11-107 Religious, nonmedical healing  
  - Cannot be sole basis for dependency unless life-threatening or will result in serious disability; affidavit of attending physician required.  
  - Life-threatening or serious disability exception, court may order medical evaluation of child and treatment. |
| Sibling Joint Placement or Frequent Visitation | § 15-11-135(e)  
  - Siblings shall be placed together unless DFCS provides written explanation of why co-placement is not appropriate.  
  - If siblings are not placed together, DFCS must provide frequent sibling visits or ongoing interactions, or must document why contact would be contrary to the safety or well-being of the siblings.  
  §15-11-201(b)(11)  
  - If siblings are removed, case plan must include statement that RE have been made and are required to be made while siblings are in care  
    - to place siblings in the same placement unless DFCS documents that joint placement would be contrary to the safety or well-being of any of the siblings, and  
    - to maintain frequent visitation or other ongoing interaction |
between siblings not placed together, unless DFCS documents that such frequent visitation or other ongoing interaction would be contrary to the safety or well-being of any of the siblings.

<table>
<thead>
<tr>
<th>Educational Stability Assurance Required</th>
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<tbody>
<tr>
<td>Statement Required in Case Plan</td>
</tr>
</tbody>
</table>

§ 15-11-201(b)(12) Educational Stability
- Statement required in case plan ensuring the educational stability of the dependent child while in foster care, including an assurance that
  - the placement of dependent child in foster care considers the appropriateness of the current educational setting and the proximity to the school in which the child was enrolled at the time of placement,
  - the state agency has coordinated with appropriate local educational agencies to ensure that the dependent child remains in the school in which the child was enrolled at the time of placement, **or**
  - if remaining in the home school is not in the best interests of the dependent child, 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 dependent child provided to the new school.

<table>
<thead>
<tr>
<th>Documents / Information Needed</th>
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<tbody>
<tr>
<td>Placement of child, any disruptions to placements</td>
</tr>
<tr>
<td>Release of information for child or parent, general HIPPA release order</td>
</tr>
<tr>
<td>Reports from: forensic evaluation, psychiatric evaluation, medical and dental screen or exam</td>
</tr>
<tr>
<td>Home evaluations of relative placement options</td>
</tr>
<tr>
<td><strong>Case plan</strong> due 30 days after removal</td>
</tr>
<tr>
<td>Photos, police reports, criminal records</td>
</tr>
<tr>
<td>Birth certificate of child, paternity documents</td>
</tr>
<tr>
<td>MDT – Multidisciplinary Team Meeting scheduled?</td>
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</tbody>
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<tr>
<th>Dismissal Options</th>
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</thead>
<tbody>
<tr>
<td>If DFCS asks for a dismissal, then there should be testimony or written statement entered into evidence stating why child is no longer at risk</td>
</tr>
<tr>
<td>Is there a safety plan signed by offending parent? If yes, it should be submitted as an exhibit to support dismissal.</td>
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<tr>
<td>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.</td>
</tr>
<tr>
<td>Verify child is not afraid to go home.</td>
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<tr>
<td>In lieu of an outright dismissal, child may be returned to the parents, DFCS put services in place, leave petition open, and all parties come back to court to confirm that services have adequately addressed risk factors. Then dismissal or use of a</td>
</tr>
<tr>
<td>Continuance Issues</td>
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<tr>
<td>If court dismisses petition after hearing evidence, court may still request DFCS services or CPS (family preservation services) referral.</td>
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</table>

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<tr>
<th>§ 15-11-110</th>
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<tbody>
<tr>
<td>No continuance if contrary to child’s interest.</td>
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<tr>
<td>Court to consider and give substantial weight to the child’s need for prompt resolution of custody status, stable environment, and damage to child of prolonged temporary placements.</td>
</tr>
<tr>
<td>Showing of good cause and only for time necessary based on evidence presented on the record.</td>
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<tr>
<td>Stipulation of parties or need for discovery is <strong>not</strong> good cause.</td>
</tr>
<tr>
<td>If no objection to continuance then consent.</td>
</tr>
</tbody>
</table>

**Practice Note:** Need to state specific reasons for continuance on the record and 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

<table>
<thead>
<tr>
<th>§ 15-11-215</th>
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<tbody>
<tr>
<td>When a child’s placement is being changed, DFCS <strong>shall</strong> notify</td>
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<tr>
<td>- the court</td>
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<tr>
<td>- the child if over 14</td>
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<tr>
<td>- child’s attorney</td>
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<tr>
<td>- GAL</td>
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<tr>
<td>- the person or agency with physical placement of child</td>
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<tr>
<td>- parent, guardian or legal custodian</td>
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<tr>
<td>o not less than <strong>5 days in advance</strong> of non-emergency placement changes and</td>
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<tr>
<td>o within 24 hours of an emergency placement change.</td>
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<tr>
<td>Emergency determined if child safety endangered.</td>
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<tr>
<td>Court may conduct a hearing in reference to the placement change; hearing may be requested by any party or attorney.</td>
</tr>
<tr>
<td>Court may reject DFCS case plan including the location of the child’s placement.</td>
</tr>
<tr>
<td>Court must state reasons why case plan rejected and court may order DFCS to devise new case plan and permanency plan.</td>
</tr>
</tbody>
</table>

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<thead>
<tr>
<th>§15-11-211</th>
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<tbody>
<tr>
<td>A diligent search shall be initiated at the outset of a dependency case and shall be a continuing DFCS duty.</td>
</tr>
<tr>
<td>Completed diligent search required before final disposition.</td>
</tr>
</tbody>
</table>
Others with Ongoing Relationship

- Diligent search and notices to relatives shall be written and filed with court within 30 days of child’s removal.
- A diligent search shall include at a minimum:
  - Interviews with the child's parent, before and after removal
  - Interviews with the child
  - Interviews with identified relatives throughout the case
  - Interviews with any other person who is likely to have information about the identity or location of the person being sought
  - Comprehensive searches of data bases available to DFCS including, but not limited to, searches of employment, residence, utilities, vehicle registration, child support enforcement, law enforcement, corrections records and any other records likely to result in identifying or locating the person being sought
  - Appropriate inquiry during the course of hearings in the case
  - Any other reasonable means likely to identify relatives or other persons who have demonstrated an ongoing commitment to the child
  - Notice to all adult relatives of the child identified in a diligent search are required to be provided with notice
    - specifying that child has been or is being removed from parental custody.
    - explaining the options a 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.
    - describing the process for becoming an approved foster family home and the additional services and supports available for children placed in approved foster homes.
    - describing any financial assistance for which a relative may be eligible.
  - Exception: Notice may not be required if there is family or domestic violence (Family Violence Exception)
- Accurint searches are frequently conducted by DFCS. GAL, child attorney and parent attorney should request to view the searches.
- Paternity documentation should be obtained from the State Office of Vital Records because children born in Georgia after 2005 may have an executed paternity acknowledgement and administrative legitimation with their birth certificates; this is different from the Putative Father Registry

Court Considerations

§15-11-26. Court Considerations for Best Interest of Child
Court to consider all factors affecting the child’s best interest in the
<table>
<thead>
<tr>
<th>Practice Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. How does parental behavior impact welfare of child? DFCS must show causal relationship between parent conduct and harm to the child.</td>
</tr>
<tr>
<td>2. Identify safety issues specifically.</td>
</tr>
<tr>
<td>3. Child and parent attorneys should receive copies of any document or exhibit submitted into evidence.</td>
</tr>
<tr>
<td>4. Any child <strong>under 3 years</strong> with a finding of dependency <strong>must</strong> have a Babies Can’t Wait (BCW) referral for developmental assessment and referral for BCW services; this may need to be included in adjudicatory order.</td>
</tr>
<tr>
<td>5. For any child <strong>14 years and older</strong>, the case plan <strong>must</strong> include a referral and plan for independent living services and written transitional living plan; this may need to be included in the adjudicatory order.</td>
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<tr>
<th>for Best Interest of Child</th>
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<tr>
<td>context of child’s age and developmental needs, including following 20 factors:</td>
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<tr>
<td>21. Physical safety and welfare, food, shelter, health and clothing</td>
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<tr>
<td>22. Love, affection, bonding, and emotional ties existing between child and parent or person available to care for the child</td>
</tr>
<tr>
<td>23. Sibling bond, including half siblings and step siblings</td>
</tr>
<tr>
<td>24. Child's need for permanence, need for stability and continuity of relationships</td>
</tr>
<tr>
<td>25. Child's attachments, child’s sense of security and familiarity, and continuity of affection for the child</td>
</tr>
<tr>
<td>26. Parental capacity</td>
</tr>
<tr>
<td>27. Home environment of each parent or person available to care for such child considering the promotion of the child's nurturance and safety rather than superficial or material factors</td>
</tr>
<tr>
<td>28. Stability of the family unit and community support systems</td>
</tr>
<tr>
<td>29. Mental and physical health of all individuals involved</td>
</tr>
<tr>
<td>30. Home, school and community record; history of child, child’s special needs</td>
</tr>
<tr>
<td>31. Community ties, church, school and friends</td>
</tr>
<tr>
<td>32. Child's background and ties, including familial, cultural and religious</td>
</tr>
<tr>
<td>33. The least disruptive placement alternative</td>
</tr>
<tr>
<td>34. Uniqueness of every family and child</td>
</tr>
<tr>
<td>35. Risks associated with being in substitute care</td>
</tr>
<tr>
<td>36. Child's wishes and long-term goals</td>
</tr>
<tr>
<td>37. Preferences of the persons available to care for the child</td>
</tr>
<tr>
<td>38. Evidence of family violence, substance abuse, criminal history, or sexual, mental, or physical child abuse</td>
</tr>
<tr>
<td>39. Recommendation by a court appointed custody evaluator or GAL</td>
</tr>
<tr>
<td>40. Any other factors considered by the court to be relevant and proper to its determination</td>
</tr>
</tbody>
</table>
- Was child present for court? Did child want to attend court hearing? Was child’s 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 (§ 15-11-215) should be monitored by child and parent attorneys. This is not a discretionary function for DFCS but it is often not followed or adequately addressed.

- § 15-11-17(c) requires all hearings to be recorded by stenographic notes, electronic or mechanical recording. See In the Interest of D.P., 284 Ga. App. 453 (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.

- **Unappealed deprivation / dependency order:** The Georgia 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 (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) (2008); In the Interest of A. G., 293 Ga. App. 383, 386 (1); In the Interest of B. T., 291 Ga. App. 604, 607 (a) (2008).
Code Sections

§ 15-11-102. Time Frames for Hearing Types (emphasis added for adjudication)
(a) A preliminary protective hearing shall be held promptly and no later than 72 hours after a child is placed in foster care, provided that, if the 72 hour time frame expires on a weekend or legal holiday, such hearing shall be held on the next day which is not a weekend or legal holiday. (b) If a child was not taken into protective custody or is released from foster care at a preliminary protective hearing, the following time frames apply: (1) A petition for dependency shall be filed within 30 days of the child's preliminary protective hearing; (2) Summons shall be served at least 72 hours before the dependency adjudication hearing; (3) The dependency adjudication hearing shall be held no later than 60 days after the filing of a petition for dependency; and (4) If the child's dispositional hearing is not held in conjunction with the dependency adjudication hearing, it shall be held and completed within 30 days after the conclusion of the dependency adjudication hearing. (c) If a child is not released from foster care at the preliminary protective hearing, the following time frames apply: (1) A petition for dependency shall be filed within five days of the child's preliminary protective hearing; (2) Summons shall be served at least 72 hours before the dependency adjudication hearing; (3) The dependency adjudication hearing shall be held no later than ten days after the filing of a petition for dependency; (4) DFCS shall submit to the court its written report within 30 days of the date a child who is placed in the custody of DFCS is removed from the home and at each subsequent review of the disposition order. If the DFCS report does not contain a plan for reunification services, a nonreunification hearing shall be held no later than 30 days from the time the report is filed; and (5) If a dispositional hearing is not held in conjunction with the dependency adjudication hearing, it shall be held and completed within 30 days after the conclusion of the dependency adjudication hearing. (d) An initial periodic review hearing shall be held within 75 days following a child's removal from his or her home. An additional periodic review shall be held within four months following such initial review. (e) Permanency plan hearings shall be held no later than 30 days after DFCS has submitted a written report to the court which does not provide a plan for reunification services or: (1) For children under seven years of age at the time a petition for dependency is filed, no later than nine months after such child is considered to have entered foster care, whichever comes first. Thereafter a permanency plan hearing shall be held every six months while such child continues in DFCS custody or more frequently as deemed necessary by the court until the court determines that such child's permanency plan and goal have been achieved; or (2) For children seven years of age and older at the time a petition is filed, no later than 12 months after such child is considered to have entered foster care, whichever comes first. Thereafter a permanency plan hearing shall be held every six months while such child continues in DFCS custody or more frequently as deemed necessary by the court until the court determines that such child's permanency plan and goal have been achieved. (f) A supplemental order of the court adopting a child's permanency plan shall be entered within 30 days after the court has determined that reunification efforts need not be made by DFCS.

15-11-109. Notice and Opportunity to be heard to foster parent, relative caregiver
(a) In advance of each hearing or review, DFCS shall give written notice of the date, time, place, and purpose of the review or hearing, including the right to be heard, to the caregiver of a child, the foster parent of a child, any preadoptive parent, or any relative providing care for a child. The written notice shall be delivered to the recipient at least 72 hours before the review or hearing,
except in the case of preliminary protective hearings or emergency hearings when such notice is not possible, by United States mail, e-mail, or hand delivery. (b) Notice of a hearing or review shall not be construed to require a legal custodian, foster parent, preadoptive parent, or relative caring for a child to be made a party to the hearing or review solely on the basis of such notice and opportunity to be heard.

**15-11-110. Continuance requirements**
(a) Upon request of an attorney for a party, the court may continue any hearing under this article beyond the time limit within which the hearing is otherwise required to be held; provided, however, that no continuance shall be granted that is contrary to the interests of the child. In considering a child's interests, the court shall give substantial weight to a child's need for prompt resolution of his or her custody status, the need to provide a child with a stable environment, and the damage to a child of prolonged temporary placements. (b) Continuances shall be granted only upon a showing of good cause and only for that period of time shown to be necessary by the evidence presented at the hearing on the motion. Whenever any continuance is granted, the facts proved which require the continuance shall be entered in the court record. (c) A stipulation between attorneys or the convenience of the parties shall not constitute good cause. Except as otherwise provided by judicial rules governing attorney conflict resolution, a pending criminal prosecution or family law matter shall not constitute good cause. The need for discovery shall not constitute good cause. (d) In any case in which a child or his or her parent, guardian, or legal custodian is represented by an attorney and no objection is made to an order continuing any such hearing beyond the time limit, the absence of such an objection shall be deemed a consent to the continuance; provided, however, that even with consent, the court shall decide whether to grant the continuance in accordance with subsection (a) of this Code section.

**15-11-111. At Any Hearing Juvenile Court May Order**
(a) At any hearing held with respect to a child, the court in its discretion, and based upon the evidence, may enter an order: (1) Accepting or rejecting any DFCS report; (2) Ordering an additional evaluation; or (3) Undertaking such other review as it deems necessary and appropriate to determine the disposition that is in the child's best interests. (b) The court's order: (1) May incorporate all or part of the DFCS report; and (2) Shall include findings of fact which reflect the court's consideration of the oral and written testimony offered by all parties, as well as nonparties, who are required to be provided with notice and a right to be heard in any hearing to be held with respect to a child, and DFCS.

**15-11-19. Party right to participate**
(a) A party has the right to be present, to be heard, to present evidence material to the proceedings, to cross-examine witnesses, to examine pertinent court files and records, and to appeal the orders of the court; provided, however, that the court shall retain the discretion to exclude a child from any part or parts of any proceeding under Article 3 of this chapter if the court determines that it is not in such child's best interests to be present. An attorney for an excluded child shall not be excluded from the proceedings. (b) A person afforded rights under this chapter shall be advised of such rights at that person's first appearance before the court.
15-11-150. Who can file dependency petition
A DFCS employee, a law enforcement officer, or any person who has actual knowledge of the abuse, neglect, or abandonment of a child or is informed of the abuse, neglect, or abandonment of a child that he or she believes to be truthful may make a petition alleging dependency.

15-11-151. Timing to file dependency petition
(a) If a child was removed from his or her home, a petition alleging dependency shall be filed within five days of the preliminary protective hearing. (b) If a child was not removed from his or her home or if a child was removed from his or her home but was released from protective custody at the preliminary protective hearing, a petition alleging dependency shall be filed within 30 days of the preliminary protective hearing. (c) Upon a showing of good cause and notice to all parties, the court may grant a requested extension of time for filing a petition alleging dependency in accordance with the best interests of the child. The court shall issue a written order reciting the facts justifying the extension. (d) If a petition alleging dependency is not filed within the required time frame, the complaint shall be dismissed without prejudice.

15-11-152. Contents of dependency petition
A petition alleging dependency shall be verified and may rely on information and belief and shall set forth plainly and with particularity: (1) The facts which bring a child within the jurisdiction of the court, with a statement that it is in the best interests of the child and the public that the proceeding be brought; (2) The name, date of birth, and residence address of the child named in the petition; (3) The name and residence address of the parent, guardian, or legal custodian of the child named in the petition; or, if such child's parent, guardian, or legal custodian does not reside or cannot be found within the state or if such place of residence address is unknown, the name of any known adult relative of such child residing within the county or, if there is none, the known adult relative of such child residing nearest to the location of the court; (4) Whether the child named in the petition is in protective custody and, if so, the place of his or her foster care and the time such child was taken into protective custody; and (5) Whether any of the information required by this Code section is unknown.

15-11-153. Amending dependency petition
(a) The petitioner may amend the petition alleging dependency at any time: (1) To cure defects of form; and (2) Prior to the adjudication hearing, to include new allegations of fact or requests for adjudication. (b) When the petition is amended after the initial service to include new allegations of fact or requests for adjudication, the amended petition shall be served on the parties and provided to the attorneys of record. (c) The court shall grant the parties additional time to prepare only as may be required to ensure a full and fair hearing; provided, however, that when a child is in protective custody or in detention, an adjudication hearing shall not be delayed more than ten days beyond the time originally fixed for the hearing.

15-11-160. Summons and Service
(a) The court shall direct the issuance of a summons to a child if such child is 14 years of age or older, such child's parent, guardian, or legal custodian, such child's attorney, such child's guardian ad litem, if any, 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 alleging dependency. A copy of the petition alleging
dependency 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 alleging dependency can be obtained. (b) A summons shall state that a
party is entitled to an attorney in the proceedings and that the court will appoint an attorney if the
party is an indigent person. (c) The court may endorse upon the summons an order directing a
child's parent, guardian, or legal custodian to appear personally at the hearing and directing the
person having the physical custody or control of a child to bring such child to the hearing. (d) A
party other than a child may waive service of summons by written stipulation or by voluntary
appearance at the hearing.

15-11-161. Summons and 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 as soon as possible and at least 72 hours before the
adjudication hearing. (b) If a party to be served is within this state and cannot be found but his or
her address is known or can be ascertained with due diligence, the summons shall be served upon
such party at least five days before the adjudication hearing by mailing him or her a copy by
registered or certified mail or statutory overnight delivery, return receipt requested. (c) If a party
to be served is outside this state but his or her address is known or can be ascertained with due
diligence, service of the summons shall be made at least five days before the adjudication
hearing either by delivering a copy to such party personally or by mailing a copy to him or her
by registered or certified mail or statutory overnight delivery, return receipt requested. (d) If,
after due diligence, a party to be served with a summons cannot be found and such party's
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. The adjudication hearing shall not
be earlier than five days after the date of the last publication. (e) (1) Service by publication shall
be made once a week for four consecutive weeks in the official organ of the county where the
petition alleging dependency has been filed. Service shall be deemed complete upon the date of
the last publication. (2) When served by publication, the notice shall contain the names of the
parties, except that the anonymity of a child shall be preserved by the use of appropriate initials,
and the date the petition alleging dependency was filed. The notice shall indicate the general
nature of the allegations and where a copy of the petition alleging dependency can be obtained
and require the party to be served by publication to appear before the court at the time fixed to
answer the allegations of the petition alleging dependency. (3) Within 15 days after the filing of
the order of service by publication, the clerk of court shall mail a copy of the notice, a copy of
the order of service by publication, and a copy of the petition alleging dependency to the last
known address of the party being served by publication. (f) Service of the summons may be
made by any suitable person under the direction of the court. (g) 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.

15-11-162. Failure to Appear
(a) In the event a parent, guardian, or legal custodian of a child named in a petition alleging
dependency is brought willfully fails to appear personally at a hearing after being ordered to so
appear or willfully fails to bring such child to a hearing after being so directed, the court may
issue an order against the person directing the person to appear before the court to show cause
why he or she should not be held in contempt of court. (b) If a parent, guardian, or legal
custodian of a child named in a petition alleging dependency is brought fails to appear in response to an order to show cause, the court may issue a bench warrant directing that such parent, guardian, or legal custodian be brought before the court without delay to show cause why he or she should not be held in contempt and the court may enter any order authorized by and in accordance with the provisions of Code Section 15-11-31.

15-11-163. Provisional hearing requirements
(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 alleging dependency and enter an interlocutory order of disposition if: (1) The petition alleges dependency of a child; (2) The summons served upon any party: (A) States that prior to the final hearing on such petition a provisional hearing 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 alleging dependency 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 the requirements of Code Section 15-11-160; and (3) A child named in a petition alleging dependency is brought is personally before the court at the provisional hearing. (b) Findings of fact and orders of disposition shall have only interlocutory effect pending final hearing on the petition alleging dependency. (c) If a party served by publication fails to appear at the final hearing on the petition alleging dependency, the findings of fact and interlocutory orders made shall become final without further evidence. If a party appears at the final hearing, the findings and orders shall be vacated and disregarded and the hearing shall proceed upon the allegations of such petition without regard to this Code section.

15-11-170. Discovery
(a) In all cases under this article, any party shall, upon written request to the party having actual custody, control, or possession of the material to be produced, have full access to the following for inspection, copying, or photographing: (1) The names and telephone numbers of each witness likely to be called to testify at the hearing by another party; (2) A copy of any formal written statement made by the alleged dependent child or any witness that relates to the subject matter concerning the testimony of the witness that a party intends to call as a witness at the hearing; (3) Except as otherwise provided in subsection (b) of this Code section, any scientific or other report which is intended to be introduced at any hearing or that pertains to physical evidence which is intended to be introduced; (4) Any drug screen concerning the alleged dependent child or his or her parent, guardian, or legal custodian; (5) Any case plan concerning the alleged dependent child or his or her parent, guardian, or legal custodian; (6) Any visitation schedule related to the alleged dependent child; (7) Photographs and any physical evidence which are intended to be introduced at any hearing; (8) Copies of any police incident reports regarding an occurrence which forms part or all of the basis of the petition; and (9) Any other relevant evidence not requiring consent or a court order under subsection (b) of this Code section. (b) Upon presentation of a court order or written consent from the appropriate person or persons permitting access to the party having actual custody, control, or possession of the material to be produced, any party shall have access to the following for inspection, copying, or photographing: (1) Any psychological, developmental, physical, mental or emotional health, or other assessments of the alleged dependent child or his or her family, parent, guardian, or legal custodian; (2) Any school
record concerning the alleged dependent child; (3) Any medical record concerning the alleged dependent child; (4) Transcriptions, recordings, and summaries of any oral statement of the alleged dependent child or of any witness, except child abuse reports that are confidential pursuant to Code Section 19-7-5 and work product of counsel; (5) Any family team meeting report or multidisciplinary team meeting report concerning the alleged dependent child or his or her parent, guardian, or legal custodian; (6) Supplemental police reports, if any, regarding an occurrence which forms part of all of the basis of the petition; and (7) Immigration records concerning the alleged dependent child. (c) If a party requests disclosure of information pursuant to subsection (a) or (b) of this Code section, it shall be the duty of such party to promptly make the following available for inspection, copying, or photographing to every other party: (1) The names and last known addresses and telephone numbers of each witness to the occurrence which forms the basis of the party's defense or claim; (2) Any scientific or other report which is intended to be introduced at the hearing or that pertains to physical evidence which is intended to be introduced; (3) Photographs and any physical evidence which are intended to be introduced at the hearing; and (4) A copy of any written statement made by any witness that relates to the subject matter concerning the testimony of the witness that the party intends to call as a witness. (d) A request for discovery or reciprocal discovery shall be complied with promptly and not later than five days after the request is received or 72 hours prior to any hearing except when later compliance is made necessary by the timing of such request. If such request for discovery is made fewer than 48 hours prior to an adjudicatory hearing, the discovery response shall be produced in a timely manner. If, subsequent to providing a discovery response in compliance with this Code section, the existence of additional evidence is found, it shall be promptly provided to the party making the discovery request. (e) If a request for discovery or consent for release is refused, application may be made to the court for a written order granting discovery. Motions for discovery shall certify that a request for discovery or consent was made and was unsuccessful despite good faith efforts made by the requesting party. An order granting discovery shall require reciprocal discovery. Notwithstanding the provisions of subsection (a) or (b) of this Code section, the court may deny, in whole or in part, or otherwise limit or set conditions concerning a discovery response upon a sufficient showing by a person or entity to whom a request for discovery is made that disclosure of the information would: (1) Jeopardize the safety of a party, witness, or confidential informant; (2) Create a substantial threat of physical or economic harm to a witness or other person; (3) Endanger the existence of physical evidence; (4) Disclose privileged information; or (5) Impede the criminal prosecution of a minor who is being prosecuted as an adult or the prosecution of an adult charged with an offense arising from the same transaction or occurrence. (f) No deposition shall be taken of an alleged dependent child unless the court orders the deposition, under such conditions as the court may order, on the ground that the deposition would further the purposes of this part. (g) If at any time during the course of the proceedings it is brought to the attention of the court that a person or entity has failed to comply with an order issued pursuant to this Code section, the court may grant a continuance, prohibit the party from introducing in evidence the information not disclosed, or enter such other order as the court deems just under the circumstances. (h) Nothing contained in this Code section shall prohibit the court from ordering the disclosure of any information that the court deems necessary for proper adjudication. (i) Any material or information furnished to a party pursuant to this Code section shall remain in the exclusive custody of the party and shall only be used during the pendency of the case and shall be subject to such other terms and conditions as the court may provide.
15-11-180. **Burden of Proof**
The petitioner shall have the burden of proving the allegations of a dependency petition by clear and convincing evidence.

15-11-181. **Timing of petition, participants in hearing, evidence, findings of fact, dismissal**

(a) The court shall fix a time for an adjudication hearing. If the alleged dependent child is in foster care, the hearing shall be scheduled for no later than ten days after the filing of the petition alleging dependency. If the alleged dependent child is not in foster care, the adjudication hearing shall be held no later than 60 days after the filing of the petition alleging dependency. If adjudication is not completed within 60 days from the date such child was taken into protective custody, the petition alleging dependency may be dismissed without prejudice. (b) The following persons shall have the right to participate in the adjudication hearing: (1) The parent, guardian, or legal custodian of the alleged dependent child, unless such person cannot be located or fails to appear in response to the notice; (2) The attorney and guardian ad litem of the alleged dependent child; (3) The alleged dependent child, unless the court finds, after considering evidence of harm to such child that will result from his or her presence at the proceeding, that being present is not in the child's best interests; (4) The attorneys for the parent, guardian, or legal custodian of the alleged dependent child if attorneys have been retained or appointed; (5) The assigned DFCS caseworker; and (6) The attorney for DFCS. (c) If the court finds it is in the best interests of the alleged dependent child, the court may allow the following to be present at the adjudication hearing: (1) Any relative or other persons who have demonstrated an ongoing commitment to a child alleged to be a dependent child with whom he or she might be placed; (2) DFCS employees involved with the case; (3) An advocate as requested by the parent, guardian, or legal custodian of the alleged dependent child; and (4) Other persons who have knowledge of or an interest in the welfare of such child. (d) Except as provided in this subsection, the adjudication hearing shall be conducted in accordance with Title 24. Testimony or other evidence relevant to the dependency of a child or the cause of such condition may not be excluded on any ground of privilege, except in the case of: (1) Communications between a party and his or her attorney; and (2) Confessions or communications between a priest, rabbi, or duly ordained minister or similar functionary and his or her confidential communicant. (e) After hearing the evidence, the court shall make and file specific written findings as to whether a child is a dependent child. (f) If the court finds that a child is not a dependent child, it shall dismiss the petition alleging dependency and order such child discharged from foster care or other restriction previously ordered. (g) If the court adjudicates a child as a dependent child, the court shall proceed immediately or at a postponed hearing to make a proper disposition of the case. (h) If the court adjudicates a child as a dependent child, the court shall also make and file a finding whether such dependency is the result of substance abuse by such child's parent, guardian, or legal custodian. (i) If the disposition hearing is held on the same day as the adjudication hearing, the court shall schedule the dates and times for the first periodic review hearing and for the permanency plan hearing.

15-11-190. **Court Ordered Social Study**
If the allegations of the petition alleging dependency are admitted or after an adjudication hearing the court has adjudicated a child as a dependent child, the court may direct that a written social study and report be made by a person designated by the court.
15-11-191. Contents of Court Ordered Social Study

Each social study shall include, but not be limited to, a factual discussion of each of the following subjects: (1) What plan, if any, for the return of the child adjudicated to be a dependent child to his or her parent and for achieving legal permanency for such child if efforts to reunify fail is recommended to the court; (2) Whether the best interests of the child will be served by granting reasonable visitation rights to his or her other relatives in order to maintain and strengthen the child adjudicated to be a dependent child's family relationships; (3) Whether the child adjudicated to be a dependent child has siblings under the court's jurisdiction, and, if so: (A) The nature of the relationship between such child and his or her siblings; (B) Whether the siblings were raised together in the same home and whether the siblings have shared significant common experiences or have existing close and strong bonds; (C) Whether the child adjudicated to be a dependent child expresses a desire to visit or live with his or her siblings and whether ongoing contact is in such child's best interests; (D) The appropriateness of developing or maintaining sibling relationships; (E) If siblings are not placed together in the same home, why the siblings are not placed together and what efforts are being made to place siblings together or why those efforts are not appropriate; (F) If siblings are not placed together, the frequency and nature of the visits between siblings; and (G) The impact of the sibling relationship on the child adjudicated to be a dependent child's placement and planning for legal permanence; (4) The appropriateness of any placement with a relative of the child adjudicated to be a dependent child; and (5) Whether a caregiver desires and is willing to provide legal permanency for a child adjudicated to be a dependent child if reunification is unsuccessful.

15-11-202. Reasonable Efforts (emphasis added for adjudication)

(a) Except as provided in subsection (a) of Code Section 15-11-203, reasonable efforts shall be made to preserve or reunify families: (1) Prior to the placement of an alleged dependent child in DFCS custody to prevent the need for removing him or her from his or her home; or (2) To eliminate the need for removal and make it possible for a child alleged to be or adjudicated as a dependent child to return safely to his or her home at the earliest possible time. (b) In determining the type of reasonable efforts to be made to a child alleged to be or adjudicated as a dependent child and in making such reasonable efforts, such child's health and safety shall be the paramount concern. (c) Appropriate services to meet the needs of a child alleged to be or adjudicated as a dependent child and his or her family may include those provided by DFCS and other services available in the community. (d) The court shall be required to review the appropriateness of DFCS's reasonable efforts at each stage of the proceedings. (e)(1) At the preliminary protective hearing, DFCS has the burden of demonstrating that: (A) It has made reasonable efforts to prevent placement of an alleged dependent child in foster care; (B) There are no appropriate services or efforts which could allow an alleged dependent child to safely remain in the home given the particular circumstances of such child and his or her family at the time of his or her removal and so the absence of such efforts was justifiable; or (C) Reasonable efforts to prevent placement and to reunify an alleged dependent child with his or her family are not required because of the existence of one or more of the circumstances enumerated in subsection (a) of Code Section 15-11-203. (2) At the adjudication hearing, DFCS has the burden of demonstrating that: (A) It has made reasonable efforts to eliminate the need for removal of an alleged dependent child from his or her home and to reunify such child with his or her family at the earliest possible time; or (B) Reasonable efforts to prevent placement and to reunify an
alleged dependent child with his or her family are not required because of the existence of one or more of the circumstances enumerated in subsection (a) of Code Section 15-11-203. (3) At each other hearing, DFCS has the burden of demonstrating that: (A) It has made reasonable efforts to eliminate the need for removal of a child alleged to be or adjudicated as a dependent child from his or her home and to reunify such child with his or her family at the earliest possible time; or (B) It has made reasonable efforts to finalize an alternative permanent home for a child alleged to be or adjudicated as a dependent child. (f) When determining whether reasonable efforts have been made, the court shall consider whether services to the child alleged to be or adjudicated as a dependent child and his or her family were: (1) Relevant to the safety and protection of such child; (2) Adequate to meet the needs of such child and his or her family; (3) Culturally and linguistically appropriate; (4) Available and accessible; (5) Consistent and timely; and (6) Realistic under the circumstances. (g) A finding that reasonable efforts have not been made shall not preclude the entry of an order authorizing a child alleged to be or adjudicated as a dependent child's placement when the court finds that placement is necessary for the protection of such child. (h) When efforts to prevent the need for a child alleged to be or adjudicated as a dependent child's placement were precluded by an immediate threat of harm to such child, the court may make a finding that reasonable efforts were made if it finds that the placement of such child in the absence of such efforts was justifiable. (i) Reasonable efforts to place a child adjudicated as a dependent child for adoption or with a guardian or legal custodian may be made concurrently with reasonable efforts to reunify. When DFCS decides to concurrently make reasonable efforts for both reunification and permanent placement away from the parent, guardian, or legal custodian of a child adjudicated as a dependent child, DFCS shall disclose its decision and both plans to all parties and obtain approval from the court. When DFCS proceeds on both plans, the court's review of reasonable efforts shall include efforts under both plans. (j) An order placing or continuing the placement of a child alleged to be or adjudicated as a dependent child in DFCS custody shall contain, but not be limited to, written findings of facts stating: (1) That such child's continuation in or return to his or her home would be contrary to his or her welfare; (2) Whether reasonable efforts have been made to prevent or eliminate the need for placement of such child, unless the court has determined that such efforts are not required or shall cease; and (3) Whether reasonable efforts should continue to be made to prevent or eliminate the need for placement of such child, unless the court has previously determined that such efforts are not required or shall cease.

15-11-203. No Reasonable Efforts allowed when . . .

(a) The court may direct that reasonable efforts to eliminate the need for placement of an alleged dependent child shall not be required or shall cease if the court determines and makes written findings of fact that a parent of an alleged dependent child: (1) Has subjected his or her child to aggravated circumstances; (2) Has been convicted of the murder of another child of such parent; (3) Has been convicted of the voluntary manslaughter of another child of such parent; (4) Has been convicted of aiding or abetting, attempting, conspiring, or soliciting to commit murder or voluntary manslaughter of another child of such parent; (5) Has been convicted of committing a felony assault that results in serious bodily injury to the child or another child of such parent; (6) Has been convicted of rape, sodomy, aggravated sodomy, child molestation, aggravated child molestation, incest, sexual battery, or aggravated sexual battery of the alleged dependent child or another child of the parent; (7) Is required to register as a sex offender and that preservation of a parent-child relationship is not in the alleged dependent child's best interests; or (8) Has had his
or her rights to a sibling of the alleged dependent child terminated involuntarily and the circumstances leading to such termination of parental rights to that sibling have not been resolved. (b) If the court determines that one or more of the circumstances enumerated in subsection (a) of this Code section exist or DFCS has submitted a written report to the court which does not contain a plan for reunification services, then: (1) A permanency plan hearing shall be held for a child adjudicated as a dependent child within 30 days; and (2) Reasonable efforts shall be made to place a child adjudicated as a dependent child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of such child.

15-11-211. Diligent Search
(a) A diligent search shall be initiated at the outset of a case under this article and shall be conducted throughout the duration of a case, when appropriate. (b) A diligent search shall include at a minimum: (1) Interviews with the child's parent during the course of an investigation, while child protective services are provided, and while such child is in care; (2) Interviews with the child; (3) Interviews with identified relatives throughout the case; (4) Interviews with any other person who is likely to have information about the identity or location of the person being sought; (5) Comprehensive searches of data bases available to DFCS including, but not limited to, searches of employment, residence, utilities, vehicle registration, child support enforcement, law enforcement, corrections records, and any other records likely to result in identifying and locating the person being sought; (6) Appropriate inquiry during the course of hearings in the case; and (7) Any other reasonable means that are likely to identify relatives or other persons who have demonstrated an ongoing commitment to the child. (c) A diligent search shall be completed by DFCS before final disposition. (d) All adult relatives of the alleged dependent child identified in a diligent search required by this Code section, subject to exceptions due to family or domestic violence, shall be provided with notice: (1) Specifying that an alleged dependent child has been or is being removed from his or her parental custody; (2) Explaining the options a relative has to participate in the care and placement of the alleged dependent child and any options that may be lost by failing to respond to the notice; (3) 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 (4) Describing any financial assistance for which a relative may be eligible. (e) The diligent search required by this Code section and the notification required by subsection (d) of this Code section shall be completed, documented in writing, and filed with the court within 30 days from the date on which the alleged dependent child was removed from his or her home. (f) After the completion of the diligent search required by this Code section, DFCS shall have a continuing duty to search for relatives or other persons who have demonstrated an ongoing commitment to a child and with whom it may be appropriate to place the alleged dependent child until such relatives or persons are found or until such child is placed for adoption unless the court excuses DFCS from conducting a diligent search.

15-11-214. No set expiration date
(a) An order of disposition in a dependency proceeding shall continue in force until the purposes of the order have been accomplished. (b) The court may terminate an order of disposition of a child adjudicated as a dependent child 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 a child remains in DFCS
care or continues to receive services from DFCS, when a child adjudicated as a dependent child reaches 18 years of age, all orders affecting him or her then in force terminate and he or she shall be discharged from further obligation or control.

15-11-215. Change of Placement procedures  
(a) Not less than five days in advance of any placement change, DFCS shall notify the court, a child who is 14 years of age or older, the child's parent, guardian, or legal custodian, the person or agency with physical custody of the child, the child's attorney, the child's guardian ad litem, if any, and any other attorney of record of such change in the location of the child's placement while the child is in DFCS custody. (b) If a child's health or welfare may be endangered by any delay in changing his or her placement, the court and all attorneys of record shall be notified of such placement change within 24 hours of such change. (c) A child adjudicated as a dependent child who is 14 years of age or older, his or her parent, guardian, or legal custodian, the person or agency with physical custody of the child, such child's attorney, such child's guardian ad litem, if any, and any attorney of record may request a hearing pertaining to such child's case plan or the permanency plan in order for the court to consider the change in the location of such child's placement and any changes to the case plan or permanency plan resulting from such child's change in placement location. The hearing shall be held within five days of receiving notice of a change in the location of such child's placement and prior to any such placement change, unless such child's health or welfare may be endangered by any delay in changing such child's placement. (d) At the hearing to consider a child adjudicated as a dependent child's case plan and permanency plan, the court shall consider the case plan and permanency plan recommendations made by DFCS, including a recommendation as to the location of the placement of such 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 DFCS, including the location of such child's placement. (e) If the court rejects DFCS recommendations, the court shall demonstrate that DFCS recommendations were considered and explain why it did not follow such recommendations. If the court rejects the DFCS case plan and permanency plan recommendations, including the change in the location of the placement of a child adjudicated as a dependent child, the court may order DFCS to devise a new case plan and permanency plan recommendation, including a new recommendation as to the location of such child within the resources of the department, or make any other order relative to placement or custody outside the department as the court finds to be in the best interests of such child and consistent with the policy that children in DFCS custody should have stable placements. (f) Placement or a change of legal custody by the court outside DFCS shall relieve DFCS of further responsibility for a child adjudicated as a dependent child except for any provision of services ordered by the court to ensure the continuation of reunification services to such child's family when appropriate.

15-11-216. Reviews  
(a) All cases of children in DFCS custody shall be initially reviewed within 75 days following a child adjudicated as a dependent child's removal from his or her home and shall be conducted by the court. An additional periodic review shall be held within four months following the initial review and shall be conducted by the court or by judicial citizen review panels established by the court, as the court directs, meeting such standards and using such procedures as are established by court rule by the Supreme Court, with the advice and consent of the Council of Juvenile Court Judges. The court shall have the discretion to schedule any subsequent review hearings as
necessary. (b) At any periodic review hearing, the paramount concern shall be a child adjudicated as a dependent child's health and safety. (c) At the initial 75 day periodic review, the court shall approve the completion of the relative search, schedule the subsequent four-month review to be conducted by the court or a citizen judicial review panel, and shall determine: (1) Whether a child adjudicated as a dependent child continues to be a dependent child; (2) Whether the existing case plan is still the best case plan for such child and his or her family and whether any changes need to be made to the case plan, including whether a concurrent case plan for nonreunification is appropriate; (3) The extent of compliance with the case plan by all participants; (4) The appropriateness of any recommended changes to such child's placement; (5) Whether appropriate progress is being made on the permanency plan; (6) Whether all legally required services are being provided to a child adjudicated as a dependent child, his or her foster parents if there are foster parents, and his or her parent, guardian, or legal custodian; (7) Whether visitation is appropriate and, if so, approve and establish a reasonable visitation schedule consistent with the age and developmental needs of a child adjudicated as a dependent child; (8) Whether, for a child adjudicated as a dependent child who is 14 years of age or older, the services needed to assist such child to make a transition from foster care to independent living are being provided; and (9) Whether reasonable efforts continue to be made to prevent or eliminate the necessity of such child's removal from his or her home and to reunify the family after removal of a child adjudicated as a dependent child, unless reasonable efforts were not required. (d) If at any review subsequent to the initial 75 day review the court finds that there is a lack of substantial progress towards completion of the case plan, the court shall order DFCS to develop a case plan for nonreunification or a concurrent case plan contemplating nonreunification. (e) At the time of each review of a child adjudicated as a dependent child in DFCS custody, DFCS shall notify the court whether and when it intends to proceed with the termination of parental rights.
Chapter 3  Disposition Hearing and Diligent Search for Relatives

Contribution by Mary Hermann, JD, CWLS

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<td>§ 15-11- 202</td>
<td>Reasonable Efforts</td>
</tr>
<tr>
<td></td>
<td>§ 15-11- 203</td>
<td>No Reasonable Efforts Required</td>
</tr>
<tr>
<td></td>
<td>§ 15-11- 210</td>
<td>Disposition Hearing</td>
</tr>
<tr>
<td></td>
<td>§ 15-11- 211</td>
<td>Diligent Search</td>
</tr>
<tr>
<td></td>
<td>§ 15-11- 212 and 213</td>
<td>Orders of Disposition</td>
</tr>
<tr>
<td></td>
<td>§ 15-11- 214</td>
<td>Disposition Order Duration</td>
</tr>
</tbody>
</table>

| Purpose | • Decide where the child will be placed following a dependency adjudication. |
|         | • Identify services needed by the family and child. |
|         | • Decide on the best long term or permanency plan for child. |
|         | • Receive case plan (must be in writing and filed with court) |
|         | • Receive diligent search for relative or other persons who have demonstrated an ongoing commitment to the child (must be in writing and filed with court) |

| Pleadings | • Dependency Petition |
|           | • Dependency adjudication order |
|           | • Diligent search |
|           | • Supplemental dispositional orders and judicial citizen panel review recommendations |
|           | • DFCS reports in reference to the permanency plan |
|           | • Social Study and Report §§ 15-11-190 and 191 |

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Same as Dependency Adjudication</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 15-11-10(1)(C)</td>
<td>• Child under 18 years alleged to be a dependent in the state.</td>
</tr>
<tr>
<td></td>
<td>• Petition must state factual basis of jurisdiction.</td>
</tr>
<tr>
<td>§ 15-11-10(1)(G)</td>
<td>• Child remaining in foster care after 18 years old OR</td>
</tr>
<tr>
<td></td>
<td>• Child is 18 years or older and receiving independent living services.</td>
</tr>
<tr>
<td></td>
<td>• Limited jurisdiction to review the status of the child and the services provided to the child for independent living or foster care.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>§ 15-11-12</th>
<th>Dual Jurisdiction Child</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• Child may be delinquent and dependent or dependent and CHINS if a “factual basis” established.</td>
</tr>
</tbody>
</table>
- If the delinquent and dependency case or CHINS and dependency cases are consolidated, the dependency time lines apply to the consolidated court action.

### Venue

<table>
<thead>
<tr>
<th>§ 15-11-125</th>
</tr>
</thead>
<tbody>
<tr>
<td>- A proceeding may be commenced</td>
</tr>
<tr>
<td>- in the county where child legally resides or</td>
</tr>
<tr>
<td>- in the county of child’s presence at commencement of action if the child is present without a custodian or the acts underlying the dependency occurred in that county.</td>
</tr>
</tbody>
</table>

**Transfer of Venue**

- Venue may be transferred to child’s county of legal residence for the convenience of parties.
- 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.

<table>
<thead>
<tr>
<th>§ 15-11-105(h)</th>
</tr>
</thead>
<tbody>
<tr>
<td>- If change of venue, GAL shall forward pertinent information to next GAL appointed.</td>
</tr>
</tbody>
</table>

### Transfer for Reunification Case Plan to County of Parent Residence

<table>
<thead>
<tr>
<th>§15-11-33</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Transfer to county of parent residence for reunification case plan</td>
</tr>
<tr>
<td>- Within 30 days of filing of the transfer order, transferring court shall provide to the receiving court:</td>
</tr>
<tr>
<td>- certified copies of the adjudication order</td>
</tr>
<tr>
<td>- order of disposition</td>
</tr>
<tr>
<td>- order of transfer</td>
</tr>
<tr>
<td>- case plan</td>
</tr>
<tr>
<td>- any other court documents deemed necessary by the transferring court to enable the receiving court to assume jurisdiction over the matter.</td>
</tr>
<tr>
<td>- Transferring court shall retain jurisdiction until the receiving court acknowledges acceptance of the transfer.</td>
</tr>
<tr>
<td>- Compliance with this code section shall terminate jurisdiction in the transferring court and confer jurisdiction in the receiving court.</td>
</tr>
</tbody>
</table>

### Change of Venue GAL Duty

<table>
<thead>
<tr>
<th>§15-11-105(h)</th>
</tr>
</thead>
<tbody>
<tr>
<td>- If change of venue then GAL shall forward pertinent information to next GAL appointed.</td>
</tr>
</tbody>
</table>

### Timing Of Disposition

<table>
<thead>
<tr>
<th>§15-11-210 (a)</th>
</tr>
</thead>
<tbody>
<tr>
<td>- To be held in conjunction with adjudication or</td>
</tr>
<tr>
<td>- Within 30 days of conclusion of adjudication</td>
</tr>
</tbody>
</table>

**Practice Notes:**

- Case plan is due to the court within 30 days of removal, § 15-11-200(a), but disposition is within 30 days of adjudication. Sometimes the case plan has already been filed with the court before the case is in court for the disposition; in this situation, the court may modify terms of the case plan.
Always review terms of the case plan before the disposition hearing.

### Evidence Used During Disposition

#### Hearsay Allowed

<table>
<thead>
<tr>
<th>§15-11-210 (b and c)</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Any evidence may be considered that is <strong>relevant, reliable and necessary</strong> to determine the needs of a child, including hearsay.</td>
</tr>
<tr>
<td>• Before determining disposition, the court shall receive in evidence:</td>
</tr>
<tr>
<td>o The social study report, if applicable, made by DFCS and the child’s proposed written case plan (social study report and case plan shall be filed with the court not less than 48 hours before the disposition hearing).</td>
</tr>
<tr>
<td>o GAL study or evaluation</td>
</tr>
<tr>
<td>o Any psychological, medical, developmental, or educational study or evaluation of the child</td>
</tr>
<tr>
<td>o Other relevant and material evidence as may be offered, including the willingness of the caregiver to provide legal permanency for the child if reunification is unsuccessful</td>
</tr>
</tbody>
</table>

### §15-11-210 (d and e)

- Prior to a disposition hearing and upon request, the parties and their attorneys shall have an opportunity to examine any written reports received by the court, to controvert reports, and to cross examine individual making reports except the court may withhold portions of reports if court did not rely on and if information is confidential or prejudicial to the interests of any party.
- GAL is subject to examination and cross examination by the parties.

### § 15-11- 104(j)

- The court, a child, or any other party may compel a GAL to attend a trial or hearing relating to the child, to testify, if appropriate, as to the proper disposition.

### § 15-11- 104(k)

- The court shall ensure that parties have the ability to challenge recommendations made by the GAL or the factual basis for the recommendations in accordance with the rules of evidence applicable to the specific proceeding.

### § 15-11- 104(l)

- GAL’s report shall not be admissible into evidence prior to the disposition hearing except in accordance with the rules of evidence applicable to the specific proceeding.

### § 15-11- 104(m)

- GAL who is not also serving as attorney for a child may be called as a witness for the purpose of cross-examination regarding the GAL’s report even if the GAL is not identified as a witness by a party.

### Diligent Search Required at

<table>
<thead>
<tr>
<th>§ 15-11-211</th>
</tr>
</thead>
<tbody>
<tr>
<td>• A diligent search shall be initiated at the outset of a dependency case and shall be a continuing DFCS duty.</td>
</tr>
</tbody>
</table>
### Outset of Case and Notice to Relatives or Others with Ongoing Relationship

- Completed diligent search required before final disposition.
- Diligent search and notices to relatives shall be written and filed with court within 30 days of child’s removal.
- A diligent search shall include at a minimum:
  - Interviews with the child’s parent, before and after removal
  - Interviews with the child
  - Interviews with identified relatives throughout the case
  - Interviews with any other person who is likely to have information about the identity or location of the person being sought
  - Comprehensive searches of data bases available to DFCS including, but not limited to, searches of employment, residence, utilities, vehicle registration, child support enforcement, law enforcement, corrections records and any other records likely to result in identifying or locating the person being sought
  - Appropriate inquiry during the course of hearings in the case
  - Any other reasonable means likely to identify relatives or other persons who have demonstrated an ongoing commitment to the child
  - Notice to all adult relatives of the child identified in a diligent search are required to be provided with notice
    - specifying that child has been or is being removed from parental custody.
    - explaining the options a 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.
    - describing the process for becoming an approved foster family home and the additional services and supports available for children placed in approved foster homes.
    - describing any financial assistance for which a relative may be eligible.
  - Exception: Notice may not be required if there is family or domestic violence (Family Violence Exception)

### Practice Notes:

- Accurint searches are frequently conducted by DFCS. GAL, child attorney and parent attorney should request to view the searches.
- Paternity documentation should be obtained from the State Office of Vital Records because children born in Georgia after 2005 may have an executed paternity acknowledgement and administrative legitimation with their birth certificates; this is different than the Putative Father Registry.
<table>
<thead>
<tr>
<th>Caveat</th>
<th>Case Plan should be filed with court 30 days after removal, this is both state and federal law</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Child and Party</strong></td>
<td><strong>§ 15-11-103 Child and Party</strong></td>
</tr>
<tr>
<td></td>
<td>• All parties, including the child, have a right to counsel at all stages of the proceedings.</td>
</tr>
<tr>
<td></td>
<td>• Party defined at § 15-11-2 (52) as state, a child, parent, guardian, legal custodian, or other person subject to any judicial proceeding, except in delinquency proceedings; then only a child and the state are parties.</td>
</tr>
<tr>
<td></td>
<td>• Parent defined at § 15-11-2 (51) as legal father or legal mother of a child.</td>
</tr>
<tr>
<td></td>
<td>• Child’s attorney should be appointed “as soon as practicable to ensure adequate representation” and before the first hearing that may substantially affect the interests of the child.</td>
</tr>
<tr>
<td></td>
<td>o Child attorney has “attorney-client” duty.</td>
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<tr>
<td></td>
<td>o Child attorney representation continues through appeals or until excused by court.</td>
</tr>
<tr>
<td></td>
<td>o Child’s right to attorney cannot be waived.</td>
</tr>
<tr>
<td></td>
<td>• Party should be advised of right to counsel prior to any hearing:</td>
</tr>
<tr>
<td></td>
<td>o Party has right to obtain or employ attorney</td>
</tr>
<tr>
<td></td>
<td>o If indigent, right to appointed counsel</td>
</tr>
<tr>
<td></td>
<td>o Can waive right to attorney</td>
</tr>
<tr>
<td></td>
<td>• If non-indigent, then did parent exercise reasonable diligence to obtain an attorney? Court findings should be on the record (<em>In the Interest of P.D.W. et al. children</em>, 296 Ga. App. 189, 674 S.E.2d 338 (2009)).</td>
</tr>
<tr>
<td></td>
<td>• Putative Father issue – is he a “party”?</td>
</tr>
<tr>
<td></td>
<td>• Inquiry about incarcerated parents; transport to hearings?</td>
</tr>
<tr>
<td><strong>Right to Attorney</strong></td>
<td><strong>§ 15-11-19</strong></td>
</tr>
<tr>
<td></td>
<td>• Party has right to be present, heard, present evidence, cross examine witnesses, examine pertinent court files and records, and appeal orders of the court.</td>
</tr>
<tr>
<td></td>
<td>• “Party” includes child, except court may exclude child if not in the child’s best interest to be present.</td>
</tr>
<tr>
<td></td>
<td>• Party shall be advised of these rights at that person’s first appearance.</td>
</tr>
<tr>
<td><strong>Timing of Appointment</strong></td>
<td><strong>§ 15-11-108(a)</strong></td>
</tr>
<tr>
<td></td>
<td>The court shall give to all parties written notice of the date, time, place, and purpose of the following post-adjudication hearings or reviews:</td>
</tr>
<tr>
<td></td>
<td>• Nonreunification hearings</td>
</tr>
<tr>
<td></td>
<td>• Disposition hearings</td>
</tr>
<tr>
<td></td>
<td>• Periodic review hearings</td>
</tr>
<tr>
<td></td>
<td>• Periodic reviews by judicial citizen review panel</td>
</tr>
<tr>
<td></td>
<td>• Permanency plan hearings</td>
</tr>
<tr>
<td></td>
<td>• TPR hearings</td>
</tr>
</tbody>
</table>
• Post-TPR review hearings

§ 15-11-108(b)
Issuance and service of summons, when appropriate, shall comply with the requirements of § 15-11-160 and § 15-11-161.

§ 15-11-108(c)
Unless otherwise provided in this chapter, written notice shall be delivered to the recipient at least 72 hours before the hearing or review by United States mail, e-mail, or hand delivery.

§ 15-11-160
• Copy of dependency petition (except publication)
• The court shall direct the issuance of a summons to
  o a child if 14 years of age or older
  o child's parent, guardian, or legal custodian
  o child's attorney and child's guardian ad litem
  o any other persons who appear to the court to be proper or necessary parties to the proceeding.
• Summons must provide notice of a party’s right to counsel.
• Party other than child may waive summons by written stipulation or voluntary appearance at hearing.

§ 15-11-161
• If party is in Georgia and can be found, then personal service ASAP and at least 72 hours before the adjudication hearing. § 15-11-161(a).
• If party is in Georgia and cannot be found but address is known or can be known with due diligence, must be served at least 5 days before the adjudication hearing by registered or certified mail or statutory overnight delivery, return receipt requested. § 15-11-161(b).
• If party is outside Georgia with known address or known with due diligence, then must be served at least 5 days before the adjudication hearing by personal service or by registered or certified mail or statutory overnight delivery, return receipt requested. § 15-11-161(c).
• If, after due diligence, whereabouts of a party are unknown, then service by publication; hearing shall be no earlier than 5 days after final publication. § 15-11-161(d).
• Publication shall be 1 time per week for 4 weeks in legal organ of county where dependency pending § 15-11-161(e)
• Party is defined at § 15-11-2 (52) as state, a child, parent, guardian, legal custodian, or other person subject to any judicial proceeding except in delinquency proceedings; then only a child and the state are parties.
• Parent is defined at § 15-11-2 (51) as legal father or legal mother of a child.

§15-11-161(f)
• Service of summons may be made by any suitable person under the
Provisional Hearing Requirements

§ 15-11-163 Provisional Hearing
- The court may conduct a provisional hearing and issue an interlocutory order if one party is before the court and service by publication is required for the other party and
  - child is present at the provisional hearing.
  - summons to published party states final hearing date, time, location.
  - served party is required to appear at provisional hearing.
- Provisional hearing findings will become final if published party does not appear at calendared final hearing.

Notice to Non-Parties: Foster Parent, Relative Caregiver

§ 15-11-109
- Notice of hearing or review must be given to foster parents of the child, pre-adoptive parents or relatives caring for the child.
- Notice is for opportunity to be heard but does not compel attendance.
- Written notice (mail, hand delivery or email) and 72 hours in advance, date, time, place, purpose of hearing and notice of their right to be heard – exception: preliminary protective hearing.
- Not a party to the dependency action; only right to attendance and opportunity to be heard.

Willful Failure to Appear

§ 15-11-162
If parent, guardian, or legal custodian willfully fails to appear after being ordered to appear, then Rule Nisi and contempt and bench warrant may occur.

Clear and Convincing
- Even though some hearsay is accepted during disposition hearings, the Georgia Court of Appeals has ruled “[i]n 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, 64, 673 S.E.2d 586, 588 (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. In the Interest of E. C., 271 Ga. App. 133, 135 (1) (609 SE2d 381) (2004), and In the Interest of H.S., 285 Ga. App. 839, 842 (648 SE2d 143) (2007).

Case Plan Options
- One of three options:
  - Reunification
  - Concurrent
  - Nonreunification requires a nonreunification hearing within 30
### Permanency Plan Options

<table>
<thead>
<tr>
<th>One of four options:</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Reunification</td>
</tr>
<tr>
<td>• Adoption</td>
</tr>
<tr>
<td>• Permanent Guardianship</td>
</tr>
<tr>
<td>• APPLA</td>
</tr>
</tbody>
</table>

### Disposition

#### § 15-11-212(a)

The court may include any of the following options in the disposition order:

- Remain with parent, guardian, or legal custodian subject to court conditions
- Grant or transfer temporary legal custody to any of these persons or entities:
  - Any individual, including a biological parent, 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 such child
  - An agency or other private organization licensed or authorized by law to receive and provide care for the child
  - Any public agency authorized by law to receive and provide care for the child
    - **Exception:** “public agency” shall not include DJJ or an individual in another state with or without supervision by an appropriate officer pursuant to the requirements of § 39-4-4, ICPC.
- Transfer jurisdiction in accordance with § 39-4-4, ICPC
- Order child and parent, guardian, or legal custodian to participate in counseling to prevent future dependency
- Order the child’s parent, guardian, or legal custodian to participate in a court approved educational or counseling program designed to enhance parental ability
- Order DFCS to implement, and child's parent, guardian, or legal custodian to cooperate with, any plan approved by the court
- Order temporary child support
  - Court to apply child support guidelines, § 19-6-15
  - Cannot modify an existing child support order except designate obligor to make payments to the child’s caretaker on a temporary basis; juvenile court order to be filed in clerk’s office of the court with the existing child support order
  - Child support can be enforced with contempt in juvenile court as long as dependency action open in the juvenile court
  - See § 19-6-15(i)(2)(I), Specific Deviation (I) permanency plan or foster care plan. In cases where the child is in the...
legal custody of DHS, the child protection or foster care agency of another state or territory, or any other child-caring entity, public or private, the court or the jury may consider a deviation from the presumptive amount of child support if the deviation will assist in accomplishing a permanency plan or foster care plan for the child with a goal of returning the child to the parent or parents and the parent's need to establish an adequate household or to otherwise adequately prepare herself or himself for the return of the child clearly justifies a deviation for this purpose.

<table>
<thead>
<tr>
<th>Disposition</th>
<th>§ 15-11-212(b)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Court Direct Or Approve Retransfer Back to Parent</td>
<td>The transfer of temporary legal custody may be subject to conditions and limitations the court may prescribe.</td>
</tr>
<tr>
<td></td>
<td>The court shall approve or direct the return of the physical custody of a child adjudicated as a dependent child to his or her parent, guardian, or legal custodian either upon the occurrence of specified circumstances or at the direction of the court.</td>
</tr>
<tr>
<td></td>
<td>The return of physical custody of a child adjudicated as a dependent child to his or her parent, guardian, or legal custodian may be made subject to conditions and limitations the court may prescribe, including, but not limited to, supervision for the protection of the child.</td>
</tr>
<tr>
<td></td>
<td>o This may include “aftercare” services or supervision provided by DFCS or court.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Disposition Detention in secure facility prohibited EXCEPT ...</th>
<th>§ 15-11-212(c)</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 15-11-212(c)</td>
<td>A child adjudicated dependent shall not be committed to or confined in an institution or other facility designed or operated for the benefit of delinquent children unless the child is also adjudicated to be a delinquent child and the child’s detention is warranted under the requirements of Article 6 of Chapter 11, § 15-11-470 to 630.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Sua Sponte Judicial Review</th>
<th>§ 15-11-212(d)</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 15-11-212(d)</td>
<td>After transferring temporary legal custody of a dependent child to DFCS, the court may at any time conduct sua sponte a judicial review of the current placement plan being provided to the child.</td>
</tr>
<tr>
<td></td>
<td>After its review, the court may</td>
</tr>
<tr>
<td></td>
<td>o order DFCS to comply with the current placement plan.</td>
</tr>
<tr>
<td></td>
<td>o order DFCS to devise a new placement plan.</td>
</tr>
<tr>
<td></td>
<td>o make any other order related to placement or custody outside DFCS as the court finds to be in the best interests of the child.</td>
</tr>
<tr>
<td></td>
<td>Placement or a change of custody by the court outside DFCS shall relieve DFCS of further responsibility for the child except for any provision of services ordered by the court to ensure the continuation of reunification services to the child’s family.</td>
</tr>
<tr>
<td></td>
<td>o This may include “aftercare” services or supervision provided by DFCS or court.</td>
</tr>
</tbody>
</table>
### Disposition not Required when Child is Discharged from Mental Health Facility when Child Returning to State Care

<table>
<thead>
<tr>
<th>§ 15-11-212(e)</th>
</tr>
</thead>
<tbody>
<tr>
<td>- A court shall not be required to make an order of disposition 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 custody when the court made its most recent adjudication that the child was a dependent child.</td>
</tr>
<tr>
<td>- Title 37 is Mental Health, Developmental Disabilities and Substance Dependent Treatment</td>
</tr>
</tbody>
</table>

### Six Months Clean Screens Option for Court

<table>
<thead>
<tr>
<th>§ 15-11-212(f)</th>
</tr>
</thead>
<tbody>
<tr>
<td>- If the court finds a child’s dependency is the result of substance abuse by his or her parent, guardian, or legal custodian and the court orders transfer of temporary legal custody of the child, the court can also order that legal custody of the child may not be transferred back to the parent, guardian, or legal custodian unless the parent, guardian, or legal custodian undergoes substance abuse treatment submits to random substance abuse screenings random screenings remain negative for a period of no less than six consecutive months.</td>
</tr>
</tbody>
</table>

**Practice Note:** 6 months clean screens is an option for the court to choose but it is DFCS policy that 6 months clean screens are required before the child may be returned to the parent. Court has discretion and may override the DFCS policy and return the child to the parent’s custody sooner than 6 months.

### If no RE but RE Would Not Cure Dependency

<table>
<thead>
<tr>
<th>§ 15-11-212(g)</th>
</tr>
</thead>
<tbody>
<tr>
<td>- If the court finds that DFCS’ preventive or reunification efforts have not been reasonable but that further efforts could not permit a dependent child to safely remain at home, the court may nevertheless authorize or continue the removal of the child</td>
</tr>
</tbody>
</table>

### Court to Review RE for Concurrent Planning

<table>
<thead>
<tr>
<th>§ 15-11-212(h)</th>
</tr>
</thead>
<tbody>
<tr>
<td>- If there is a concurrent permanency plan, the court shall review the RE of DFCS to recruit, identify, and place the child in the home of a relative, foster parent, or other person who has demonstrated an ongoing commitment to the child and has agreed to provide a legally permanent home for the child in the event reunification efforts are not successful.</td>
</tr>
</tbody>
</table>

### Disposition Order Contents

<table>
<thead>
<tr>
<th>§ 15-11-213</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Disposition order shall contain written findings of fact to support the disposition and case plan ordered.</td>
</tr>
<tr>
<td>- Before making disposition, court shall consider:</td>
</tr>
<tr>
<td>o Why child’s best interest and safety are served by disposition and case plan, with consideration of the following:</td>
</tr>
<tr>
<td>▪ Relationship between child and siblings, parents, and</td>
</tr>
</tbody>
</table>
any other person who may significantly affect the child's best interests
- Child's adjustment to home, school and community
- Mental and physical health of all individuals involved
- Child’s wishes as to placement
- The wishes of the child’s parent, guardian, or legal custodian
- Potential relative or individuals appropriate for placement
- Parent’s ability to provide safe home
- Availability of recommended services
- Alternative dispositions or services considered and why the dispositions or services were not appropriate in this case
- Appropriateness of the particular placement made or to be made by the placing agency
- Whether RE were made to prevent or eliminate the necessity of removal and to reunify after removal
- The court's findings should include a brief description of what preventive and reunification efforts were made and why further efforts could not have prevented or eliminated the necessity of the removal.

<table>
<thead>
<tr>
<th>Duration of Disposition Court Order</th>
<th>Expiration of Dependency Court Orders – NONE until purpose of Order accomplished</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>§ 15-11-214</strong></td>
<td><strong>§ 15-11-10(1)(G)</strong></td>
</tr>
<tr>
<td>- Dependency disposition order continues until purposes of the order accomplished</td>
<td></td>
</tr>
<tr>
<td>- Dependency disposition order expires when child turns 18 except if child remains in DFCS custody or is receiving services from DFCS after turning 18 years old.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Caveat</th>
<th>Legal custody to more than one entity</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Court cannot split legal and physical custody between DFCS and other unrelated party, except when child is committed to both DJJ and DFCS.</td>
</tr>
<tr>
<td></td>
<td>§ 15-11-12, provides for child to be adjudicated both dependent and either delinquent or CHINS.</td>
</tr>
<tr>
<td></td>
<td>Both agencies are expected to work together pursuant to a cooperative agreement signed by both agencies (note: the cooperative agreement is currently expired {3/31/14}).</td>
</tr>
<tr>
<td></td>
<td>DFCS and DJJ should work toward a consolidated case plan whenever the child requires the services of both child welfare and juvenile justice.</td>
</tr>
<tr>
<td></td>
<td>The court may direct the agencies to present a consolidated case plan as being in the child’s best interest.</td>
</tr>
<tr>
<td></td>
<td>The court may require both the DJJ and the DFCS case managers to both appear at court hearings.</td>
</tr>
</tbody>
</table>
**Practice Note:** Frequently there is little coordination of planning or services. Dual commitments need monitoring and judicial oversight to maximize the benefit to the child and family.

<table>
<thead>
<tr>
<th>Case Plan Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>§ 15-11-200</strong></td>
</tr>
<tr>
<td>• Submitted to court and becomes part of court record</td>
</tr>
<tr>
<td>o within 30 days of removal and</td>
</tr>
<tr>
<td>o at each subsequent review of disposition order.</td>
</tr>
<tr>
<td>• Developed at meeting with parents and with the child when appropriate.</td>
</tr>
<tr>
<td>• All parties, including child age 14 and older, need 5 days written notice of case plan meeting.</td>
</tr>
<tr>
<td>• In effect until modified by court.</td>
</tr>
<tr>
<td>• Should include dissenting opinions of parties or citizen panel review members, reasons for removal, essential steps for reunification.</td>
</tr>
<tr>
<td>• Party may ask for in-court review of case plan within 5 days of receipt of plan.</td>
</tr>
</tbody>
</table>

**Practice Note:** Parent and child attorneys need to ask for copies of case plans and citizen review plans immediately to preserve the 5 days within which to request in-court judicial review.

<table>
<thead>
<tr>
<th>Case Plan Contents</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>§ 15-11-201</strong></td>
</tr>
<tr>
<td>• Case plan goal is to achieve placement that is</td>
</tr>
<tr>
<td>o in the most appropriate, least restrictive and most family-like setting available,</td>
</tr>
<tr>
<td>o close to child's parent's home,</td>
</tr>
<tr>
<td>o consistent with the best interests and special needs of the child, and</td>
</tr>
<tr>
<td>o considers the placement's proximity to the child’s school at the time of removal.</td>
</tr>
<tr>
<td>• Case plan must include the following:</td>
</tr>
<tr>
<td>o Reasons for removal from home</td>
</tr>
<tr>
<td>o Assessment of child and family strengths and needs and best placement to meet those needs</td>
</tr>
<tr>
<td>o Placement description</td>
</tr>
<tr>
<td>o Specific time-limited goals and related activities for reunification, or if reunification is not possible, activities toward permanent placement or emancipation</td>
</tr>
<tr>
<td>o Who is responsible for accomplishing each activity</td>
</tr>
<tr>
<td>o Projected date of completion of the case plan objectives</td>
</tr>
<tr>
<td>o The date time-limited services will be terminated</td>
</tr>
<tr>
<td>o Visitation schedule for siblings and other appropriate family members, or why visitation is not contemplated. Visitation is presumed unsupervised unless court finds unsupervised is not in child’s best interests. § 15-11-112.</td>
</tr>
<tr>
<td>Sibling Joint Placement or frequent visitation</td>
</tr>
<tr>
<td>---------------------------------------------</td>
</tr>
<tr>
<td>§ 15-11-135(e)</td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>

| § 15-11-201(b)(11)                          | • If siblings are removed, case plan must include statement that RE have been made and are required to be made while siblings are in care |
|                                             | o to place siblings in the same placement unless DFCS documents that joint placement would be contrary to the safety or well-being of any of the siblings, and |
|                                             | o to maintain frequent visitation or other ongoing interaction between siblings not placed together, unless DFCS documents that such frequent visitation or other ongoing interaction would be contrary to the safety or well-being of any of the siblings. |

| Educational Stability Assurance Required     | § 15-11-201(b)(12) Educational Stability |
| Statement Required in Case Plan              | • Statement required in case plan ensuring the educational stability of the dependent child while in foster care, including an assurance that |
|                                              | o the placement of dependent child in foster care considers the appropriateness of the current educational setting and the proximity to the school in which the child was enrolled at the time of placement, |
|                                              | o the state agency has coordinated with appropriate local educational agencies to ensure that the dependent child remains in the school in which the child was enrolled at the |
time of placement, or
   o if remaining in the home school is not in the best interests of
     the dependent child, 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 dependent child provided to
     the new school.

RE Required at Each Stage

| § 15-11-202(a) | • Except where § 15-11-203 applies, RE shall be made to preserve or
                reunify families
                o to prevent removal, prior to placement, or
                o to eliminate the need for removal and reunify. |
| § 15-11-202(b) | • Type of RE based on child's health and safety, which is of
                “paramount concern.” |
| § 15-11-202(c) | • Appropriate services may be provided by DFCS or in the
                community. |
| § 15-11-202(d) | • The court shall review the appropriateness of DFCS’s RE at each
                stage of the dependency proceedings. |

RE at Disposition

| § 15-11-202(e)(3) | • DFCS has the burden of demonstrating that DFCS has made
                  RE to eliminate the need for removal and to reunify at the
                  earliest possible time or
                  RE to finalize an alternative permanent home for the child. |

RE Considerations by Court

| § 15-11-202(f), (g), (h) | • Court considerations in RE determination: whether services to
                           the child and family were
                           o relevant to the safety and protection child.
                           o adequate to meet the needs child and family.
                           o culturally and linguistically appropriate.
                           o available and accessible.
                           o consistent and timely.
                           o realistic under the circumstances. |

| § 15-11-202(i) | • If no RE found by court, child may still be adjudicated dependent
                  and removed. |

| § 15-11-202(l) | • Court may determine no RE justified because of an immediate
                 threat of harm to child. |

Concurrent RE Authorized

| § 15-11-202(j) | • Order placing or continuing DFCS custody of child shall contain
                 written findings of facts stating
                 o child’s continuation in or return home would be contrary to |
<table>
<thead>
<tr>
<th>When RE Not Required</th>
<th>§ 15-11-203</th>
</tr>
</thead>
</table>
| Permanency Plan Hearing Required within 30 Days | - Court may direct that RE to eliminate the need for placement **shall not be required or shall cease** if the court determines and makes written findings of fact that a parent
  - has subjected this child to aggravated circumstances, § 15-11-2(5).
  - has been convicted of the murder of another child of the parent.
  - has been convicted of the voluntary manslaughter of another child of the parent.
  - has been convicted of aiding or abetting, attempting, conspiring, or soliciting to commit murder or voluntary manslaughter of another child of the parent.
  - has been convicted of committing a felony assault that results in serious bodily injury to the child or another child of the parent.
  - has been convicted of rape, sodomy, aggravated sodomy, child molestation, aggravated child molestation, incest, sexual battery, or aggravated sexual battery of the child or another child of the parent.
  - is required to register as a sex offender and that preservation of a parent-child relationship is not in the child's best interests.
  - has had an involuntary termination of parental rights to a sibling of the child and the circumstances leading to such termination of parental rights to that sibling have not been resolved.
- Permanency plan hearing required within 30 days and RE to finalize permanency considered.
- See chapter 12 on nonreunification hearings and chapter 11 on permanency plan hearings.

the child’s welfare.
- whether RE determination have been made to prevent or eliminate the need for out-of-home placement, unless court determines RE are not required or that RE may cease.
- whether RE should continue to be made to prevent or eliminate the need for placement.
### Change of Placement

#### Procedure for Notifying Court of Child’s Placement Changes

<table>
<thead>
<tr>
<th><strong>§ 15-11-215</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>- When a child’s placement is being changed, DFCS shall notify</td>
</tr>
<tr>
<td>- the court</td>
</tr>
<tr>
<td>- the child if over 14</td>
</tr>
<tr>
<td>- child’s attorney</td>
</tr>
<tr>
<td>- GAL</td>
</tr>
<tr>
<td>- the person or agency with physical placement of child</td>
</tr>
<tr>
<td>- parent, guardian or legal custodian</td>
</tr>
<tr>
<td>- not less than <strong>5 days in advance</strong> of non-emergency placement changes and</td>
</tr>
<tr>
<td>- within 24 hours of an emergency placement change.</td>
</tr>
</tbody>
</table>

- Emergency determined if child safety endangered.
- Court may conduct a hearing in reference to the placement change; hearing may be requested by any party or attorney.
- Court may reject DFCS case plan including the location of the child’s placement.
- Court must state reasons why case plan rejected and court may order DFCS to devise new case plan and permanency plan.

### One Judge – One Family

<table>
<thead>
<tr>
<th><strong>§ 15-11-3</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>- A single judge shall hear all successive cases or proceedings involving the same child or family.</td>
</tr>
<tr>
<td>- Direct calendaring</td>
</tr>
</tbody>
</table>

### Important Considerations

- Who gets custody?
- Accept or reject case plan?
- Are case plan goals supported by the findings of fact contained in the adjudication order?
- Accept or reject long term care plan goal (reunify or not)?
- RE to implement case plan?
- Does **nonreunification hearing** need to be scheduled?
- **§ 15-11-212(f)** If dependency is a result of alcohol or 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 to overrides DFCS policy.
- Visitation between child and parent, and sibling contact.

### Continuance Issues

<table>
<thead>
<tr>
<th><strong>§ 15-11-110</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>- No continuance if contrary to child’s interest.</td>
</tr>
<tr>
<td>- Court to consider and give substantial weight to the child’s need for prompt resolution of custody status, stable environment, and damage to child of prolonged temporary placements.</td>
</tr>
<tr>
<td>- Showing of good cause and only for time necessary based on evidence presented on the record.</td>
</tr>
<tr>
<td>- Stipulation of parties or need for discovery is <strong>not</strong> good cause.</td>
</tr>
<tr>
<td>- If no objection to continuance then consent.</td>
</tr>
</tbody>
</table>
**Practice Note:** Need to state specific reasons for continuance on the record and 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

<table>
<thead>
<tr>
<th>Right To GAL and GAL Best Interest Advocacy Considerations</th>
<th>§ 15-11-104</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>- GAL shall be appointed</td>
</tr>
<tr>
<td></td>
<td>- May be child’s attorney unless or until a conflict of interest between the attorney’s duty to the child and the attorney’s “considered opinion” of the child’s best interest as a GAL</td>
</tr>
<tr>
<td></td>
<td>- CASA may serve as GAL</td>
</tr>
<tr>
<td></td>
<td>- Procedure for removal of GAL for cause, § 15-11-104 (h)</td>
</tr>
<tr>
<td></td>
<td>- CASA appointment § 15-11-106</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>§ 15-11-105</th>
</tr>
</thead>
<tbody>
<tr>
<td>To advocate for the child’s best interest, GAL shall consider factors such as the following, in the context of child’s age and developmental needs:</td>
</tr>
<tr>
<td>o Physical safety and welfare, food, shelter, health, clothing</td>
</tr>
<tr>
<td>o Mental and physical health of all individuals involved</td>
</tr>
<tr>
<td>o Evidence of domestic violence</td>
</tr>
<tr>
<td>o Child's background and ties, including familial, cultural, religious</td>
</tr>
<tr>
<td>o Child’s sense of attachments</td>
</tr>
<tr>
<td>o Least disruptive placement alternative</td>
</tr>
<tr>
<td>o Child's wishes and long-term goals</td>
</tr>
<tr>
<td>o Community ties, church, school, friends</td>
</tr>
<tr>
<td>o Child's need for permanence, stability, and continuity of relationships</td>
</tr>
<tr>
<td>o Uniqueness of every family and child</td>
</tr>
<tr>
<td>o Risks associated with being in substitute care</td>
</tr>
<tr>
<td>o Preferences of the persons available to care for the child</td>
</tr>
<tr>
<td>o Any other factors considered by the GAL to be relevant and proper</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Minimum Duties of GAL</th>
<th>§ 15-11-105(c)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minimum duties of GAL, unless child’s circumstances make these unreasonable (must be performed in a developmentally appropriate manner):</td>
<td></td>
</tr>
<tr>
<td>o Maintain regular and sufficient in-person contact with the child, in a manner appropriate to his or her developmental level</td>
<td></td>
</tr>
<tr>
<td>o Meet with and interview child prior to all hearings and reviews</td>
<td></td>
</tr>
<tr>
<td>o Determine child’s needs, circumstances and views</td>
<td></td>
</tr>
<tr>
<td>o Make independent factual determination of the case</td>
<td></td>
</tr>
</tbody>
</table>
- Consult with child’s attorney
- Communicate with health, mental health, and other professionals
- Review case study and educational, medical, psychological, and other relevant reports
- Review all court-related documents
- Attend all court hearings and other proceedings to advocate for the child's best interests
- Advocate for timely court hearings to obtain permanency for the child
- Protect the cultural needs of the child
- Contact the child prior to any proposed placement changes
- Contact the child after placement changes
- Request a judicial citizen review panel or judicial review of the case
- Attend citizen panel review hearings, and if unable to attend, send panel a letter stating the child’s status since the last citizen panel review and an assessment of the DFCS permanency and treatment plans
- Provide written reports to the court and the parties on the child's best interests, including recommendations regarding placement, updates on child's adjustment to placement, DFCS's and respondent's compliance with prior court orders and treatment plans, child's participation during visits, and any other recommendations based on the best interests of the child
- When appropriate, encourage settlement and the use of alternative forms of dispute resolution and participate in such processes to the extent permitted
- Monitor compliance with the case plan and all court orders

### GAL Participation and Access to Records

<table>
<thead>
<tr>
<th>§ 15-11-105(d), (e)</th>
</tr>
</thead>
<tbody>
<tr>
<td>GAL shall receive all notices of hearings, reviews, panels, case plan formulation meetings, and shall be served pleadings in the same manner as a party.</td>
</tr>
<tr>
<td>GAL shall have access to all records and information relevant to the child’s case except</td>
</tr>
<tr>
<td>o § 19-7-5, Child Abuse Reporting Statute</td>
</tr>
<tr>
<td>o § 49-4A, Juvenile Justice authorizing statute</td>
</tr>
<tr>
<td>o Article 11, Office of the Child Advocate for the Protection of Children authorizing statute</td>
</tr>
</tbody>
</table>

### GAL Confidentiality Required

<table>
<thead>
<tr>
<th>§ 15-11-105(f), (g)</th>
</tr>
</thead>
<tbody>
<tr>
<td>All information acquired by GAL is confidential except as directed by court:</td>
</tr>
<tr>
<td>o Misdemeanor if violated</td>
</tr>
<tr>
<td>o Maintain confidential records require by § 37-3-166, Hospitalization and Treatment of Alcoholics and Drug Dependent Individual, clinical records; when release permitted; scope of privileged communications; liability for</td>
</tr>
<tr>
<td>§ 37-4-125</td>
</tr>
</tbody>
</table>

### Court Considerations for Best Interest of Child

**§ 15-11-26. Court Considerations for Best Interest of Child**

Court to consider all factors affecting the child’s best interest in the context of child’s age and developmental needs, including following 20 factors:

41. Physical safety and welfare, food, shelter, health and clothing
42. Love, affection, bonding, and emotional ties existing between child and parent or person available to care for the child
43. Sibling bond, including half siblings and step siblings
44. Child's need for permanence, need for stability and continuity of relationships
45. Child's attachments, child’s sense of security and familiarity, and continuity of affection for the child
46. Parental capacity
47. Home environment of each parent or person available to care for such child considering the promotion of the child's nurturance and safety rather than superficial or material factors
48. Stability of the family unit and community support systems
49. Mental and physical health of all individuals involved
50. Home, school and community record; history of child, child’s special needs
51. Community ties, church, school and friends
52. Child's background and ties, including familial, cultural and religious
53. The least disruptive placement alternative
54. Uniqueness of every family and child
55. Risks associated with being in substitute care
56. Child's wishes and long-term goals
57. Preferences of the persons available to care for the child
58. Evidence of family violence, substance abuse, criminal history, or sexual, mental, or physical child abuse
59. Recommendation by a court appointed custody evaluator or GAL
60. Any other factors considered by the court to be relevant and proper to its determination

### Subpoena to Produce Documents to Vital Records to Obtain Birth Records

Subpoena to Produce Documents to Vital Records to Obtain Paternity Acknowledgement or Administrative legitimation

FAX  404-679-4765
Attention: Deborah Aderhold, State Registrar, Director of Vital Records
OR
Vital Records
2600 Skyland Drive
Atlanta, Ga. 30319-3640
Phone 404-679-4755 or 4702
Practice Points

- Case Plan is the roadmap for the future of the case, who and what needs to be done, in addition the time frame to complete goals
- If Case Plan is nonreunification then a separate hearing **must** be held within 30 days of the announcement that nonreunification is the goal
- Make sure next hearing date or review is set **before** leaving courtroom
- Dependency orders do not expire and require court review to
  - change custody
  - add case plan goals for reunification
  - change type of case plan (reunification, nonreunification, concurrent)
  - change permanency goal for child (reunify, adoption, permanent guardianship, APPLA)
- If foster child turns 18 but remains in custody or continues to receive independent living services, then court may continue to exercise jurisdiction over the service plan for the child.
- DFCS Policy 2102.3a addresses components of the Reasonably Diligent Search

Code Sections

15-11-19.  **Party - right to participate**

(a) A party has the right to be present, to be heard, to present evidence material to the proceedings, to cross-examine witnesses, to examine pertinent court files and records, and to appeal the orders of the court; provided, however, that the court shall retain the discretion to exclude a child from any part or parts of any proceeding under Article 3 of this chapter if the court determines that it is not in such child's best interests to be present. An attorney for an excluded child shall not be excluded from the proceedings. (b) A person afforded rights under this chapter shall be advised of such rights at that person's first appearance before the court.

15-11-26.  **Court Considerations for Best Interest of Child**

Whenever a best interests determination is required, the court shall consider and evaluate all of the factors affecting the best interests of the child in the context of such child's age and developmental needs. Such factors shall include: (1) The physical safety and welfare of such child, including food, shelter, health, and clothing; (2) The love, affection, bonding, and emotional ties existing between such child and each parent or person available to care for such child; (3) The love, affection, bonding, and emotional ties existing between such child and his or her siblings, half siblings, and stepsiblings and the residence of such other children; (4) Such child's need for permanence, including such child's need for stability and continuity of relationships with his or her parent, siblings, other relatives, and any other person who has provided significant care to such child; (5) Such child's sense of attachments, including his or her sense of security and familiarity, and continuity of affection for such child; (6) The capacity and disposition of each parent or person available to care for such child to give him or her love, affection, and guidance and to continue the education and rearing of such child; (7) The home environment of each parent or person available to care for such child considering the promotion of such child's nurturance and safety rather than superficial or material factors; (8) The stability of the family unit and the presence or absence of support systems within the community to
benefit such child; (9) The mental and physical health of all individuals involved; (10) The home, school, and community record and history of such child, as well as any health or educational special needs of such child; (11) Such child's community ties, including church, school, and friends; (12) Such child's background and ties, including familial, cultural, and religious; (13) The least disruptive placement alternative for such child; (14) The uniqueness of every family and child; (15) The risks attendant to entering and being in substitute care; (16) Such child's wishes and long-term goals; (17) The preferences of the persons available to care for such child; (18) Any evidence of family violence, substance abuse, criminal history, or sexual, mental, or physical child abuse in any current, past, or considered home for such child; (19) Any recommendation by a court appointed custody evaluator or guardian ad litem; and (20) Any other factors considered by the court to be relevant and proper to its determination.

15-11-33. Transfer of Jurisdiction to Another County for Reunification Purposes
(a) 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 to whom the reunification plan is directed. (b) Within 30 days of the filing of the transfer order, the transferring court shall provide the receiving court with certified copies of the adjudication order, the order of disposition, the order of transfer, the case plan, and any other court documents deemed necessary by the transferring court to enable the receiving court to assume jurisdiction over the matter. (c) The transferring court shall retain jurisdiction until the receiving court acknowledges acceptance of the transfer. (d) Compliance with this Code section shall terminate jurisdiction in the transferring court and confer jurisdiction in the receiving court.

§ 15-11-102. Time Frames for Hearing Types (emphasis added for disposition)
(a) A preliminary protective hearing shall be held promptly and no later than 72 hours after a child is placed in foster care, provided that, if the 72 hour time frame expires on a weekend or legal holiday, such hearing shall be held on the next day which is not a weekend or legal holiday. (b) If a child was not taken into protective custody or is released from foster care at a preliminary protective hearing, the following time frames apply: (1) A petition for dependency shall be filed within 30 days of the child's preliminary protective hearing; (2) Summons shall be served at least 72 hours before the dependency adjudication hearing; (3) The dependency adjudication hearing shall be held no later than 60 days after the filing of a petition for dependency; and (4) If the child's dispositional hearing is not held in conjunction with the dependency adjudication hearing, it shall be held and completed within 30 days after the conclusion of the dependency adjudication hearing. (c) If a child is not released from foster care at the preliminary protective hearing, the following time frames apply: (1) A petition for dependency shall be filed within five days of the child's preliminary protective hearing; (2) Summons shall be served at least 72 hours before the dependency adjudication hearing; (3) The dependency adjudication hearing shall be held no later than ten days after the filing of a petition for dependency; (4) DFCS shall submit to the court its written report within 30 days of the date a child who is placed in the custody of DFCS is removed from the home and at each subsequent review of the disposition order. If the DFCS report does not contain a plan for reunification services, a nonreunification hearing shall be held no later than 30 days from the time the report is filed; and (5) If a dispositional hearing is not held in conjunction with the dependency adjudication hearing, it shall be held and completed
within 30 days after the conclusion of the dependency adjudication hearing. (d) An initial periodic review hearing shall be held within 75 days following a child's removal from his or her home. An additional periodic review shall be held within four months following such initial review. (e) Permanency plan hearings shall be held no later than 30 days after DFCS has submitted a written report to the court which does not provide a plan for reunification services or: (1) For children under seven years of age at the time a petition for dependency is filed, no later than nine months after such child is considered to have entered foster care, whichever comes first. Thereafter a permanency plan hearing shall be held every six months while such child continues in DFCS custody or more frequently as deemed necessary by the court until the court determines that such child's permanency plan and goal have been achieved; or (2) For children seven years of age and older at the time a petition is filed, no later than 12 months after such child is considered to have entered foster care, whichever comes first. Thereafter a permanency plan hearing shall be held every six months while such child continues in DFCS custody or more frequently as deemed necessary by the court until the court determines that such child's permanency plan and goal have been achieved. (f) A supplemental order of the court adopting a child's permanency plan shall be entered within 30 days after the court has determined that reunification efforts need not be made by DFCS.

15-11-103. Child attorney appointment & other parties right to attorney
(a) A child and any other party to a proceeding under this article shall have the right to an attorney at all stages of the proceedings under this article. (b) The court shall appoint an attorney for an alleged dependent child. The appointment shall be made as soon as practicable to ensure adequate representation of such child and, in any event, before the first court hearing that may substantially affect the interests of such child. (c) A child's attorney owes to his or her client the duties imposed by the law of this state in an attorney-client relationship. (d) If an attorney has been appointed to represent a child in a prior proceeding under this chapter, the court, when possible, shall appoint the same attorney to represent such child in any subsequent proceeding. (e) An attorney appointed to represent a child in a dependency proceeding shall continue the representation in any subsequent appeals unless excused by the court. (f) Neither a child nor a representative of a child may waive a child's right to an attorney in a dependency proceeding. (g) A party other than a child shall be informed of his or her right to an attorney prior to any hearing. A party other than a child shall be given an opportunity to: (1) Obtain and employ an attorney of such party's own choice; (2) Obtain a court appointed attorney if the court determines that such party is an indigent person; or (3) Waive the right to an attorney.

15-11-104. GAL appointment required, dual role GAL & child attorney allowed
(a) The court shall appoint a guardian ad litem for an alleged dependent child. (b) An attorney for an alleged dependent child may serve as such child's guardian ad litem unless or until there is conflict of interest between the attorney's duty to such child as such child's attorney and the attorney's considered opinion of such child's best interests as guardian ad litem. (c) A party to the proceeding, the employee or representative of a party to the proceeding, or any other individual with a conflict of interest shall not be appointed as guardian ad litem. (d) A court shall appoint a CASA to act as guardian ad litem whenever possible, and a CASA may be appointed in addition to an attorney who is serving as a guardian ad litem. (e) A lay guardian shall not engage in activities which could reasonably be construed as the practice of law. (f) Before the appointment as a guardian ad litem, such person shall have received training appropriate to the role as guardian ad litem which is administered or approved by the Office of the Child Advocate for the
Protection of Children. For attorneys, preappointment guardian ad litem training shall be satisfied within the attorney's existing continuing legal education obligations and shall not require the attorney to complete additional training hours in addition to the hours required by the State Bar of Georgia. (g) Any volunteer guardian ad litem 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. (h) The court may remove a guardian ad litem from a case upon finding that the guardian ad litem acted in a manner contrary to a child's best interests, has not appropriately participated in the case, or if the court otherwise deems continued service as inappropriate or unnecessary. (i) A guardian ad litem shall not engage in ex parte contact with the court except as otherwise provided by law. (j) The court, a child, or any other party may compel a guardian ad litem for a child to attend a trial or hearing relating to such child and to testify, if appropriate, as to the proper disposition of a proceeding. (k) The court shall ensure that parties have the ability to challenge recommendations made by the guardian ad litem or the factual basis for the recommendations in accordance with the rules of evidence applicable to the specific proceeding. (l) A guardian ad litem's report shall not be admissible into evidence prior to the disposition hearing except in accordance with the rules of evidence applicable to the specific proceeding. (m) A guardian ad litem who is not also serving as attorney for a child may be called as a witness for the purpose of cross-examination regarding the guardian ad litem's report even if the guardian ad litem is not identified as a witness by a party.

15-11-105. GAL best interest advocacy elements
(a) A guardian ad litem shall advocate for a child's best interests in the proceeding for which the guardian ad litem has been appointed. (b) In determining a child's best interests, a guardian ad litem shall consider and evaluate all of the factors affecting the best interests of a child in the context of a child's age and developmental needs. Such factors shall include: (1) The physical safety and welfare of such child, including food, shelter, health, and clothing; (2) The mental and physical health of all individuals involved; (3) Evidence of domestic violence in any current, past, or considered home for such child; (4) Such child's background and ties, including familial, cultural, and religious; (5) Such child's sense of attachments, including his or her sense of security and familiarity and continuity of affection for the child; (6) The least disruptive placement alternative for such child; (7) The child's wishes and long-term goals; (8) The child's community ties, including church, school, and friends; (9) The child's need for permanence, including his or her need for stability and continuity of relationships with a parent, siblings, and other relatives; (10) The uniqueness of every family and child; (11) The risks attendant to entering and being in substitute care; (12) The preferences of the persons available to care for such child; and (13) Any other factors considered by the guardian ad litem to be relevant and proper to his or her determination. (c) Unless a child's circumstances render the following duties and responsibilities unreasonable, a guardian ad litem shall at a minimum: (1) Maintain regular and sufficient in-person contact with the child and, in a manner appropriate to his or her developmental level, meet with and interview such child prior to custody hearings, adjudication hearings, disposition hearings, judicial reviews, and any other hearings scheduled in accordance with the provisions of this chapter; (2) In a manner appropriate to such child's developmental level, ascertain such child's needs, circumstances, and views; (3) Conduct an independent assessment to determine the facts and circumstances surrounding the case; (4) Consult with the
child's attorney, if appointed separately, regarding the issues in the proceeding; (5) Communicate with health care, mental health care, and other professionals involved with such child's case; (6) Review case study and educational, medical, psychological, and other relevant reports relating to such child and the respondents; (7) Review all court related documents; (8) Attend all court hearings and other proceedings to advocate for such child's best interests; (9) Advocate for timely court hearings to obtain permanency for such child; (10) Protect the cultural needs of such child; (11) Contact the child prior to any proposed change in such child's placement; (12) Contact the child after changes in such child's placement; (13) Request a judicial citizen review panel or judicial review of the case; (14) Attend citizen panel review hearings concerning such child and if unable to attend the hearings, forward to the panel a letter setting forth such child's status during the period since the last citizen panel review and include an assessment of the DFCS permanency and treatment plans; (15) Provide written reports to the court and the parties on the child's best interests, including, but not limited to, recommendations regarding placement of such child, updates on such child's adjustment to placement, DFCS's and respondent's compliance with prior court orders and treatment plans, such child's degree of participation during visitations, and any other recommendations based on the best interests of the child; (16) When appropriate, encourage settlement and the use of any alternative forms of dispute resolution and participate in such processes to the extent permitted; and (17) Monitor compliance with the case plan and all court orders. (d)(1) Except as provided in Article 11 of this chapter, a guardian ad litem shall receive notices, pleadings, or other documents required to be provided to or served upon a party and shall be notified of all court hearings, judicial reviews, judicial citizen review panels, and other significant changes of circumstances of a child's case which he or she is appointed to the same extent and in the same manner as the parties to the case are notified of such matters. (2) A guardian ad litem shall be notified of the formulation of any case plan of a child's case which he or she is appointed and may be given the opportunity to be heard by the court about such plans. (e) Upon presentation of an order appointing a guardian ad litem, such guardian ad litem shall have access to all records and information relevant to a child's case to which he or she is 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 11 of this chapter or provided under Chapter 4A of Title 49. (f) All records and information acquired or reviewed by a guardian ad litem during the course of his or her appointment shall be deemed confidential and shall not be disclosed except as ordered by the court. (g) Except as provided in Code Section 49-5-41, regarding access to records, any guardian ad litem who discloses confidential information obtained during the course of his or her appointment, in violation of law, shall be guilty of a misdemeanor. A guardian ad litem 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. (h) In the event of a change of venue, the original guardian ad litem shall, as soon as possible, communicate with the appointed guardian ad litem in the new venue and shall forward all pertinent information to the new guardian ad litem.

15-11-106. CASA – role & appointment

(a)(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 dependency 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 and Code Sections 15-11-104 and 15-11-105. (b) The role of a CASA in juvenile court dependency proceedings shall be to advocate for the best interests of the child. (c) In addition to the reasons stated in subsection (h) of Code Section 15-11-104, the court may discharge a CASA upon finding that the CASA has acted in a manner contrary to the mission and purpose of the affiliate court appointed special advocate program.

15-11-108. Notice required at post adjudication hearings or reviews
(a) The court shall give to all parties written notice of the date, time, place, and purpose of the following postadjudication hearings or reviews: (1) Nonreunification hearings; (2) Disposition hearings; (3) Periodic review hearings; (4) Periodic reviews by judicial citizen review panel; (5) Permanency plan hearings; (6) Termination of parental rights hearings; and (7) Post termination of parental rights review hearings. (b) Issuance and service of summons, when appropriate, shall comply with the requirements of Code Sections 15-11-160 and 15-11-161. (c) Unless otherwise provided in this chapter, written notice shall be delivered to the recipient at least 72 hours before the hearing or review by United States mail, e-mail, or hand delivery.

15-11-109. Notice & Opportunity to be heard to foster parent, relative caregiver
(a) In advance of each hearing or review, DFCS shall give written notice of the date, time, place, and purpose of the review or hearing, including the right to be heard, to the caregiver of a child, the foster parent of a child, any preadoptive parent, or any relative providing care for a child. The written notice shall be delivered to the recipient at least 72 hours before the review or hearing, except in the case of preliminary protective hearings or emergency hearings when such notice is not possible, by United States mail, e-mail, or hand delivery. (b) Notice of a hearing or review shall not be construed to require a legal custodian, foster parent, preadoptive parent, or relative caring for a child to be made a party to the hearing or review solely on the basis of such notice and opportunity to be heard.

15-11-110. Continuance requirements
(a) Upon request of an attorney for a party, the court may continue any hearing under this article beyond the time limit within which the hearing is otherwise required to be held; provided, however, that no continuance shall be granted that is contrary to the interests of the child. In considering a child's interests, the court shall give substantial weight to a child's need for prompt resolution of his or her custody status, the need to provide a child with a stable environment, and the damage to a child of prolonged temporary placements. (b) Continuances shall be granted only upon a showing of good cause and only for that period of time shown to be necessary by the evidence presented at the hearing on the motion. Whenever any continuance is granted, the facts proved which require the continuance shall be entered in the court record. (c) A stipulation between attorneys or the convenience of the parties shall not constitute good cause. Except as otherwise provided by judicial rules governing attorney conflict resolution, a pending criminal prosecution or family law matter shall not constitute good cause. The need for discovery shall not constitute good cause. (d) In any case in which a child or his or her parent, guardian, or legal
custodian is represented by an attorney and no objection is made to an order continuing any such hearing beyond the time limit, the absence of such an objection shall be deemed a consent to the continuance; provided, however, that even with consent, the court shall decide whether to grant the continuance in accordance with subsection (a) of this Code section.

15-11-111. At Any Hearing Juvenile Court May Order
(a) At any hearing held with respect to a child, the court in its discretion, and based upon the evidence, may enter an order: (1) Accepting or rejecting any DFCS report; (2) Ordering an additional evaluation; or (3) Undertaking such other review as it deems necessary and appropriate to determine the disposition that is in the child's best interests. (b) The court's order: (1) May incorporate all or part of the DFCS report; and (2) Shall include findings of fact which reflect the court's consideration of the oral and written testimony offered by all parties, as well as nonparties, who are required to be provided with notice and a right to be heard in any hearing to be held with respect to a child, and DFCS.

15-11-160. Summons & Service
(a) The court shall direct the issuance of a summons to a child if such child is 14 years of age or older, such child's parent, guardian, or legal custodian, such child's attorney, such child's guardian ad litem, if any, 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 alleging dependency. A copy of the petition alleging dependency 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 alleging dependency can be obtained. (b) A summons shall state that a party is entitled to an attorney in the proceedings and that the court will appoint an attorney if the party is an indigent person. (c) The court may endorse upon the summons an order directing a child's parent, guardian, or legal custodian to appear personally at the hearing and directing the person having the physical custody or control of a child to bring such child to the hearing. (d) A party other than a child may waive service of summons by written stipulation or by voluntary appearance at the hearing.

15-11-161. Summons & 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 as soon as possible and at least 72 hours before the adjudication hearing. (b) If a party to be served is within this state and cannot be found but his or her address is known or can be ascertained with due diligence, the summons shall be served upon such party at least five days before the adjudication hearing by mailing him or her a copy by registered or certified mail or statutory overnight delivery, return receipt requested. (c) If a party to be served is outside this state but his or her address is known or can be ascertained with due diligence, service of the summons shall be made at least five days before the adjudication hearing either by delivering a copy to such party personally or by mailing a copy to him or her by registered or certified mail or statutory overnight delivery, return receipt requested. (d) If, after due diligence, a party to be served with a summons cannot be found and such party's 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. The adjudication hearing shall not be earlier than five days after the date of the last publication. (e)(1) Service by publication shall
be made once a week for four consecutive weeks in the official organ of the county where the petition alleging dependency has been filed. Service shall be deemed complete upon the date of the last publication. (2) When served by publication, the notice shall contain the names of the parties, except that the anonymity of a child shall be preserved by the use of appropriate initials, and the date the petition alleging dependency was filed. The notice shall indicate the general nature of the allegations and where a copy of the petition alleging dependency can be obtained and require the party to be served by publication to appear before the court at the time fixed to answer the allegations of the petition alleging dependency. (3) Within 15 days after the filing of the order of service by publication, the clerk of court shall mail a copy of the notice, a copy of the order of service by publication, and a copy of the petition alleging dependency to the last known address of the party being served by publication. (f) Service of the summons may be made by any suitable person under the direction of the court. (g) 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.

15-11-162. Failure to Appear
(a) In the event a parent, guardian, or legal custodian of a child named in a petition alleging dependency is brought willfully fails to appear personally at a hearing after being ordered to so appear or willfully fails to bring such child to a hearing after being so directed, the court may issue an order against the person directing the person to appear before the court to show cause why he or she should not be held in contempt of court. (b) If a parent, guardian, or legal custodian of a child named in a petition alleging dependency is brought fails to appear in response to an order to show cause, the court may issue a bench warrant directing that such parent, guardian, or legal custodian be brought before the court without delay to show cause why he or she should not be held in contempt and the court may enter any order authorized by and in accordance with the provisions of Code Section 15-11-31.

15-11-190. Court Ordered Social Study
If the allegations of the petition alleging dependency are admitted or after an adjudication hearing the court has adjudicated a child as a dependent child, the court may direct that a written social study and report be made by a person designated by the court.

15-11-191. Contents of Court Ordered Social Study
Each social study shall include, but not be limited to, a factual discussion of each of the following subjects: (1) What plan, if any, for the return of the child adjudicated to be a dependent child to his or her parent and for achieving legal permanency for such child if efforts to reunify fail is recommended to the court; (2) Whether the best interests of the child will be served by granting reasonable visitation rights to his or her other relatives in order to maintain and strengthen the child adjudicated to be a dependent child's family relationships; (3) Whether the child adjudicated to be a dependent child has siblings under the court's jurisdiction, and, if so: (A) The nature of the relationship between such child and his or her siblings; (B) Whether the siblings were raised together in the same home and whether the siblings have shared significant common experiences or have existing close and strong bonds; (C) Whether the child adjudicated to be a dependent child expresses a desire to visit or live with his or her siblings and whether ongoing contact is in such child's best interests; (D) The appropriateness of developing or maintaining sibling relationships; (E) If siblings are not placed together in the same home, why
the siblings are not placed together and what efforts are being made to place siblings together or why those efforts are not appropriate; (F) If siblings are not placed together, the frequency and nature of the visits between siblings; and (G) The impact of the sibling relationship on the child adjudicated to be a dependent child's placement and planning for legal permanence; (4) The appropriateness of any placement with a relative of the child adjudicated to be a dependent child; and (5) Whether a caregiver desires and is willing to provide legal permanency for a child adjudicated to be a dependent child if reunification is unsuccessful.

15-11-200. Case Plan Requirements

(a) Within 30 days of the date a child who is placed in DFCS custody is removed from his or her home and at each subsequent review of the disposition order, DFCS shall submit a written report to the court which shall either: (1) Include a case plan for a reunification of the family; or (2) Include a statement of the factual basis for determining that a plan for reunification is not appropriate. (b) The report submitted by DFCS shall become a discrete part of the case record in a format determined by DFCS and shall be made available to a child who is placed in DFCS custody if such child is 14 years of age or older, his or her attorney, his or her guardian ad litem, if any, and the parent, guardian, or legal custodian of such child. The contents of the report shall be determined at a meeting to be held by DFCS in consultation with the parent, guardian, or legal custodian and child who was placed in DFCS custody, when appropriate. The parent, guardian, or legal custodian, the child who was placed in DFCS custody if such child is 14 years of age or older, his or her attorney, and guardian ad litem, if any, shall be given written notice of the meeting at least five days in advance of such meeting and shall be advised that the report will be submitted to the court for consideration as 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 parent, guardian, or legal custodian of the child who was placed in DFCS custody, if such are available. (c) If the court adopts a report that contains a case plan for reunification services, it shall be in effect until modification by the court. A case plan shall address each reason requiring removal of a child from his or her home and shall, at a minimum, comply with the requirements of Code Section 15-11-201. (d) If the submitted DFCS report contains a proposed case plan for reunification services: (1) DFCS shall provide the caregiver, the foster parent, and any preadoptive parent or relative providing care for the child who was placed in DFCS custody with a copy of those portions of the court approved case plan that involve the permanency goal and the services to be provided to the child; (2) A copy of the DFCS report and case plan shall be delivered to the parent, guardian, or legal custodian by United States mail, e-mail, or hand delivery at the same time the report and case plan are transmitted to the court, along with written notice that such report will be considered by the court without a hearing unless, within five days from the date the copy of such report and case plan were delivered, the parent, guardian, or legal custodian of the child who was placed in DFCS custody requests a hearing before the court to review such report and case plan; and (3) If no hearing is requested, the court shall enter a disposition order or supplemental order incorporating all elements of the case plan for reunification services which the court finds essential to reunification, specifying what shall be accomplished by all parties before reunification of the family can be achieved. (e) When DFCS recommends that reunification services are not appropriate and should not be allowed, the DFCS report shall address each reason requiring removal of a child from his or her home and shall contain at least the following: (1) The purpose for which the child in DFCS custody was placed in foster care, including a statement of the
reasons why such child cannot be adequately and safely protected at his or her home and the
harm which may occur if such child remains in his or her home and a description of the services
offered and the services provided to prevent removal of such child from his or her home; (2) A
clear statement describing all of the reasons supporting a finding that reunification of a child
with his or her parent will be detrimental to such 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; and (3) The statements, provisions, and requirements found in
paragraphs (11) and (12) of subsection (b) of Code Section 15-11-201.

15-11-201. Case Plan Contents
(a) A case plan shall be designed to achieve placement in the most appropriate, least restrictive,
and most family-like setting available and in close proximity to the alleged dependent child's
parent's home, consistent with the best interests and special needs of such child, and shall
consider the placement's proximity to the school in which such child is enrolled at the time of
placement. (b) A case plan shall be developed by DFCS and the parent, guardian, or legal
custodian of the alleged dependent child and, when appropriate, such child. A case plan shall
include, but not be limited to, all of the following: (1) A description of the circumstances that
resulted in such child being placed under the jurisdiction of the court and in foster care; (2) An
assessment of such child's and his or her family's strengths and needs and the type of placement
best equipped to meet those needs; (3) A description of the type of home or institution in which
such child is to be placed, including a discussion of the safety and appropriateness of the
placement; (4) Specific time-limited goals and related activities designed to enable the safe
return of such child to his or her home, or, in the event that return to his or her home is not
possible, activities designed to result in permanent placement or emancipation; (5) Assignment
of specific responsibility for accomplishing the planned activities; (6) The projected date of
completion of the case plan objectives; (7) The date time-limited services will be terminated; (8)
A schedule of visits between such child and his or her siblings and other appropriate family
members and an explanation if no visits are scheduled; (9) When placement is made in a foster
family home, group home, or other child care institution that is either a substantial distance from
the home of such child's parent, guardian, or legal custodian or out of state, the case plan shall
specify the reasons why the placement is the most appropriate and is in the best interests of the
child; (10) When an out-of-state group home placement is recommended or made, the case plan
shall comply with Code Section 39-4-4, the Interstate Compact on the Placement of Children. In
addition, documentation of the recommendation of the multidisciplinary team and the rationale
for such particular placement shall be included. The case plan shall also address what in-state
services or facilities were used or considered and why they were not recommended; (11) If
applicable, a statement that reasonable efforts have been made and a requirement that reasonable
efforts shall be made for so long as such child remains in the custody of the department: (A) To
place siblings removed from their home in the same foster care, kinship care, guardianship, or
adoptive placement, unless DFCS 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 DFCS documents that such frequent visitation or other ongoing interaction
would be contrary to the safety or well-being of any of the siblings; (12) Provisions ensuring the
educational stability of such child while in foster care, including: (A) An assurance that the
placement of such child in foster care takes into account the appropriateness of the current
educational setting and the proximity to the school in which such 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 such child remains in the school in which such 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 DFCS that 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 such child provided to such new school; (13) An account of health and education information about such child including school records, immunizations, known medical problems, any known medications he or she may be taking, names and addresses of his or her health and educational providers; such child's grade level performance; assurances that such child's placement in foster care takes into account proximity to the school in which he or she was enrolled at the time of placement; and other relevant health and educational information; (14) A recommendation for a permanency plan for such child. If, after considering reunification, adoptive placement, or permanent guardianship, DFCS recommends placement in another planned permanent living arrangement, the case plan shall include documentation of a compelling reason or reasons why termination of parental rights is not in the child's best interests. For purposes of this paragraph, a 'compelling reason' shall have the same meaning as in paragraph (2) of subsection (b) of Code Section 15-11-233; (15) A statement that the parent, guardian, or legal custodian of such child and the child have had an opportunity to participate in the development of the case plan, to review the case plan, to sign the case plan, and to receive a copy of the plan, or an explanation about why such persons were not able to participate or sign the case plan; (16) A requirement that the DFCS case manager and staff and, as appropriate, other representatives of such child provide him or her with assistance and support in developing a transition plan that is personalized at the direction of such child, including 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 such child may elect. The transition plan shall be completed in the 90 day period: (A) Immediately prior to the date on which such child will attain 18 years of age; or (B) If such child remains in the care of DFCS past his or her eighteenth birthday, before his or her planned exit from DFCS care. (17) For such child in out-of-home care who is 14 years of age or older, a written description of the programs and services which will help him or her prepare for the transition from foster care to independent living; and (18) The identity of the person within DFCS or other agency who is directly responsible for ensuring that the case plan is implemented.

15-11-202. Reasonable Efforts

(a) Except as provided in subsection (a) of Code Section 15-11-203, reasonable efforts shall be made to preserve or reunify families: (1) Prior to the placement of an alleged dependent child in DFCS custody to prevent the need for removing him or her from his or her home; or (2) To eliminate the need for removal and make it possible for a child alleged to be or adjudicated as a dependent child to return safely to his or her home at the earliest possible time. (b) In determining the type of reasonable efforts to be made to a child alleged to be or adjudicated as a dependent child and in making such reasonable efforts, such child's health and safety shall be the paramount concern. (c) Appropriate services to meet the needs of a child alleged to be or adjudicated as a dependent child and his or her family may include those provided by DFCS and other services available in the community. (d) The court shall be required to review the appropriateness of DFCS's reasonable efforts at each stage of the proceedings. (e)(1) At the
preliminary protective hearing, DFCS has the burden of demonstrating that: (A) It has made reasonable efforts to prevent placement of an alleged dependent child in foster care; (B) There are no appropriate services or efforts which could allow an alleged dependent child to safely remain in the home given the particular circumstances of such child and his or her family at the time of his or her removal and so the absence of such efforts was justifiable; or (C) Reasonable efforts to prevent placement and to reunify an alleged dependent child with his or her family are not required because of the existence of one or more of the circumstances enumerated in subsection (a) of Code Section 15-11-203. (2) At the adjudication hearing, DFCS has the burden of demonstrating that: (A) It has made reasonable efforts to eliminate the need for removal of an alleged dependent child from his or her home and to reunify such child with his or her family at the earliest possible time; or (B) Reasonable efforts to prevent placement and to reunify an alleged dependent child with his or her family are not required because of the existence of one or more of the circumstances enumerated in subsection (a) of Code Section 15-11-203. (3) At each other hearing, DFCS has the burden of demonstrating that: (A) It has made reasonable efforts to eliminate the need for removal of a child alleged to be or adjudicated as a dependent child from his or her home and to reunify such child with his or her family at the earliest possible time; or (B) It has made reasonable efforts to finalize an alternative permanent home for a child alleged to be or adjudicated as a dependent child. (f) When determining whether reasonable efforts have been made, the court shall consider whether services to the child alleged to be or adjudicated as a dependent child and his or her family were: (1) Relevant to the safety and protection of such child; (2) Adequate to meet the needs of such child and his or her family; (3) Culturally and linguistically appropriate; (4) Available and accessible; (5) Consistent and timely; and (6) Realistic under the circumstances. (g) A finding that reasonable efforts have not been made shall not preclude the entry of an order authorizing a child alleged to be or adjudicated as a dependent child's placement when the court finds that placement is necessary for the protection of such child. (h) When efforts to prevent the need for a child alleged to be or adjudicated as a dependent child's placement were precluded by an immediate threat of harm to such child, the court may make a finding that reasonable efforts were made if it finds that the placement of such child in the absence of such efforts was justifiable. (i) Reasonable efforts to place a child adjudicated as a dependent child for adoption or with a guardian or legal custodian may be made concurrently with reasonable efforts to reunify. When DFCS decides to concurrently make reasonable efforts for both reunification and permanent placement away from the parent, guardian, or legal custodian of a child adjudicated as a dependent child, DFCS shall disclose its decision and both plans to all parties and obtain approval from the court. When DFCS proceeds on both plans, the court's review of reasonable efforts shall include efforts under both plans. (j) An order placing or continuing the placement of a child alleged to be or adjudicated as a dependent child in DFCS custody shall contain, but not be limited to, written findings of facts stating: (1) That such child's continuation in or return to his or her home would be contrary to his or her welfare; (2) Whether reasonable efforts have been made to prevent or eliminate the need for placement of such child, unless the court has determined that such efforts are not required or shall cease; and (3) Whether reasonable efforts should continue to be made to prevent or eliminate the need for placement of such child, unless the court has previously determined that such efforts are not required or shall cease.
15-11-203. **No Reasonable Efforts allowed when**

(a) The court may direct that reasonable efforts to eliminate the need for placement of an alleged dependent child shall not be required or shall cease if the court determines and makes written findings of fact that a parent of an alleged dependent child: (1) Has subjected his or her child to aggravated circumstances; (2) Has been convicted of the murder of another child of such parent; (3) Has been convicted of the voluntary manslaughter of another child of such parent; (4) Has been convicted of aiding or abetting, attempting, conspiring, or soliciting to commit murder or voluntary manslaughter of another child of such parent; (5) Has been convicted of committing a felony assault that results in serious bodily injury to the child or another child of such parent; (6) Has been convicted of rape, sodomy, aggravated sodomy, child molestation, aggravated child molestation, incest, sexual battery, or aggravated sexual battery of the alleged dependent child or another child of the parent; (7) Is required to register as a sex offender and that preservation of a parent-child relationship is not in the alleged dependent child's best interests; or (8) Has had his or her rights to a sibling of the alleged dependent child terminated involuntarily and the circumstances leading to such termination of parental rights to that sibling have not been resolved. (b) If the court determines that one or more of the circumstances enumerated in subsection (a) of this Code section exist or DFCS has submitted a written report to the court which does not contain a plan for reunification services, then: (1) A permanency plan hearing shall be held for a child adjudicated as a dependent child within 30 days; and (2) Reasonable efforts shall be made to place a child adjudicated as a dependent child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of such child.

15-11-210. **Disposition Hearing**

(a) If not held in conjunction with an adjudication hearing, a disposition hearing shall be held and completed within 30 days after the conclusion of an adjudication hearing. (b) The court may consider any evidence, including hearsay evidence, that the court finds to be relevant, reliable, and necessary to determine the needs of a child adjudicated as a dependent child and the most appropriate disposition. (c) Before determining the appropriate disposition, the court shall receive in evidence: (1) The social study report, if applicable, made by DFCS and the child adjudicated as a dependent child's proposed written case plan. The social study report and case plan shall be filed with the court not less than 48 hours before the disposition hearing; (2) Any study or evaluation made by a guardian ad litem appointed by the court; (3) Any psychological, medical, developmental, or educational study or evaluation of the child adjudicated as a dependent child; and (4) Other relevant and material evidence as may be offered, including, but not limited to, the willingness of the caregiver to provide legal permanency for the child adjudicated as a dependent child if reunification is unsuccessful. (d) Prior to a disposition hearing, and upon request, the parties and their attorneys shall be afforded an opportunity to examine any written reports received by the court. (e)(1) Portions of written reports received by the court which are not relied on by the court in reaching its decision, which if revealed would be prejudicial to the interests of any party to the proceeding, or which reveal confidential sources, may be withheld in the court's discretion. (2) Parties and their attorneys shall be given the opportunity to controvert written reports received by the court and to cross-examine individuals making such reports. (f) At the conclusion of the disposition hearing, the court shall set the time and date for the first periodic review hearing and the permanency plan hearing.
15-11-211. Diligent Search
(a) A diligent search shall be initiated at the outset of a case under this article and shall be conducted throughout the duration of a case, when appropriate. (b) A diligent search shall include at a minimum: (1) Interviews with the child's parent during the course of an investigation, while child protective services are provided, and while such child is in care; (2) Interviews with the child; (3) Interviews with identified relatives throughout the case; (4) Interviews with any other person who is likely to have information about the identity or location of the person being sought; (5) Comprehensive searches of data bases available to DFCS including, but not limited to, searches of employment, residence, utilities, vehicle registration, child support enforcement, law enforcement, corrections records, and any other records likely to result in identifying and locating the person being sought; (6) Appropriate inquiry during the course of hearings in the case; and (7) Any other reasonable means that are likely to identify relatives or other persons who have demonstrated an ongoing commitment to the child. (c) A diligent search shall be completed by DFCS before final disposition. (d) All adult relatives of the alleged dependent child identified in a diligent search required by this Code section, subject to exceptions due to family or domestic violence, shall be provided with notice: (1) Specifying that an alleged dependent child has been or is being removed from his or her parental custody; (2) Explaining the options a relative has to participate in the care and placement of the alleged dependent child and any options that may be lost by failing to respond to the notice; (3) 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 (4) Describing any financial assistance for which a relative may be eligible. (e) The diligent search required by this Code section and the notification required by subsection (d) of this Code section shall be completed, documented in writing, and filed with the court within 30 days from the date on which the alleged dependent child was removed from his or her home. (f) After the completion of the diligent search required by this Code section, DFCS shall have a continuing duty to search for relatives or other persons who have demonstrated an ongoing commitment to a child and with whom it may be appropriate to place the alleged dependent child until such relatives or persons are found or until such child is placed for adoption unless the court excuses DFCS from conducting a diligent search.

15-11-212. Disposition Order Options
(a) The court may make any of the following orders of disposition or a combination of those best suited to the protection and physical, emotional, mental, and moral welfare of a child adjudicated as a dependent child: (1) Permit such child to remain with his or her parent, guardian, or legal custodian subject to conditions and limitations as the court prescribes, including supervision as directed by the court for the protection of such child; (2) Grant or transfer temporary legal custody to any of these persons or entities: (A) Any individual, including a biological parent, 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 such child; (B) Any public agency authorized by law to receive and provide care for such child; provided, however, that for the purpose of this Code section, the term 'public agency' shall not include DJJ; (3) Transfer jurisdiction over such child in accordance with the requirements of Code Section 39-4-4, the Interstate Compact on the Placement of Children; (4) Transfer jurisdiction over such child in accordance with the requirements of Code Section 39-4-4, the Interstate Compact on the Placement of Children; (4)
Order such child and his or her parent, guardian, or legal custodian 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, physician assistants, 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 dependency or other conduct or conditions which would be harmful to a child or society; (5) Order the parent, guardian, or legal custodian of such child to participate in a court approved educational or counseling program designed to contribute to the ability of such parent, guardian, or legal custodian to provide proper parental care and supervision of such child, including, but not limited to, parenting classes; (6) Order DFCS to implement and such child's parent, guardian, or legal custodian to cooperate with any plan approved by the court; or (7) Order temporary child support for such child to be paid by that person or those persons determined to be legally obligated to support such child. In determining such temporary child support, the court shall apply the child support guidelines provided in Code Section 19-6-15 and the implementation and any review of the order shall be held as provided in Code Section 19-6-15. Where there is an existing order of a superior court or other court of competent jurisdiction, the court may order the child support obligor in the existing order to make payments to such child's caretaker on a temporary basis but shall not otherwise modify the terms of the existing order. A copy of the juvenile court's order shall be filed in the clerk's office of the court that entered the existing order. Temporary child support orders entered pursuant to this paragraph shall be enforceable by the court's contempt powers so long as the court is entitled to exercise jurisdiction over the dependency case. (b) The transfer of temporary legal custody may be subject to conditions and limitations the court may prescribe. Such conditions and limitations shall include a provision that the court shall approve or direct the return of the physical custody of a child adjudicated as a dependent child to his or her parent, guardian, or legal custodian either upon the occurrence of specified circumstances or at the direction of the court. The return of physical custody of a child adjudicated as a dependent child to his or her parent, guardian, or legal custodian may be made subject to conditions and limitations the court may prescribe, including, but not limited to, supervision for the protection of such child. (c) A child adjudicated as a dependent child shall not be committed to or confined in an institution or other facility designed or operated for the benefit of delinquent children unless such child is also adjudicated to be a delinquent child and such child's detention is warranted under the requirements of Article 6 of this chapter. (d) After transferring temporary legal custody of a child adjudicated as a dependent child to DFCS, the court may at any time conduct sua sponte a judicial review of the current placement plan being provided to such child. After its review, the court may order DFCS to comply with the current placement plan, order DFCS to devise a new placement plan, or make any other order relative to placement or custody outside DFCS as the court finds to be in the best interests of such child. Placement or a change of custody by the court outside DFCS shall relieve DFCS of further responsibility for such child except for any provision of services ordered by the court to ensure the continuation of reunification services to such child's family when appropriate. (e) A court shall not be required to make an order of disposition regarding a child who is discharged from a facility in which such child was hospitalized or habituated pursuant to Chapter 3, 4, or 7 of Title 37 unless such child is to be discharged into the physical custody of any person who had such custody when the court made its most recent adjudication that the child was a dependent child. (f) If a child is adjudicated as a dependent child and the dependency is found to have been the result of substance abuse by his or...
her parent, guardian, or legal custodian and the court orders transfer of temporary legal custody of such child, the court shall be authorized to further order that legal custody of such child may not be transferred back to his or her parent, guardian, or legal custodian unless such parent, guardian, or legal custodian undergoes substance abuse treatment and random substance abuse screenings and those screenings remain negative for a period of no less than six consecutive months. (g) If the court finds that DFCS preventive or reunification efforts have not been reasonable but that further efforts could not permit a child adjudicated as a dependent child to safely remain at home, the court may nevertheless authorize or continue the removal of such child. (h) When the case plan requires a concurrent permanency plan, the court shall review the reasonable efforts of DFCS to recruit, identify, and make a placement in a home in which a relative of a child adjudicated as a dependent child, foster parent, or other persons who have demonstrated an ongoing commitment to the child has agreed to provide a legally permanent home for such child in the event reunification efforts are not successful.

15-11-213. Disposition Order Requirements

Any order of disposition shall contain written findings of fact to support the disposition and case plan ordered. Before making an order of disposition, the court shall consider the following: (1) Why the best interests and safety of a child adjudicated as a dependent child are served by the disposition and case plan ordered, including but not limited to: (A) The interaction and interrelationship of such child with his or her parent, siblings, and any other person who may significantly affect the child's best interests; (B) Such child's adjustment to his or her home, school, and community; (C) The mental and physical health of all individuals involved; (D) The wishes of such child as to his or her placement; (E) The wishes of such child's parent, guardian, or legal custodian as to such child's custody; (F) Whether there exists a relative of such child or other individual who, after study by DFCS, is found to be qualified to receive and care for such child; and (G) The ability of a parent, guardian, or legal custodian of a child adjudicated as a dependent child to care for such child in the home so that no harm will result to such child; (2) The availability of services recommended in the case plan; (3) What alternative dispositions or services under the case plan were considered by the court and why such dispositions or services were not appropriate in the instant case; (4) The appropriateness of the particular placement made or to be made by the placing agency; and (5) Whether reasonable efforts were made to prevent or eliminate the necessity of a child adjudicated as a dependent child's removal and to reunify his or her family after removal from the custody of his or her family unless reasonable efforts were not required. The court's findings should include a brief description of what preventive and reunification efforts were made and why further efforts could not have prevented or eliminated the necessity of such removal.

15-11-214. No set expiration date for dependency orders

(a) An order of disposition in a dependency proceeding shall continue in force until the purposes of the order have been accomplished. (b) The court may terminate an order of disposition of a child adjudicated as a dependent child 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 a child remains in DFCS care or continues to receive services from DFCS, when a child adjudicated as a dependent child reaches 18 years of age, all orders affecting him or her then in force terminate and he or she shall be discharged from further obligation or control.
15-11-215. **Change of Placement procedures**

(a) Not less than five days in advance of any placement change, DFCS shall notify the court, a child who is 14 years of age or older, the child's parent, guardian, or legal custodian, the person or agency with physical custody of the child, the child's attorney, the child's guardian ad litem, if any, and any other attorney of record of such change in the location of the child's placement while the child is in DFCS custody. (b) If a child's health or welfare may be endangered by any delay in changing his or her placement, the court and all attorneys of record shall be notified of such placement change within 24 hours of such change. (c) A child adjudicated as a dependent child who is 14 years of age or older, his or her parent, guardian, or legal custodian, the person or agency with physical custody of the child, such child's attorney, such child's guardian ad litem, if any, and any attorney of record may request a hearing pertaining to such child's case plan or the permanency plan in order for the court to consider the change in the location of such child's placement and any changes to the case plan or permanency plan resulting from such child's change in placement location. The hearing shall be held within five days of receiving notice of a change in the location of such child's placement and prior to any such placement change, unless such child's health or welfare may be endangered by any delay in changing such child's placement. (d) At the hearing to consider a child adjudicated as a dependent child's case plan and permanency plan, the court shall consider the case plan and permanency plan recommendations made by DFCS, including a recommendation as to the location of the placement of such 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 DFCS, including the location of such child's placement. (e) If the court rejects DFCS recommendations, the court shall demonstrate that DFCS recommendations were considered and explain why it did not follow such recommendations. If the court rejects the DFCS case plan and permanency plan recommendations, including the change in the location of the placement of a child adjudicated as a dependent child, the court may order DFCS to devise a new case plan and permanency plan recommendation, including a new recommendation as to the location of such child within the resources of the department, or make any other order relative to placement or custody outside the department as the court finds to be in the best interests of such child and consistent with the policy that children in DFCS custody should have stable placements. (f) Placement or a change of legal custody by the court outside DFCS shall relieve DFCS of further responsibility for a child adjudicated as a dependent child except for any provision of services ordered by the court to ensure the continuation of reunification services to such child's family when appropriate.
Chapter 4  
Review Hearings

Contribution by Mary Hermann, JD, CWLS and Judge Cassandra Kirk, JD, CWLS

Periodic Reviews

<table>
<thead>
<tr>
<th>Authority</th>
<th>§ 15-11-102(d)</th>
<th>Initial Periodic Review timing</th>
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<tbody>
<tr>
<td></td>
<td>§ 15-11-216</td>
<td>Initial Periodic Review Considerations</td>
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<td>§ 15-11-217</td>
<td>Judicial Panel Review procedure</td>
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<td></td>
<td>§ 15-11-218</td>
<td>Court Order Following Review</td>
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<td>§ 15-11-201(a)(16)</td>
<td>90 Day Transition Review Hearing</td>
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### Purpose
- To monitor progress on case plan goals, promote accountability of all parties.
- To determine if permanent plan for child is still appropriate.
- To determine if goals and services are still appropriate.
- To determine if there is a continued need for an out-of-home placement for the child.

### Pleadings
- Scheduled as part of a disposition court order
- Party may file a motion for court review
- Confirm the issues to be reviewed or the relief sought are stated in either the court order or the motion
- Dependency petition
- Dependency adjudication order
- Case plan
- Diligent search
- Supplemental dispositional orders and judicial citizen panel review recommendations
- DFCS reports in reference to the permanency plan
- Social study and report § 15-11-190, 191
- GAL report

### Jurisdiction
#### Same as Dependency Adjudication
§ 15-11-10(1)(C)
- Child under 18 years alleged to be a dependent in the state.
- Petition must state factual basis of jurisdiction.

§ 15-11-10(1)(G)
- Child remaining in foster care after 18 years old OR
- Child is 18 years or older and receiving independent living services.
- Limited jurisdiction to review the status of the child and the services provided to the child for independent living or foster care.

#### § 15-11-12 Dual Jurisdiction Child
- Child may be delinquent and dependent or dependent and CHINS if a “factual basis” established.
- If the delinquent and dependency case or CHINS and dependency cases are consolidated the dependency time lines apply to the consolidated court action.
### Venue

**§ 15-11-125, Venue**
- A proceeding may be commenced
  - in the county where child legally resides **or**
  - in the county of child’s presence at commencement of action if the child is present without a custodian or the acts underlying the dependency occurred in that county.
- Transfer of Venue
  - Venue may be transferred to child’s county of legal residence for the convenience of parties.
  - 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.

### Timing of Reviews

**§ 15-11-216(a) and § 15-11-102(d)**
- Initial Periodic Review
  - For all children in DFCS custody, initial review by court required within 75 days of removal
- Periodic review by court or judicial citizen panel
  - within 4 months of initial periodic review
- Additional reviews at court’s discretion then statutory permanency hearings
- Every six month in court reviews following permanency hearing until the permanency plan and goal is achieved

### Child and Party

**§ 15-11-103 Child and Party**
- All parties, including the child
- Party defined at §15-11-2 (52) as state, a child, parent, guardian, legal custodian, or other person subject to any judicial proceeding, except in delinquency proceedings; then only a child and the state are parties.
- Parent defined at §15-11-2 (51) as legal father or legal mother of a child.
- Child Attorney should be appointed “as soon as practicable to ensure adequate representation” and before the first hearing that may substantially affect the interests of the child.
  - Child attorney has “attorney-client” duty.
  - Child attorney representation continues through appeals or until excused by court.
  - Child’s right to attorney cannot be waived.
- Party should be advised of right to counsel prior to any hearing:
  - Party has right to obtain or employ attorney
  - If indigent, right to appointed counsel
  - Can waive right to attorney
- 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 (2009)).
- Putative Father issue – is he a “party”?

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### Right to Be Present, Heard and Present Evidence

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<td>- Party has right to be present, heard, present evidence, cross examine witnesses, examine pertinent court files and records, and appeal orders of the court.</td>
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<td>- “Party” includes child, except court may exclude child if not in the child’s best interest to be present.</td>
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<td>- Party shall be advised of these rights at that person’s first appearance</td>
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### Within 75 Days of Removal Initial In Court Review then Periodic Reviews Required

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<td>- Dependent child’s health and safety is paramount concern.</td>
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<td>- At 75 Day Review, court shall</td>
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<td>- o approve relative search</td>
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<td>- o schedule the next 4 month review by citizen panel or court</td>
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<td>- o determine</td>
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### Concurrent or Nonreunification Case Plan if No Substantial Progress

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<td>- After 75 day initial periodic review, if court finds “lack of substantial progress” toward completion of case plan, then court shall order DFCS to develop concurrent case plan or nonreunification case plan.</td>
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<td>- At each review, DFCS shall notify the court whether and when it intends to file a TPR.</td>
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### Periodic Review by Judicial Citizen Panel

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<td>- Panel shall transmit its report and the DFCS report, including its findings and recommendations together with DFCS’s proposed revised plan for reunification or other permanency plan, to the court and the parent within five days after the review.</td>
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<th>§ 15-11-217(b)</th>
</tr>
</thead>
</table>
| - DFCS shall provide the caregiver, foster parents, any preadoptive parents or relatives providing care for the dependent child with a copy of those portions of the report of the judicial citizen review panel that involve the
<table>
<thead>
<tr>
<th>Periodic Review</th>
<th>recommended permanency goal and the recommended services to be provided to the child.</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 15-11-217(c)</td>
<td>Any party may request a hearing on the proposed revised plan, in writing within five days after receiving a copy of the plan.</td>
</tr>
<tr>
<td>§ 15-11-217(d)</td>
<td>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 the revised plan as part of its disposition in the case. If 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.</td>
</tr>
<tr>
<td>§15-11-217(e)</td>
<td>Even if no in-court review is requested, if the judicial citizen review panel finds that there is a lack of substantial progress towards completion of the case plan, the court shall schedule a hearing within 30 days of such finding to determine whether a case plan for nonreunification is appropriate.</td>
</tr>
<tr>
<td>§15-11-217(f)</td>
<td>Panel may make a recommendation to DFCS and the child’s attorney that a petition for TPR should be prepared, if the judicial citizen review panel determines that a parent has unjustifiably failed to comply with the ordered plan for reunification and the failure is significant enough to warrant consideration of TPR.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Notice</th>
<th>§15-11-108(a)</th>
<th>The court shall give to all parties written notice of the date, time, place, and purpose of the following post adjudication hearings or reviews:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1. Nonreunification hearings</td>
<td>2. Disposition hearings</td>
</tr>
<tr>
<td></td>
<td>3. Periodic review hearings</td>
<td>4. Periodic reviews by judicial citizen review panel</td>
</tr>
<tr>
<td></td>
<td>5. Permanency plan hearings</td>
<td>6. TPR hearings</td>
</tr>
<tr>
<td></td>
<td>7. Post-TPR review hearings</td>
<td></td>
</tr>
<tr>
<td>§ 15-11-108(b)</td>
<td>Issuance and service of summons, when appropriate, shall comply with the requirements of § 15-11-160 and § 15-11-161.</td>
<td></td>
</tr>
<tr>
<td>§ 15-11-108(c)</td>
<td>Unless otherwise provided in this chapter, written notice shall be delivered to the recipient at least 72 hours before the hearing or review by United States mail, e-mail, or hand delivery.</td>
<td></td>
</tr>
<tr>
<td>§ 15-11-160</td>
<td>Copy of dependency petition (except publication)</td>
<td>The court shall direct the issuance of a summons to</td>
</tr>
<tr>
<td></td>
<td></td>
<td>o a child if 14 years of age or older</td>
</tr>
<tr>
<td></td>
<td></td>
<td>o child's parent, guardian, or legal custodian</td>
</tr>
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<td>o child's attorney and child's guardian ad litem</td>
</tr>
<tr>
<td></td>
<td></td>
<td>o any other persons who appear to the court to be proper or</td>
</tr>
</tbody>
</table>
necessary parties to the proceeding

- Summons must provide notice of a party’s right to counsel.
- Party other than child may waive summons by written stipulation or voluntary appearance at hearing.

§ 15-11-161
- If party is in Georgia and can be found, then personal service ASAP and at least 72 hours before the adjudication hearing. § 15-11-161(a).
- If party is in Georgia and cannot be found but address is known or can be known with due diligence, must be served at least 5 days before the adjudication hearing by registered or certified mail or statutory overnight delivery, return receipt requested. § 15-11-161(b).
- If party is outside Georgia with known address or known with due diligence, then must be served at least 5 days before the adjudication hearing by personal service or by registered or certified mail or statutory overnight delivery, return receipt requested. § 15-11-161(c).
- If, after due diligence, whereabouts of a party are unknown, then service by publication; hearing shall be no earlier than 5 days after final publication. § 15-11-161(d).
- Publication shall be 1 time per week for 4 weeks in legal organ of county where dependency pending. § 15-11-161(e).
- Party is defined at § 15-11-2 (52) as state, a child, parent, guardian, legal custodian, or other person subject to any judicial proceeding except in delinquency then only a child and the state shall be a party
- Parent is defined at § 15-11-2 (51) as legal father or legal mother of a child.

§ 15-11-161(f)
- Service of summons may be made by any suitable person under the direction of the court.

<table>
<thead>
<tr>
<th>Provisional Hearing Requirements</th>
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<tbody>
<tr>
<td>§ 15-11-163 Provisional Hearing</td>
</tr>
<tr>
<td>- The court may conduct a provisional hearing and issue an interlocutory order if one party is before the court and service by publication is required for the other party and</td>
</tr>
<tr>
<td>o child is present at the provisional hearing.</td>
</tr>
<tr>
<td>o summons to published party states final hearing date, time, location.</td>
</tr>
<tr>
<td>o served party is required to appear at provisional hearing.</td>
</tr>
<tr>
<td>- Provisional hearing findings will become final if published party does not appear at calendared final hearing.</td>
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</table>

<table>
<thead>
<tr>
<th>Notice to Non Parties: Foster Parent, Relative</th>
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<tbody>
<tr>
<td>§ 15-11-109</td>
</tr>
<tr>
<td>- Notice of hearing or review to child’s caregiver, foster parents, pre-adoptive parents or relatives caring for the child.</td>
</tr>
</tbody>
</table>
### Caregiver
- Notice is for opportunity to be heard but does not compel attendance.
- Written notice (mail, hand delivery or email) must
  - be delivered at least 72 hours in advance
  - include date, time, place, purpose of hearing
  - include notice of their right to be heard
  - Exception: preliminary protective hearing
- Not a party to the dependency action only right to attendance and opportunity to be heard

### Court Order Following Review
§15-11-218(a)
- Following a periodic review hearing or report from judicial citizen panel court order shall make written findings of fact that address:
  - whether child is still dependent
  - whether case plan is still appropriate
  - whether parties are complying with case plan
  - basis for any placement change recommendations
  - visitation schedule appropriateness
  - progress toward child’s permanency plan
  - whether all legally required services are being provided to the child, foster parents, parents
  - whether transitional living plan services for child 14 years and older are being provided
  - whether RE to eliminate the need for removal and reunify are being made (unless RE not required)

§15-11-218(b)
- Dispositions available to the court following review:
  - Return child to parent, guardian or legal custodian
  - Allow child to continue in the current custodial placement because the current placement is appropriate for the child's needs
  - Allow child to continue in the current custodial placement although the current placement is no longer appropriate for the child's needs and direct DFCS to devise another plan
  - Make additional orders regarding the treatment plan or placement to protect the child's best interests if the court determines DFCS has failed in implementing any material provision of the case plan or abused its discretion in the placement or proposed placement of the child

### RE Required at Each Stage
§ 15-11-202(a)
- Except where § 15-11-203 applies, RE shall be made to preserve or reunify families
  - to prevent removal, prior to placement, or
  - to eliminate the need for removal and reunify.

§ 15-11-202(b)
- Type of RE based on child's health and safety, which is of "paramount concern."
<table>
<thead>
<tr>
<th>Reasonable RE Considerations by Court</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 15-11-202(c)</td>
</tr>
<tr>
<td>• Appropriate services may be provided by DFCS or in the community.</td>
</tr>
<tr>
<td>§ 15-11-202(d)</td>
</tr>
<tr>
<td>The court shall review the appropriateness of DFCS's RE at each stage of the dependency proceedings.</td>
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<thead>
<tr>
<th>Concurrent RE authorized</th>
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<tbody>
<tr>
<td>§ 15-11-202(f), (g), (h)</td>
</tr>
<tr>
<td>• Court considerations in RE determination: whether services to the child and family were</td>
</tr>
<tr>
<td>o relevant to the safety and protection child.</td>
</tr>
<tr>
<td>o adequate to meet the needs child and family.</td>
</tr>
<tr>
<td>o culturally and linguistically appropriate.</td>
</tr>
<tr>
<td>o available and accessible.</td>
</tr>
<tr>
<td>o consistent and timely.</td>
</tr>
<tr>
<td>o realistic under the circumstances.</td>
</tr>
<tr>
<td>• If no RE found by court, child may still be adjudicated dependent and removed.</td>
</tr>
<tr>
<td>• Court may determine no RE justified because of an immediate threat of harm to child.</td>
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<tr>
<th>RE in Every Order</th>
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<tr>
<td>§ 15-11-202(l)</td>
</tr>
<tr>
<td>• Concurrent RE authorized — reunification and other permanent placement</td>
</tr>
<tr>
<td>§ 15-11-202(j)</td>
</tr>
<tr>
<td>• Order placing or continuing DFCS custody of child shall contain written findings of facts stating</td>
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<td>o child's continuation in or return home would be contrary to the child’s welfare.</td>
</tr>
<tr>
<td>o whether RE determination have been made to prevent or eliminate the need for out-of-home placement, unless court determines RE are not required or that RE may cease.</td>
</tr>
<tr>
<td>o whether RE should continue to be made to prevent or eliminate the need for placement.</td>
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<thead>
<tr>
<th>Case Plan Requirements</th>
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<tr>
<td>§ 15-11-200</td>
</tr>
<tr>
<td>• Submitted to court and becomes part of court record</td>
</tr>
<tr>
<td>o within 30 days of removal and</td>
</tr>
<tr>
<td>o at each subsequent review of disposition order.</td>
</tr>
<tr>
<td>• Developed at meeting with parents and with the child when appropriate.</td>
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<tr>
<td>• All parties, including child age 14 and older, need 5 days written notice of case plan meeting.</td>
</tr>
<tr>
<td>• In effect until modified by court.</td>
</tr>
<tr>
<td>• Should include dissenting opinions of parties or citizen panel review members, reasons for removal, essential steps for reunification.</td>
</tr>
<tr>
<td>• Party may ask for in-court review of case plan within 5 days of receipt of plan.</td>
</tr>
</tbody>
</table>
**Practice Note:** Parent and child attorneys need to ask for copies of case plans and citizen review plans immediately to preserve the 5 days within which to request in-court judicial review.

<table>
<thead>
<tr>
<th>Case Plan Contents</th>
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<tbody>
<tr>
<td><strong>§ 15-11-201</strong></td>
</tr>
<tr>
<td>• Case plan goal is to achieve placement that is</td>
</tr>
<tr>
<td>o in the most appropriate, least restrictive and most family-like setting available,</td>
</tr>
<tr>
<td>o close to child's parent's home,</td>
</tr>
<tr>
<td>o consistent with the best interests and special needs of the child, and</td>
</tr>
<tr>
<td>o considers the placement's proximity to the child’s school at the time of removal.</td>
</tr>
<tr>
<td>• Case plan must include the following:</td>
</tr>
<tr>
<td>o Reasons for removal from home</td>
</tr>
<tr>
<td>o Assessment of child and family strengths and needs and best placement to meet those needs</td>
</tr>
<tr>
<td>o Placement description</td>
</tr>
<tr>
<td>o Specific time-limited goals and related activities for reunification, or if reunification is not possible, activities toward permanent placement or emancipation</td>
</tr>
<tr>
<td>o Who is responsible for accomplishing each activity</td>
</tr>
<tr>
<td>o Projected date of completion of the case plan objectives</td>
</tr>
<tr>
<td>o The date time-limited services will be terminated</td>
</tr>
<tr>
<td>o Visitation schedule for siblings and other appropriate family members, or why visitation is not contemplated. Visitation is presumed unsupervised unless court finds unsupervised is not in child’s best interests. § 15-11-112.</td>
</tr>
<tr>
<td>o If placement is substantial distance from home, explanation of why</td>
</tr>
<tr>
<td>o If out-of-state placement, explanation of why</td>
</tr>
<tr>
<td>o Sibling co-placement issues, § 15-11-135(e) and § 15-11-201(b)(11)</td>
</tr>
<tr>
<td>o Educational stability issues, § 15-11-201(b)(12)</td>
</tr>
<tr>
<td>o Health and education information</td>
</tr>
<tr>
<td>o Permanency plan recommendation: reunification, adoptive placement, permanent guardianship, or APPLA with compelling reason(s) why termination of parental rights is not in the child's best interests</td>
</tr>
<tr>
<td>o Documentation of who participated in case plan development</td>
</tr>
<tr>
<td>o Transition plan is required 90 days before child’s 18th birthday</td>
</tr>
<tr>
<td>o Written transitional living plan for child 14 or older</td>
</tr>
<tr>
<td>o DFCS person or other agency directly responsible for ensuring case plan is implemented</td>
</tr>
</tbody>
</table>
### Important Considerations

- Has the risk to the child’s safety been removed or diminished as a result of the court’s intervention or the services provided by DFCS?
- 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? § 15-11-31
- Are the specific services made available appropriate for the child and family?
- Changes made by parents
- Likelihood of success by parents? What is the timeframe for success?
- Receive reports by service providers
- Summary of visitation and effect on child
- Are the needs of the child 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 and relieve DFCS of custody. § 15-11-212(d).
- Are there barriers to reunification that are different than the initial reasons for removal? This will require additional court hearings, findings of fact and case plan review

### Continuance Issues

<table>
<thead>
<tr>
<th>§ 15-11-110</th>
</tr>
</thead>
<tbody>
<tr>
<td>- No continuance if contrary to child’s interest.</td>
</tr>
<tr>
<td>- Court to consider and give substantial weight to the child’s need for prompt resolution of custody status, stable environment, and damage to child of prolonged temporary placements.</td>
</tr>
<tr>
<td>- Showing of good cause and only for time necessary based on evidence presented on the record.</td>
</tr>
<tr>
<td>- Stipulation of parties or need for discovery is <strong>not</strong> good cause.</td>
</tr>
<tr>
<td>- If no objection to continuance then consent.</td>
</tr>
</tbody>
</table>

**Practice Note:** Need to state specific reasons for continuance on the record and 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

### Right To GAL

<table>
<thead>
<tr>
<th>§ 15-11-104</th>
</tr>
</thead>
<tbody>
<tr>
<td>- GAL shall be appointed</td>
</tr>
<tr>
<td>- May be child’s attorney unless or until a conflict of interest between the attorney’s duty to the child and the attorney’s “considered opinion” of the child’s best interest as a GAL</td>
</tr>
</tbody>
</table>
### GAL Best Interest Advocacy Considerations

- CASA may serve as GAL
- Procedure for removal of GAL for cause, § 15-11-104 (h)
- CASA appointment, § 15-11-106

**§ 15-11-105**

To advocate for the child’s best interest, GAL shall consider factors such as the following, in the context of child’s age and developmental needs:

- Physical safety and welfare, food, shelter, health, clothing
- Mental and physical health of all individuals involved
- Evidence of domestic violence
- Child's background and ties, including familial, cultural, religious
- Child’s sense of attachments
- Least disruptive placement alternative
- Child's wishes and long-term goals
- Community ties, church, school, friends
- Child's need for permanence, stability, and continuity of relationships
- Uniqueness of every family and child
- Risks associated with being in substitute care
- Preferences of the persons available to care for the child
- Any other factors considered by the GAL to be relevant and proper

### Minimum Duties of GAL

**§ 15-11-105(c)**

Minimum duties of GAL, unless child’s circumstances make these unreasonable (must be performed in a developmentally appropriate manner):

- Maintain regular and sufficient in-person contact with the child, in a manner appropriate to his or her developmental level
- Meet with and interview child prior to all hearings and reviews
- Determine child’s needs, circumstances and views
- Make independent factual determination of the case
- Consult with child’s attorney
- Communicate with health, mental health, and other professionals
- Review case study and educational, medical, psychological, and other relevant reports
- Review all court-related documents
- Attend all court hearings and other proceedings to advocate for the child's best interests
- Advocate for timely court hearings to obtain permanency for the child
- Protect the cultural needs of the child
- Contact the child prior to any proposed placement changes
- Contact the child after placement changes
- Request a judicial citizen review panel or judicial review of the
- Attend citizen panel review hearings, and if unable to attend, send panel a letter stating the child’s status since the last citizen panel review and an assessment of the DFCS permanency and treatment plans.
- Provide written reports to the court and the parties on the child's best interests, including recommendations regarding placement, updates on child's adjustment to placement, DFCS's and respondent's compliance with prior court orders and treatment plans, child's participation during visits, and any other recommendations based on the best interests of the child.
- When appropriate, encourage settlement and the use of alternative forms of dispute resolution and participate in such processes to the extent permitted.
- Monitor compliance with the case plan and all court orders.

<table>
<thead>
<tr>
<th>GAL Participation and Access to Records</th>
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§ 15-11-105(d), (e)
- GAL shall receive all notices of hearings, reviews, panels, case plan formulation meetings, and shall be served pleadings in the same manner as a party.
- GAL shall have access to all records and information relevant to the child’s case except:
  - § 19-7-5, Child Abuse Reporting Statute
  - § 49-4A, Juvenile Justice authorizing statute
  - Article 11, Office of the Child Advocate for the Protection of Children authorizing statute

§ 15-11-105(f), (g)
- All information acquired by GAL is confidential except as directed by court:
  - Misdemeanor if violated
  - Maintain confidential records require by § 37-3-166, Hospitalization and Treatment of Alcoholics and Drug Dependent Individual, clinical records; when release permitted; scope of privileged communications; liability for disclosure; notice to sheriff of discharge
  - § 37-4-125 – Services for Developmentally Disabled, clinical records, release, privilege

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<tr>
<th>GAL Confidentiality Required</th>
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<tr>
<th>At Any Hearing Juvenile Court May Order</th>
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§ 15-11-111
At any hearing, in the court’s discretion and based on evidence presented, the court may enter an order:
- accepting or rejecting any DFCS report.
- requiring an additional evaluation.
- requiring other reviews to determine the disposition that is in the child's best interests.

The court’s order:
- may incorporate all or part of the DFCS report.
- shall include findings of fact reflecting the court's consideration of
the oral and written testimony offered by parties and nonparties with a right to receive notice and be heard.

<table>
<thead>
<tr>
<th><strong>90 Day Transition Plan and Hearing</strong></th>
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</thead>
<tbody>
<tr>
<td>§15-11-201(a)(16)</td>
</tr>
<tr>
<td>• Transition plan required to be developed by DFCS case manager, DFCS staff and other representatives of the child to develop, at the child’s direction, a personalized transition plan to include specific options on</td>
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<tr>
<td>o housing</td>
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<tr>
<td>o health insurance</td>
</tr>
<tr>
<td>o education</td>
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<tr>
<td>o local opportunities for mentors and continuing support services</td>
</tr>
<tr>
<td>o work force supports and employment services</td>
</tr>
<tr>
<td>o plan should be as detailed as the child wants</td>
</tr>
<tr>
<td>• The transition plan shall be completed in the 90 day period</td>
</tr>
<tr>
<td>o immediately prior to the date on which the child will turn 18, or</td>
</tr>
<tr>
<td>o if the child remains in the care of DFCS after turning 18, then before his or her planned exit from DFCS care.</td>
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<thead>
<tr>
<th><strong>Change of Placement Procedure for Notifying Court of Child's Placement Changes</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 15-11-215</td>
</tr>
<tr>
<td>• When a child’s placement is being changed, DFCS shall notify</td>
</tr>
<tr>
<td>▪ the court</td>
</tr>
<tr>
<td>▪ the child if over 14</td>
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<tr>
<td>▪ child’s attorney</td>
</tr>
<tr>
<td>▪ GAL</td>
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<tr>
<td>▪ the person or agency with physical placement of child</td>
</tr>
<tr>
<td>▪ parent, guardian or legal custodian</td>
</tr>
<tr>
<td>o not less than 5 days in advance of non-emergency placement changes and</td>
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<tr>
<td>o within 24 hours of an emergency placement change.</td>
</tr>
<tr>
<td>• Emergency determined if child safety endangered.</td>
</tr>
<tr>
<td>• Court may conduct a hearing in reference to the placement change; hearing may be requested by any party or attorney.</td>
</tr>
<tr>
<td>• Court may reject DFCS case plan including the location of the child’s placement.</td>
</tr>
<tr>
<td>• Court must state reasons why case plan rejected and court may order DFCS to devise new case plan and permanency plan.</td>
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<table>
<thead>
<tr>
<th><strong>Court Considerations for Best Interest of Child</strong></th>
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<tbody>
<tr>
<td>§ 15-11-26. Court Considerations for Best Interest of Child</td>
</tr>
<tr>
<td>Court to consider all factors affecting the child’s best interest in the context of child’s age and developmental needs, including following 20 factors:</td>
</tr>
<tr>
<td>61. Physical safety and welfare, food, shelter, health and clothing</td>
</tr>
<tr>
<td>62. Love, affection, bonding, and emotional ties existing between child and parent or person available to care for the child</td>
</tr>
<tr>
<td>63. Sibling bond, including half siblings and step siblings</td>
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<td>79.</td>
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<td>80.</td>
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**Over 18 Review Hearings**

| **Purpose** | To ensure non-minor dependents remaining in foster care receive the supports and services to help them navigate the transition from foster care to independence. |

**Relevant Definitions**

<table>
<thead>
<tr>
<th><strong>§ O.C.G.A. 15-11-2 (10)</strong></th>
<th>Expands the definition of “child” to include any individual who is:</th>
</tr>
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<tbody>
<tr>
<td></td>
<td>o under the age of 22 years and in the care of DFCS or</td>
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<tr>
<td></td>
<td>o under the age of 23 years and eligible for and receiving independent living services through DFCS.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>§ 15-11-10</strong></th>
<th>Gives the juvenile court exclusive original jurisdiction over juvenile matters and requires it be the sole court for initiating action concerning any child who:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>o has remained in foster care after such child's 18th birthday or</td>
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<tr>
<td></td>
<td>o who is receiving independent living services from DFCS after such child's 18th birthday.</td>
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<p>| <strong>§ 15-11-214</strong> | Allows an order of disposition in a dependency proceeding to continue when a child remains in DFCS care or continues to receive |</p>
<table>
<thead>
<tr>
<th>Services from DFCS.</th>
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<tbody>
<tr>
<td>• DFCS will not automatically be discharged of obligation or control of children remaining in care or continuing to receive services and the order adjudicating them dependent will not automatically terminate at age 18.</td>
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<thead>
<tr>
<th>Time Limits</th>
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<tbody>
<tr>
<td>§ 15-11-230(c)</td>
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<tr>
<td>• Review is required every 6 months following the initial permanency plan hearing.</td>
</tr>
<tr>
<td>• Court has discretion to schedule any subsequent review hearings as necessary.</td>
</tr>
<tr>
<td>• The juvenile code does not identify a specific time frame for the “over 18 review.” However, as there is no parental compliance with case plans to review, the review period seems to most closely correspond to the post-TPR review and nonreunification review. Those reviews are set by statute to occur every 6 months. §§ 15-11-230(c), 15-11-322.</td>
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<tr>
<th>Notice</th>
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<tr>
<td>§ 15-11-108(a)(3)</td>
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<tr>
<td>• As a periodic review hearing, the court shall give all parties written notice of the date, time, place, and purpose of the hearings.</td>
</tr>
<tr>
<td>• Written notice shall be delivered to the recipient at least 72 hours before the hearing or review by United States mail, e-mail, or hand delivery.</td>
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<tr>
<th>RE</th>
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<tr>
<td>§ 15-11-202(b)</td>
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<tr>
<td>• Type of RE based on child's health and safety, which is of &quot;paramount concern.&quot;</td>
</tr>
<tr>
<td>§ 15-11-202(c)</td>
</tr>
<tr>
<td>• Appropriate services to meet the needs of the child may be provided by DFCS or in the community.</td>
</tr>
<tr>
<td>§ 15-11-202(d)</td>
</tr>
<tr>
<td>• The court shall review the appropriateness of DFCS's RE at each stage of the dependency proceedings.</td>
</tr>
<tr>
<td>§ 15-11-202(e)(3)</td>
</tr>
<tr>
<td>• DFCS has the burden of demonstrating that it has made reasonable efforts to finalize an alternative permanent home for a child adjudicated as a dependent child.</td>
</tr>
<tr>
<td>• Subsection (A) includes the option of the court making a finding of reasonable efforts based on the elimination of the need for removal from home and efforts to reunify the child with family at the earliest possible time. These may remain relevant considerations at the over 18 review.</td>
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<thead>
<tr>
<th>Before Exit, Transition Plan</th>
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<tbody>
<tr>
<td>§ 15-11-201(b)(16)</td>
</tr>
<tr>
<td>• For children remaining in the care of DFCS past their 18th birthday, 90 days before their planned exit from DFCS care, DFCS case manager and staff and, as appropriate, other representatives of the child must provide assistance and support in developing a transition plan.</td>
</tr>
</tbody>
</table>
- The plan is:
  - personalized at the direction of such child
  - as detailed as the child elects
  - includes specific options on:
    - housing
    - health insurance
    - education
    - local opportunities for mentors and continuing support services
    - work force supports and employment services

### Attorney for Child

**§ 15-11-103**

- A child and any other party shall have the right to an attorney at all stages of the proceedings.
- Child’s attorney should be appointed “as soon as practicable to ensure adequate representation” and before the first hearing that may substantially affect the interests of the child.
  - Child attorney has “attorney-client” duty.
  - Child attorney representation continues through appeals or until excused by court.
  - Child’s right to attorney cannot be waived.
- If an attorney has been appointed to represent a child in a prior proceeding, the court, when possible, shall appoint the same attorney to represent the child in any subsequent proceeding.

### Necessary Information

**§ 15-11-10**

- At the review, the court’s jurisdiction is limited to review of:
  - the status of the child and
  - the services being provided as a result of the child's independent living plan or status as a child in foster care.

**§ 15-11-201**

- In order to conduct the review, in addition to the child or child’s representative, the court requires:
  - the document which confirms the non-minor dependent’s (child’s) status as either (1) remaining in foster care or (2) receiving independent living services
  - the current case plan or written transition living plan
  - information about the child’s
    - services (provided by or funded by DFCS, e.g., individual counseling, substance abuse counseling, independent living, skill building)
    - supportive services (community based, e.g., mentor, other adult relationship)
    - income (Title IV-E maintenance payments, accrued Social Security Income benefits, establishment and maintenance of child’s individual development account)
    - living arrangement or placement (will child remain in
Practice Points
- Reviews potentially keep parties more engaged in the process and 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.

Code Sections

15-11-102. Time Frames for Hearing Types *(emphasis added for review hearing)*

(a) A preliminary protective hearing shall be held promptly and no later than 72 hours after a child is placed in foster care, provided that, if the 72 hour time frame expires on a weekend or legal holiday, such hearing shall be held on the next day which is not a weekend or legal holiday. (b) If a child was not taken into protective custody or is released from foster care at a preliminary protective hearing, the following time frames apply: (1) A petition for dependency shall be filed within 30 days of the child's preliminary protective hearing; (2) Summons shall be served at least 72 hours before the dependency adjudication hearing; (3) The dependency adjudication hearing shall be held no later than 60 days after the filing of a petition for dependency; and (4) If the child's dispositional hearing is not held in conjunction with the dependency adjudication hearing, it shall be held and completed within 30 days after the conclusion of the dependency adjudication hearing. (c) If a child is not released from foster care at the preliminary protective hearing, the following time frames apply: (1) A petition for dependency shall be filed within five days of the child's preliminary protective hearing; (2) Summons shall be served at least 72 hours before the dependency adjudication hearing; (3) The dependency adjudication hearing shall be held no later than ten days after the filing of a petition for dependency; (4) DFCS shall submit to the court its written report within 30 days of the date a child who is placed in the custody of DFCS is removed from the home and at each subsequent review of the disposition order. If the DFCS report does not contain a plan for reunification services, a nonreunification hearing shall be held no later than 30 days from the time the report is filed; and (5) If a dispositional hearing is not held in conjunction with the dependency adjudication hearing, it shall be held and completed within 30 days after the conclusion of the dependency hearing.

- education
- employment, vocational training or job placement services
- status of the child’s mental and physical health
  - Medicaid remains active and available for the child to meet needs
- Additionally, courts need to be aware of the federal requirements and options available under The Chaffee Foster Care Independence Act and the Fostering Connections to Success Act.
adjudication hearing. (d) An initial periodic review hearing shall be held within 75 days following a child's removal from his or her home. An additional periodic review shall be held within four months following such initial review. (e) Permanency plan hearings shall be held no later than 30 days after DFCS has submitted a written report to the court which does not provide a plan for reunification services or: (1) For children under seven years of age at the time a petition for dependency is filed, no later than nine months after such child is considered to have entered foster care, whichever comes first. Thereafter a permanency plan hearing shall be held every six months while such child continues in DFCS custody or more frequently as deemed necessary by the court until the court determines that such child's permanency plan and goal have been achieved; or (2) For children seven years of age and older at the time a petition is filed, no later than 12 months after such child is considered to have entered foster care, whichever comes first. Thereafter a permanency plan hearing shall be held every six months while such child continues in DFCS custody or more frequently as deemed necessary by the court until the court determines that such child's permanency plan and goal have been achieved. (f) A supplemental order of the court adopting a child's permanency plan shall be entered within 30 days after the court has determined that reunification efforts need not be made by DFCS.

15-11-108. Notice required at post adjudication hearings or reviews
(a) The court shall give to all parties written notice of the date, time, place, and purpose of the following postadjudication hearings or reviews: (1) Nonreunification hearings; (2) Disposition hearings; (3) Periodic review hearings; (4) Periodic reviews by judicial citizen review panel; (5) Permanency plan hearings; (6) Termination of parental rights hearings; and (7) Post termination of parental rights review hearings. (b) Issuance and service of summons, when appropriate, shall comply with the requirements of Code Sections 15-11-160 and 15-11-161. (c) Unless otherwise provided in this chapter, written notice shall be delivered to the recipient at least 72 hours before the hearing or review by United States mail, e-mail, or hand delivery.

15-11-109. Notice and opportunity to be heard to foster parent, relative caregiver
(a) In advance of each hearing or review, DFCS shall give written notice of the date, time, place, and purpose of the review or hearing, including the right to be heard, to the caregiver of a child, the foster parent of a child, any preadoptive parent, or any relative providing care for a child. The written notice shall be delivered to the recipient at least 72 hours before the review or hearing, except in the case of preliminary protective hearings or emergency hearings when such notice is not possible, by United States mail, e-mail, or hand delivery. (b) Notice of a hearing or review shall not be construed to require a legal custodian, foster parent, preadoptive parent, or relative caring for a child to be made a party to the hearing or review solely on the basis of such notice and opportunity to be heard.

15-11-110. Continuance requirements
(a) Upon request of an attorney for a party, the court may continue any hearing under this article beyond the time limit within which the hearing is otherwise required to be held; provided, however, that no continuance shall be granted that is contrary to the interests of the child. In considering a child's interests, the court shall give substantial weight to a child's need for prompt resolution of his or her custody status, the need to provide a child with a stable environment, and the damage to a child of prolonged temporary placements. (b) Continuances shall be granted only upon a showing of good cause and only for that period
of time shown to be necessary by the evidence presented at the hearing on the motion. Whenever any continuance is granted, the facts proved which require the continuance shall be entered in the court record. (c) A stipulation between attorneys or the convenience of the parties shall not constitute good cause. Except as otherwise provided by judicial rules governing attorney conflict resolution, a pending criminal prosecution or family law matter shall not constitute good cause. The need for discovery shall not constitute good cause. (d) In any case in which a child or his or her parent, guardian, or legal custodian is represented by an attorney and no objection is made to an order continuing any such hearing beyond the time limit, the absence of such an objection shall be deemed a consent to the continuance; provided, however, that even with consent, the court shall decide whether to grant the continuance in accordance with subsection (a) of this Code section.

15-11-111. At Any Hearing Juvenile Court May Order
(a) At any hearing held with respect to a child, the court in its discretion, and based upon the evidence, may enter an order: (1) Accepting or rejecting any DFCS report; (2) Ordering an additional evaluation; or (3) Undertaking such other review as it deems necessary and appropriate to determine the disposition that is in the child's best interests. (b) The court's order: (1) May incorporate all or part of the DFCS report; and (2) Shall include findings of fact which reflect the court's consideration of the oral and written testimony offered by all parties, as well as nonparties, who are required to be provided with notice and a right to be heard in any hearing to be held with respect to a child, and DFCS.

15-11-200. Case Plan Requirements
(a) Within 30 days of the date a child who is placed in DFCS custody is removed from his or her home and at each subsequent review of the disposition order, DFCS shall submit a written report to the court which shall either: (1) Include a case plan for a reunification of the family; or (2) Include a statement of the factual basis for determining that a plan for reunification is not appropriate. (b) The report submitted by DFCS shall become a discrete part of the case record in a format determined by DFCS and shall be made available to a child who is placed in DFCS custody if such child is 14 years of age or older, his or her attorney, his or her guardian ad litem, if any, and the parent, guardian, or legal custodian of such child. The contents of the report shall be determined at a meeting to be held by DFCS in consultation with the parent, guardian, or legal custodian and child who was placed in DFCS custody, when appropriate. The parent, guardian, or legal custodian, the child who was placed in DFCS custody if such child is 14 years of age or older, his or her attorney, and guardian ad litem, if any, shall be given written notice of the meeting at least five days in advance of such meeting and shall be advised that the report will be submitted to the court for consideration as 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 parent, guardian, or legal custodian of the child who was placed in DFCS custody, if such are available. (c) If the court adopts a report that contains a case plan for reunification services, it shall be in effect until modification by the court. A case plan shall address each reason requiring removal of a child from his or her home and shall, at a minimum, comply with the requirements of Code Section 15-11-201. (d) If the submitted DFCS report contains a proposed case plan for reunification services: (1) DFCS shall provide the caregiver, the foster parent, and any preadoptive parent or relative providing care for the child who was placed in DFCS custody with a copy of those portions of the court approved case plan that involve the permanency goal and the services to be provided to the child; (2) A copy of the DFCS report and case plan shall be delivered to the parent, guardian, or legal
custodian by United States mail, e-mail, or hand delivery at the same time the report and case plan are transmitted to the court, along with written notice that such report will be considered by the court without a hearing unless, within five days from the date the copy of such report and case plan were delivered, the parent, guardian, or legal custodian of the child who was placed in DFCS custody requests a hearing before the court to review such report and case plan; and (3) If no hearing is requested, the court shall enter a disposition order or supplemental order incorporating all elements of the case plan for reunification services which the court finds essential to reunification, specifying what shall be accomplished by all parties before reunification of the family can be achieved. (e) When DFCS recommends that reunification services are not appropriate and should not be allowed, the DFCS report shall address each reason requiring removal of a child from his or her home and shall contain at least the following: (1) The purpose for which the child in DFCS custody was placed in foster care, including a statement of the reasons why such child cannot be adequately and safely protected at his or her home and the harm which may occur if such child remains in his or her home and a description of the services offered and the services provided to prevent removal of such child from his or her home; (2) A clear statement describing all of the reasons supporting a finding that reunification of a child with his or her parent will be detrimental to such 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; and (3) The statements, provisions, and requirements found in paragraphs (11) and (12) of subsection (b) of Code Section 15-11-201.

15-11-201. Case Plan Contents
(a) A case plan shall be designed to achieve placement in the most appropriate, least restrictive, and most family-like setting available and in close proximity to the alleged dependent child's parent's home, consistent with the best interests and special needs of such child, and shall consider the placement's proximity to the school in which such child is enrolled at the time of placement. (b) A case plan shall be developed by DFCS and the parent, guardian, or legal custodian of the alleged dependent child and, when appropriate, such child. A case plan shall include, but not be limited to, all of the following: (1) A description of the circumstances that resulted in such child being placed under the jurisdiction of the court and in foster care; (2) An assessment of such child's and his or her family's strengths and needs and the type of placement best equipped to meet those needs; (3) A description of the type of home or institution in which such child is to be placed, including a discussion of the safety and appropriateness of the placement; (4) Specific time-limited goals and related activities designed to enable the safe return of such child to his or her home, or, in the event that return to his or her home is not possible, activities designed to result in permanent placement or emancipation; (5) Assignment of specific responsibility for accomplishing the planned activities; (6) The projected date of completion of the case plan objectives; (7) The date time-limited services will be terminated; (8) A schedule of visits between such child and his or her siblings and other appropriate family members and an explanation if no visits are scheduled; (9) When placement is made in a foster family home, group home, or other child care institution that is either a substantial distance from the home of such child's parent, guardian, or legal custodian or out of state, the case plan shall specify the reasons why the placement is the most appropriate and is in the best interests of the child; (10) When an out-of-state group home placement is recommended or made, the case plan shall comply with Code Section 39-4-4, the Interstate Compact on the Placement of Children. In addition, documentation of the recommendation of the multidisciplinary team and the rationale for such particular placement shall be included. The case plan shall also address what in-state services or facilities were used
or considered and why they were not recommended; (11) If applicable, a statement that reasonable efforts have been made and a requirement that reasonable efforts shall be made for so long as such child remains in the custody of the department: (A) To place siblings removed from their home in the same foster care, kinship care, guardianship, or adoptive placement, unless DFCS 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 DFCS documents that such frequent visitation or other ongoing interaction would be contrary to the safety or well-being of any of the siblings; (12) Provisions ensuring the educational stability of such child while in foster care, including: (A) An assurance that the placement of such child in foster care takes into account the appropriateness of the current educational setting and the proximity to the school in which such 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 such child remains in the school in which such 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 DFCS that 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 such child provided to such new school; (13) An account of health and education information about such child including school records, immunizations, known medical problems, any known medications he or she may be taking, names and addresses of his or her health and educational providers; such child's grade level performance; assurances that such child's placement in foster care takes into account proximity to the school in which he or she was enrolled at the time of placement; and other relevant health and educational information; (14) A recommendation for a permanency plan for such child. If, after considering reunification, adoptive placement, or permanent guardianship, DFCS recommends placement in another planned permanent living arrangement, the case plan shall include documentation of a compelling reason or reasons why termination of parental rights is not in the child's best interests. For purposes of this paragraph, a 'compelling reason' shall have the same meaning as in paragraph (2) of subsection (b) of Code Section 15-11-233; (15) A statement that the parent, guardian, or legal custodian of such child and the child have had an opportunity to participate in the development of the case plan, to review the case plan, to sign the case plan, and to receive a copy of the plan, or an explanation about why such persons were not able to participate or sign the case plan; (16) A requirement that the DFCS case manager and staff and, as appropriate, other representatives of such child provide him or her with assistance and support in developing a transition plan that is personalized at the direction of such child, including 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 such child may elect. The transition plan shall be completed in the 90 day period: (A) Immediately prior to the date on which such child will attain 18 years of age; or (B) If such child remains in the care of DFCS past his or her eighteenth birthday, before his or her planned exit from DFCS care. (17) For such child in out-of-home care who is 14 years of age or older, a written description of the programs and services which will help him or her prepare for the transition from foster care to independent living; and (18) The identity of the person within DFCS or other agency who is directly responsible for ensuring that the case plan is implemented.

(a) Except as provided in subsection (a) of Code Section 15-11-203, reasonable efforts shall be made to preserve or reunify families: (1) Prior to the placement of an alleged dependent child in DFCS custody to
prevent the need for removing him or her from his or her home; or (2) To eliminate the need for removal and make it possible for a child alleged to be or adjudicated as a dependent child to return safely to his or her home at the earliest possible time. (b) In determining the type of reasonable efforts to be made to a child alleged to be or adjudicated as a dependent child and in making such reasonable efforts, such child's health and safety shall be the paramount concern. (c) Appropriate services to meet the needs of a child alleged to be or adjudicated as a dependent child and his or her family may include those provided by DFCS and other services available in the community. (d) The court shall be required to review the appropriateness of DFCS's reasonable efforts at each stage of the proceedings. (e)(1) At the preliminary protective hearing, DFCS has the burden of demonstrating that: (A) It has made reasonable efforts to prevent placement of an alleged dependent child in foster care; (B) There are no appropriate services or efforts which could allow an alleged dependent child to safely remain in the home given the particular circumstances of such child and his or her family at the time of his or her removal and so the absence of such efforts was justifiable; or (C) Reasonable efforts to prevent placement and to reunify an alleged dependent child with his or her family are not required because of the existence of one or more of the circumstances enumerated in subsection (a) of Code Section 15-11-203. (2) At the adjudication hearing, DFCS has the burden of demonstrating that: (A) It has made reasonable efforts to eliminate the need for removal of an alleged dependent child from his or her home and to reunify such child with his or her family at the earliest possible time; or (B) Reasonable efforts to prevent placement and to reunify an alleged dependent child with his or her family are not required because of the existence of one or more of the circumstances enumerated in subsection (a) of Code Section 15-11-203. (3) At each other hearing, DFCS has the burden of demonstrating that: (A) It has made reasonable efforts to eliminate the need for removal of a child alleged to be or adjudicated as a dependent child from his or her home and to reunify such child with his or her family at the earliest possible time; or (B) It has made reasonable efforts to finalize an alternative permanent home for a child alleged to be or adjudicated as a dependent child. (f) When determining whether reasonable efforts have been made, the court shall consider whether services to the child alleged to be or adjudicated as a dependent child and his or her family were: (1) Relevant to the safety and protection of such child; (2) Adequate to meet the needs of such child and his or her family; (3) Culturally and linguistically appropriate; (4) Available and accessible; (5) Consistent and timely; and (6) Realistic under the circumstances. (g) A finding that reasonable efforts have not been made shall not preclude the entry of an order authorizing a child alleged to be or adjudicated as a dependent child's placement when the court finds that placement is necessary for the protection of such child. (h) When efforts to prevent the need for a child alleged to be or adjudicated as a dependent child's placement were precluded by an immediate threat of harm to such child, the court may make a finding that reasonable efforts were made if it finds that the placement of such child in the absence of such efforts was justifiable. (i) Reasonable efforts to place a child adjudicated as a dependent child for adoption or with a guardian or legal custodian may be made concurrently with reasonable efforts to reunify. When DFCS decides to concurrently make reasonable efforts for both reunification and permanent placement away from the parent, guardian, or legal custodian of a child adjudicated as a dependent child, DFCS shall disclose its decision and both plans to all parties and obtain approval from the court. When DFCS proceeds on both plans, the court's review of reasonable efforts shall include efforts under both plans. (j) An order placing or continuing the placement of a child alleged to be or adjudicated as a dependent child in DFCS custody shall contain, but not be limited to, written findings of facts stating: (1) That such child's continuation in or return to his or her home would be contrary to his or her welfare; (2) Whether reasonable efforts have been made to prevent or eliminate the need for placement of such child, unless the court has determined
that such efforts are not required or shall cease; and (3) Whether reasonable efforts should continue to be made to prevent or eliminate the need for placement of such child, unless the court has previously determined that such efforts are not required or shall cease.

15-11-216. Periodic Reviews and Citizen Panel Reviews
(a) All cases of children in DFCS custody shall be initially reviewed within 75 days following a child adjudicated as a dependent child's removal from his or her home and shall be conducted by the court. An additional periodic review shall be held within four months following the initial review and shall be conducted by the court or by judicial citizen review panels established by the court, as the court directs, meeting such standards and using such procedures as are established by court rule by the Supreme Court, with the advice and consent of the Council of Juvenile Court Judges. The court shall have the discretion to schedule any subsequent review hearings as necessary. (b) At any periodic review hearing, the paramount concern shall be a child adjudicated as a dependent child's health and safety. (c) At the initial 75 day periodic review, the court shall approve the completion of the relative search, schedule the subsequent four-month review to be conducted by the court or a citizen judicial review panel, and shall determine: (1) Whether a child adjudicated as a dependent child continues to be a dependent child; (2) Whether the existing case plan is still the best case plan for such child and his or her family and whether any changes need to be made to the case plan, including whether a concurrent case plan for nonreunification is appropriate; (3) The extent of compliance with the case plan by all participants; (4) The appropriateness of any recommended changes to such child's placement; (5) Whether appropriate progress is being made on the permanency plan; (6) Whether all legally required services are being provided to a child adjudicated as a dependent child, his or her foster parents if there are foster parents, and his or her parent, guardian, or legal custodian; (7) Whether visitation is appropriate and, if so, approve and establish a reasonable visitation schedule consistent with the age and developmental needs of a child adjudicated as a dependent child; (8) Whether, for a child adjudicated as a dependent child who is 14 years of age or older, the services needed to assist such child to make a transition from foster care to independent living are being provided; and (9) Whether reasonable efforts continue to be made to prevent or eliminate the necessity of such child's removal from his or her home and to reunify the family after removal of a child adjudicated as a dependent child, unless reasonable efforts were not required. (d) If at any review subsequent to the initial 75 day review the court finds that there is a lack of substantial progress towards completion of the case plan, the court shall order DFCS to develop a case plan for nonreunification or a concurrent case plan contemplating nonreunification. (e) At the time of each review of a child adjudicated as a dependent child in DFCS custody, DFCS shall notify the court whether and when it intends to proceed with the termination of parental rights.

(a) In the event the periodic review of a case is conducted by a judicial citizen review panel, the panel shall transmit its report and that of DFCS, including its findings and recommendations together with DFCS proposed revised plan for reunification or other permanency plan, if necessary, to the court and the parent within five days after the review. (b) DFCS shall provide the caregiver of a child adjudicated as a dependent child, his or her foster parents if there are foster parents, and any preadoptive parents or relatives providing care for such 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 such child. (c) Any party may request a hearing on the proposed revised plan in writing.
within five days after receiving a copy of the plan. (d) 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 the 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. (e) Notwithstanding subsections (c) and (d) of this Code section, if the judicial citizen review panel finds that there is a lack of substantial progress towards completion of the case plan, the court shall schedule a hearing within 30 days of such finding to determine whether a case plan for nonreunification is appropriate. (f) If the judicial citizen review panel determines that a parent of a child adjudicated as a dependent child has unjustifiably failed to comply with the ordered plan designed to reunite such child's family and that such failure is significant enough to warrant consideration of the parent's termination of parental rights, the panel may make a recommendation to DFCS and the attorney for such child that a petition for termination of parental rights should be prepared.

15-11-218. Court's order following review

(a) At the conclusion of a periodic review hearing, or upon review of a report by a judicial citizen review panel, the court shall issue written findings of fact that include: (1) Why a child adjudicated as a dependent child continues to be a dependent child; (2) Whether the existing case plan is still the best case plan for a child adjudicated as a dependent child and his or her family and whether any changes need to be made to the case plan including whether a concurrent case plan for nonreunification is appropriate; (3) The extent of compliance with the case plan by all participants; (4) The basis for any changes to the placement of a child adjudicated as a dependent child; (5) Whether visitation is or continues to be appropriate; (6) A description of progress being made on the permanency plan; (7) Whether all legally required services are being provided to a child adjudicated as a dependent child, his or her foster parents if there are foster parents, and his or her parent, guardian, or legal custodian; (8) Whether, for a child adjudicated as a dependent child who is 14 years of age or older, the services needed to assist such child to make a transition from foster care to independent living are being provided; and (9) Whether reasonable efforts continue to be made to prevent or eliminate the necessity of the removal of a child adjudicated as a dependent child and to reunify his or her family after removal, unless reasonable efforts were not required. (b) At the conclusion of a periodic review hearing, or upon review of a report by a judicial citizen review panel, the court shall order one of the following dispositions: (1) Return a child adjudicated as a dependent child to his or her parent, guardian, or legal custodian's home with or without court imposed conditions; (2) Allow a child adjudicated as a dependent child to continue in the current custodial placement because the current placement is appropriate for such child's needs; (3) Allow a child adjudicated as a dependent child to continue in the current custodial placement although the current placement is no longer appropriate for such child's needs and direct DFCS to devise another plan which shall: (A) Be submitted within ten days for court approval; (B) Be furnished to all parties after court approval of the revised plan; and (C) Be provided to the caregiver of a child adjudicated as a dependent child, his or her foster parents if there are foster parents, and any preadoptive parents or relative providing care for such 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 such child; or (4) Make additional orders regarding the treatment plan or placement of a child adjudicated as a dependent child to protect such child's best interests if the court determines DFCS has failed in implementing any material provision of the case plan or abused its discretion in the placement or proposed placement of such child.
# Chapter 5  Protective Orders and Contempt Actions

*Contribution by Mary Hermann, JD, CWLS*

<table>
<thead>
<tr>
<th>Authority</th>
<th>§ 15-11-29</th>
<th>Protective Order</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>§ 15-11-31</td>
<td>Contempt Powers of Juvenile Court</td>
</tr>
<tr>
<td></td>
<td>§ 15-11-162</td>
<td>Willful Failure to Appear</td>
</tr>
</tbody>
</table>

## Purpose

- Court may restrain or control the conduct of an adult, parent, guardian or legal custodian where a dependency action is pending or other pending action under Title 15, Chapter 11
- May allow the child to return home under close judicial oversight and conditions
- Increases judicial oversight and accountability

## Pleadings

- **Protective Order** comes before the court by:
  - A specified prayer for relief in a petition
  - Filed as a separate action, petition for a protective order
  - Oral motion in open court
  - Application of a party
  - On the court’s own motion
- **Contempt** comes before the court by:
  - A specified prayer for relief in a Petition
  - Filed as a separate action
  - Oral motion in open court
  - Application of a party
  - On the court’s own motion

## Jurisdiction

- § 15-11-10(1)(C)
  - Child under 18 years alleged to be a dependent in the state.
  - Petition must state factual basis of jurisdiction.
- § 15-11-10(1)(G)
  - Child remaining in foster care after 18 years old or
  - Child is 18 years or older and receiving independent living services.
  - Limited jurisdiction to review the status of the child and the services provided to the child for independent living or foster care.

- **§ 15-11-12 Dual Jurisdiction Child**
  - Child may be delinquent and dependent or dependent and CHINS if a “factual basis” established
  - If the delinquent and dependency case or CHINS and dependency cases are consolidated the dependency time lines apply to the consolidated court action

## Venue

- **§ 15-11-125**
  - A proceeding may be commenced
    - in the county where child legally resides or
    - in the county of child’s presence at commencement of action if the child is present without a custodian or the acts
underlying the dependency occurred in that county.

### Transfer of Venue
- Venue may be transferred to child’s county of legal residence for the convenience of parties.
- 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.

**§ 15-11-105(h)**
- If change of venue, GAL shall forward pertinent information to next GAL appointed.

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### Protective Order Application or Motion

#### Contents of Application or Motion

**§ 15-11-29(a) Protective Order Application or Motion**
- In any Title 15, Chapter 11 proceeding
  - either 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
    - due notice of the application or motion and
    - the grounds therefor and
    - an opportunity to be heard thereon
  - have been given to the person against whom the order is directed.
- Activity subject to court control or restriction
  - To stay away from a person’s home or a child
  - To permit a parent to visit his or her child at stated periods
  - To abstain from offensive conduct against a child, his or her parent, or any person to whom custody of such child is awarded
  - To give proper attention to the care of his or her home
  - 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 a child is referred by the court
  - To refrain from acts of commission or omission that tend to make a home not a proper place for a child
  - To ensure that a child attends school pursuant to any valid law relating to compulsory attendance
  - To participate with a child in any counseling or treatment deemed necessary after consideration of employment and other family needs
  - To enter into and complete successfully a substance abuse program approved by the court

---

### Protective Order modification, extension or termination

**§ 15-11-29(b)**
- A protective order may be
  - modified and/or
  - extended for a further specified period or
  - terminated
- if the person subject to the protective order receives notice and has an opportunity to be heard and
<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 15-11-29(c)</td>
<td>Enforcement of Protective Order</td>
</tr>
<tr>
<td>§ 15-11-162</td>
<td>Willful Failure to Appear</td>
</tr>
<tr>
<td>§ 15-11-31(a)</td>
<td>Contempt: Power of Juvenile Court Against an Adult</td>
</tr>
<tr>
<td>§ 15-11-31(b)</td>
<td>Contempt: Restricted use against dependent child</td>
</tr>
<tr>
<td>§ 15-11-31(c)</td>
<td>Contempt: Non-dependent child</td>
</tr>
<tr>
<td>§ 15-11-31(d)</td>
<td>Contempt</td>
</tr>
</tbody>
</table>

- if the court finds that action is in the best interests of the child and the public.

### Enforcement of Protective Order

- Protective orders may be enforced by:
  - citation to show cause for contempt of court for any violation
  - issuance of warrant where protection of child’s welfare requires
- a warrant may be issued to take the alleged violator into custody and bring him or her before the court

### Willful Failure to Appear

- If parent, guardian, or legal custodian willfully fails to appear after being ordered to appear, then Rule Nisi and contempt and bench warrant may occur.

### Contempt: Power of Juvenile Court Against an Adult

- In addition to all other inherent powers of the court to enforce its lawful orders, 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, the court may punish an adult for contempt of court by:
  - imprisonment for not more than 20 days or
  - a fine not to exceed $1,000.00.
- Requires appropriate notice and opportunity to be heard.

### Contempt: Restricted use against dependent child

- The court shall restrict and limit the use of contempt powers with respect to commitment of a child to a secure residential facility or nonsecure residential facility.
- In no event shall a child solely alleged or adjudicated to be a dependent child be placed in a secure residential facility or nonsecure residential facility.

### Contempt: Non-dependent child

- A child may be placed in a secure residential facility or nonsecure residential facility for not more than 72 hours if:
  - he or she is found in contempt of court, and
  - less restrictive alternatives have been considered and are unavailable or inappropriate, or
  - if such child has already been ordered to serve a less restrictive alternative sanction but failed to comply with the sanction.

### Contempt

- Except against DJJ or DFCS
- Additional or alternative sanctions against a parent, guardian, or legal custodian, who willfully violates any order issued by the court directed to him or her
- Requires notice and opportunity to be heard
- Court may impose any or all of the following sanctions:
  - Require a child’s parent, guardian, or legal custodian to make restitution as provided in § 17-14-5
  - Reimburse the state for the costs of detention, treatment, or rehabilitation of a child
  - Require a child’s parent, guardian, or legal custodian to participate in a court approved educational or counseling program designed to contribute to the ability to provide proper parental care and supervision of the child, including, but not limited to, parenting classes
  - Require a child’s parent, guardian, or legal custodian 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 his or her parent, guardian, or legal custodian and reunification with the child

<table>
<thead>
<tr>
<th>Child and Party</th>
<th>§ 15-11-103 Child and Party</th>
</tr>
</thead>
<tbody>
<tr>
<td>Right to Attorney</td>
<td>• All parties, including the child, have a right to counsel at all stages of the proceedings.</td>
</tr>
<tr>
<td>Timing of Appointment</td>
<td>• Party defined at § 15-11-2(52) as state, a child, parent, guardian, legal custodian, or other person subject to any judicial proceeding, except in delinquency proceedings; then only a child and the state are parties.</td>
</tr>
<tr>
<td></td>
<td>• Parent defined at § 15-11-2(51) as legal father or legal mother of a child.</td>
</tr>
<tr>
<td></td>
<td>• Child Attorney should be appointed “as soon as practicable to ensure adequate representation” and before the first hearing that may substantially affect the interests of the child.</td>
</tr>
<tr>
<td></td>
<td>o Child attorney has “attorney-client” duty.</td>
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<td></td>
<td>o Child attorney representation continues through appeals or until excused by court.</td>
</tr>
<tr>
<td></td>
<td>o Child’s right to attorney cannot be waived.</td>
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<tr>
<td></td>
<td>• Party should be advised of right to counsel prior to any hearing:</td>
</tr>
<tr>
<td></td>
<td>o Party has right to obtain or employ attorney</td>
</tr>
<tr>
<td></td>
<td>o If indigent, right to appointed counsel</td>
</tr>
<tr>
<td></td>
<td>o Can waive right to attorney</td>
</tr>
<tr>
<td></td>
<td>• 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 (2009)).</td>
</tr>
<tr>
<td></td>
<td>• Putative Father issue – is he a “party”?</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Right to Be Present, Heard and Present Evidence</th>
<th>§ 15-11-19</th>
</tr>
</thead>
</table>
| • Party has right to be present, heard, present evidence, cross examine witnesses, examine pertinent court files and records, and appeal orders of the court.
 | “Party” includes child, except court may exclude child if not in the child’s best interest to be present. |
| • Party shall be advised of these rights at that person’s first
appearance.

<table>
<thead>
<tr>
<th>§ 15-11-108(a)</th>
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<tbody>
<tr>
<td>• The court shall give to all parties written notice of the date, time, place, and purpose of the following post-adjudication hearings or reviews:</td>
</tr>
<tr>
<td>o Nonreunification hearings</td>
</tr>
<tr>
<td>o Disposition hearings</td>
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<tr>
<td>o Periodic review hearings</td>
</tr>
<tr>
<td>o Periodic reviews by judicial citizen review panel</td>
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<tr>
<td>o Permanency plan hearings</td>
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<tr>
<td>o TPR hearings</td>
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<tr>
<td>o Post-TPR review hearings</td>
</tr>
</tbody>
</table>

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<thead>
<tr>
<th>§ 15-11-108(b)</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Issuance and service of summons, when appropriate, shall comply with the requirements of § 15-11-160 and § 15-11-161.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>§ 15-11-108(c)</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Unless otherwise provided in this chapter, written notice shall be delivered to the recipient at least 72 hours before the hearing or review by United States mail, e-mail, or hand delivery.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>§ 15-11-160</th>
</tr>
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<tbody>
<tr>
<td>• Copy of dependency petition (except publication)</td>
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<tr>
<td>• The court shall direct the issuance of a summons to</td>
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<tr>
<td>o a child if 14 years of age or older</td>
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<tr>
<td>o child's parent, guardian, or legal custodian</td>
</tr>
<tr>
<td>o child's attorney and child's guardian ad litem</td>
</tr>
<tr>
<td>o any other persons who appear to the court to be proper or necessary parties to the proceeding</td>
</tr>
<tr>
<td>• Summons must provide notice of a party’s right to counsel.</td>
</tr>
<tr>
<td>• Party other than child may waive summons by written stipulation or voluntary appearance at hearing.</td>
</tr>
</tbody>
</table>

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<thead>
<tr>
<th>§ 15-11-161</th>
</tr>
</thead>
<tbody>
<tr>
<td>• If party is in Georgia and can be found, then personal service ASAP and at least 72 hours before the adjudication hearing. § 15-11-161(a).</td>
</tr>
<tr>
<td>• If party is in Georgia and cannot be found but address is known or can be known with due diligence, must be served at least 5 days before the adjudication hearing by registered or certified mail or statutory overnight delivery, return receipt requested. § 15-11-161(b).</td>
</tr>
<tr>
<td>• If party is outside Georgia with known address or known with due diligence, then must be served at least 5 days before the adjudication hearing by personal service or by registered or certified mail or statutory overnight delivery, return receipt requested. § 15-11-161(c).</td>
</tr>
<tr>
<td>• If, after due diligence, whereabouts of a party are unknown, then service by publication; hearing shall be no earlier than 5 days after</td>
</tr>
</tbody>
</table>
final publication. § 15-11-161(d).

- Publication shall be 1 time per week for 4 weeks in legal organ of county where dependency pending. § 15-11-161(e).

- **Party** is defined at § 15-11-2 (52) as state, a child, parent, guardian, legal custodian, or other person subject to any judicial proceeding except in delinquency then only a child and the state shall be a party

- **Parent** is defined at § 15-11-2 (51) as legal father or legal mother of a child.

§ 15-11-161(f)

- Service of summons may be made by any suitable person under the direction of the court.

### Provisional Hearing Requirements

§ 15-11-163 Provisional Hearing

- The court may conduct a provisional hearing and issue an interlocutory order if one party is before the court and service by publication is required for the other party **and**
  - child is present at the provisional hearing.
  - summons to published party states final hearing date, time, location.
  - served party is required to appear at provisional hearing.

- Provisional hearing findings will become final if published party does not appear at calendared final hearing.

### Notice to Non-Parties: Foster Parent, Relative Caregiver

§ 15-11-109

- Notice of hearing or review must be given to foster parents of the child, pre-adoptive parents or relatives caring for the child.

- Notice is for opportunity to be heard but does not compel attendance.

- Written notice (mail, hand delivery or email) and 72 hours in advance, date, time, place, purpose of hearing and notice of their right to be heard – exception: preliminary protective hearing.

- Not a party to the dependency action; only right to attendance and opportunity to be heard.

### RE Required at Each Stage

§ 15-11-202(a)

- Except where § 15-11-203 applies, RE shall be made to preserve or reunify families
  - to prevent removal, prior to placement, or
  - to eliminate the need for removal and reunify.

§ 15-11-202(b)

- Type of RE based on child’s health and safety, which is of “paramount concern.”

§ 15-11-202(c)

- Appropriate services may be provided by DFCS or in the community.

§ 15-11-202(d)

- The court shall review the appropriateness of DFCS’s RE at each stage of the dependency proceedings.
<table>
<thead>
<tr>
<th>RE Considerations by Court</th>
<th>§ 15-11-202(f), (g), (h)</th>
</tr>
</thead>
<tbody>
<tr>
<td>RE Authorized</td>
<td>- Court considerations in RE determination: whether services to the child and family were</td>
</tr>
<tr>
<td>RE in Every Order</td>
<td>o relevant to the safety and protection child.</td>
</tr>
<tr>
<td></td>
<td>o adequate to meet the needs child and family.</td>
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<tr>
<td></td>
<td>o culturally and linguistically appropriate.</td>
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<td></td>
<td>o available and accessible.</td>
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<tr>
<td></td>
<td>o consistent and timely.</td>
</tr>
<tr>
<td></td>
<td>o realistic under the circumstances.</td>
</tr>
<tr>
<td></td>
<td>- If no RE found by court, child may still be adjudicated dependent and removed.</td>
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<tr>
<td></td>
<td>- Court may determine no RE justified because of an immediate threat of harm to child.</td>
</tr>
</tbody>
</table>

§ 15-11-202(i)
- Concurrent RE authorized — reunification and other permanent placement

§ 15-11-202(j)
- Order placing or continuing DFCS custody of child shall contain written findings of facts stating  |
  o child's continuation in or return home would be contrary to the child’s welfare.  |
  o whether RE determination have been made to prevent or eliminate the need for out-of-home placement, unless court determines RE are not required or that RE may cease.  |
  o whether RE should continue to be made to prevent or eliminate the need for placement.

<table>
<thead>
<tr>
<th>Important Considerations</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Is it possible to eliminate or contain the safety risk to the child by use of the protective order?</td>
</tr>
<tr>
<td>- Could the permanency goal be advanced by use of contempt power of the court?</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Continuance Issues</th>
</tr>
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<tbody>
<tr>
<td>§ 15-11-110</td>
</tr>
<tr>
<td>- No continuance if contrary to child’s interest.</td>
</tr>
<tr>
<td>- Court to consider and give substantial weight to the child’s need for prompt resolution of custody status, stable environment, and damage to child of prolonged temporary placements.</td>
</tr>
<tr>
<td>- Showing of good cause and only for time necessary based on evidence presented on the record.</td>
</tr>
<tr>
<td>- Stipulation of parties or need for discovery is <strong>not</strong> good cause.</td>
</tr>
<tr>
<td>- If no objection to continuance then consent.</td>
</tr>
</tbody>
</table>

Practice Note: Need to state specific reasons for continuance on the record and in continuance order.

- Case should be active even during the continuance period:
<table>
<thead>
<tr>
<th>Right to GAL and GAL Best Interest Advocacy Considerations</th>
<th>§ 15-11-104</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>GAL shall be appointed</td>
</tr>
<tr>
<td></td>
<td>May be child’s attorney unless or until a conflict of interest between the attorney’s duty to the child and the attorney’s “considered opinion” of the child’s best interest as a GAL</td>
</tr>
<tr>
<td></td>
<td>CASA may serve as GAL</td>
</tr>
<tr>
<td></td>
<td>Procedure for removal of GAL for cause § 15-11-104(h)</td>
</tr>
<tr>
<td></td>
<td>CASA appointment § 15-11-106</td>
</tr>
</tbody>
</table>

§ 15-11-105

To advocate for the child’s best interest, GAL shall consider factors such as the following, in the context of child’s age and developmental needs:

- Physical safety and welfare, food, shelter, health, clothing
- Mental and physical health of all individuals involved
- Evidence of domestic violence
- Child's background and ties, including familial, cultural, religious
- Child’s sense of attachments
- Least disruptive placement alternative
- Child's wishes and long-term goals
- Community ties, church, school, friends
- Child's need for permanence, stability, and continuity of relationships
- Uniqueness of every family and child
- Risks associated with being in substitute care
- Preferences of the persons available to care for the child

Any other factors considered by the GAL to be relevant and proper

<table>
<thead>
<tr>
<th>Minimum Duties of GAL</th>
<th>§ 15-11-105(c) Minimum duties of GAL, unless child’s circumstances make these unreasonable (must be performed in a developmentally appropriate manner):</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Maintain regular and sufficient in-person contact with the child, in a manner appropriate to his or her developmental level</td>
</tr>
<tr>
<td></td>
<td>Meet with and interview child prior to all hearings and reviews</td>
</tr>
<tr>
<td></td>
<td>Determine child’s needs, circumstances and views</td>
</tr>
<tr>
<td></td>
<td>Make independent factual determination of the case</td>
</tr>
<tr>
<td></td>
<td>Consult with child’s attorney</td>
</tr>
<tr>
<td></td>
<td>Communicate with health, mental health, and other professionals</td>
</tr>
<tr>
<td></td>
<td>Review case study and educational, medical, psychological, and other relevant reports</td>
</tr>
<tr>
<td></td>
<td>Review all court-related documents</td>
</tr>
</tbody>
</table>
- Attend all court hearings and other proceedings to advocate for the child's best interests
- Advocate for timely court hearings to obtain permanency for the child
- Protect the cultural needs of the child
- Contact the child prior to any proposed placement changes
- Contact the child after placement changes
- Request a judicial citizen review panel or judicial review of the case
- Attend citizen panel review hearings, and if unable to attend, send panel a letter stating the child’s status since the last citizen panel review and an assessment of the DFCS permanency and treatment plans
- Provide written reports to the court and the parties on the child's best interests, including recommendations regarding placement, updates on child's adjustment to placement, DFCS's and respondent's compliance with prior court orders and treatment plans, child's participation during visits, and any other recommendations based on the best interests of the child
- When appropriate, encourage settlement and the use of alternative forms of dispute resolution and participate in such processes to the extent permitted
- Monitor compliance with the case plan and all court orders.

### GAL Participation and Access to Records

<table>
<thead>
<tr>
<th>GAL Confidentiality Required</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 15-11-105 (d), (e)</td>
</tr>
<tr>
<td>- GAL shall receive all notices of hearings, reviews, panels, case plan formulation meetings, and shall be served pleadings in the same manner as a party.</td>
</tr>
<tr>
<td>- GAL shall have access to all records and information relevant to the child’s case except</td>
</tr>
<tr>
<td>- § 19-7-5, Child Abuse Reporting Statute</td>
</tr>
<tr>
<td>- § 49-4A, Juvenile Justice authorizing statute</td>
</tr>
<tr>
<td>- Article 11, Office of the Child Advocate for the Protection of Children authorizing statute</td>
</tr>
<tr>
<td>§ 15-11-105 (f), (g)</td>
</tr>
<tr>
<td>- All information acquired by GAL is confidential except as directed by court:</td>
</tr>
<tr>
<td>- Misdemeanor if violated</td>
</tr>
<tr>
<td>- Maintain confidential records require by § 37-3-166, Hospitalization and Treatment of Alcoholics and Drug Dependent Individual, clinical records; when release permitted; scope of privileged communications; liability for disclosure; notice to sheriff of discharge</td>
</tr>
<tr>
<td>- § 37-4-125 – Services for Developmentally Disabled, clinical records, release, privilege</td>
</tr>
</tbody>
</table>

### At Any Hearing Juvenile

| § 15-11-111 |
| At any hearing, in the court’s discretion and based on evidence presented, the court may enter an order: |
Practice Notes

- Protective orders can be used to expedite or facilitate the return of a child to the home from which he or she was removed. Examples: parents need to complete a portion of the

| Court May Order | • accepting or rejecting any DFCS report.  
|                 | • requiring an additional evaluation.  
|                 | • requiring other reviews to determine the disposition that is in the child's best interests.  
|                 | The court’s order  
|                 | • may incorporate all or part of the DFCS report.  
|                 | • shall include findings of fact reflecting the court's consideration of the oral and written testimony offered by parties and nonparties with a right to receive notice and be heard.  

| § 15-11-26 Court Considerations for Best Interest of Child | Court to consider all factors affecting the child’s best interest in the context of the child’s age and developmental needs, including the following 20 factors:  
| § 15-11-26 Court Considerations for Best Interest of Child | 1. Physical safety and welfare, food, shelter, health and clothing  
| § 15-11-26 Court Considerations for Best Interest of Child | 2. Love, affection, bonding, and emotional ties existing between child and parent or person available to care for the child  
| § 15-11-26 Court Considerations for Best Interest of Child | 3. Sibling bond, including half siblings and step siblings  
| § 15-11-26 Court Considerations for Best Interest of Child | 4. Child's need for permanence, stability and continuity of relationships  
| § 15-11-26 Court Considerations for Best Interest of Child | 5. Child's attachments, child’s sense of security and familiarity, and continuity of affection for the child  
| § 15-11-26 Court Considerations for Best Interest of Child | 6. Parental capacity  
| § 15-11-26 Court Considerations for Best Interest of Child | 7. Home environment of each parent or person available to care for the child considering the promotion of the child's nurturance and safety rather than superficial or material factors  
| § 15-11-26 Court Considerations for Best Interest of Child | 8. Stability of the family unit and community support systems  
| § 15-11-26 Court Considerations for Best Interest of Child | 9. Mental and physical health of all individuals involved  
| § 15-11-26 Court Considerations for Best Interest of Child | 10. Home, school and community record; history of child, child’s special needs  
| § 15-11-26 Court Considerations for Best Interest of Child | 11. Community ties, church, school and friends  
| § 15-11-26 Court Considerations for Best Interest of Child | 12. Child's background and ties, including familial, cultural and religious  
| § 15-11-26 Court Considerations for Best Interest of Child | 13. The least disruptive placement alternative  
| § 15-11-26 Court Considerations for Best Interest of Child | 14. Uniqueness of every family and child  
| § 15-11-26 Court Considerations for Best Interest of Child | 15. Risks associated with being in substitute care  
| § 15-11-26 Court Considerations for Best Interest of Child | 16. Child's wishes and long-term goals  
| § 15-11-26 Court Considerations for Best Interest of Child | 17. Preferences of the persons available to care for the child  
| § 15-11-26 Court Considerations for Best Interest of Child | 18. Evidence of family violence, substance abuse, criminal history, or sexual, mental, or physical child abuse  
| § 15-11-26 Court Considerations for Best Interest of Child | 19. Recommendation by a court appointed custody evaluator or GAL  
| § 15-11-26 Court Considerations for Best Interest of Child | 20. Any other factors considered by the court to be relevant and proper to its determination |
case plan that does not place the child at a safety risk, parenting classes, following up on services for the child.

- Protective orders allow return of the child to a home or an alternative placement under “conditions” that can be reviewed and enforced by the court.

**Code Sections**

**§ 15-11-29. Protective Order Application or Motion**

(a) In any proceeding under this chapter, either 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 due notice of the application or motion and the grounds therefor 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 a person's home or a child; (2) To permit a parent to visit his or her child at stated periods; (3) To abstain from offensive conduct against a child, his or her parent, or any person to whom custody of such child is awarded; (4) To give proper attention to the care of his or her 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 a child is referred by the court; (6) To refrain from acts of commission or omission that tend to make a home not a proper place for a child; (7) To ensure that a child attends school pursuant to any valid law relating to compulsory attendance; (8) To participate with a 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, a protective 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 a child so requires, by the issuance of a warrant to take the alleged violator into custody and bring him or her before the court.

**§ 15-11-31. Contempt Power of Juvenile Court**

(a) In addition to all other inherent powers of the court to enforce its lawful orders, the court may punish an adult for contempt of court by imprisonment for not more than 20 days or a fine not to exceed $1,000.00 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. (b) The court shall restrict and limit the use of contempt powers with respect to commitment of a child to a secure residential facility or nonsecure residential facility and in no event shall a child solely alleged or adjudicated to be a dependent child be placed in a secure residential facility or nonsecure residential facility. (c) A child may be placed in a secure residential facility or nonsecure residential facility for not more than 72 hours if: (1) He or she is found in contempt of court; and (2) Less restrictive alternatives have been considered and are unavailable or inappropriate or if such child has already been ordered to serve a less restrictive alternative sanction but failed to comply with the sanction. (d) In addition or as an alternative to the punishment provided in subsection (a) of this Code section, after notice and opportunity to be heard, the court may impose any or all of the following sanctions when a parent, guardian, or legal custodian other than DJJ or DFCS willfully
violates any order issued by the court directed to him or her: (1) Require a child's parent, guardian, or legal custodian to make restitution as provided in Code Section 17-14-5; (2) Reimburse the state for the costs of detention, treatment, or rehabilitation of a child; (3) Require a child's parent, guardian, or legal custodian to participate in a court approved educational or counseling program designed to contribute to the ability to provide proper parental care and supervision of such child, including, but not limited to, parenting classes; or (4) Require a child's parent, guardian, or legal custodian to enter into a contract or plan as a part of the disposition of any charges against such child so as to provide for the supervision and control of such child by his or her parent, guardian, or legal custodian and reunification with such child.

§ 15-11-26. Court Considerations for Best Interest of Child
Whenever a best interests determination is required, the court shall consider and evaluate all of the factors affecting the best interests of the child in the context of such child's age and developmental needs. Such factors shall include: (1) The physical safety and welfare of such child, including food, shelter, health, and clothing; (2) The love, affection, bonding, and emotional ties existing between such child and each parent or person available to care for such child; (3) The love, affection, bonding, and emotional ties existing between such child and his or her siblings, half siblings, and stepsiblings and the residence of such other children; (4) Such child's need for permanence, including such child's need for stability and continuity of relationships with his or her parent, siblings, other relatives, and any other person who has provided significant care to such child; (5) Such child's sense of attachments, including his or her sense of security and familiarity, and continuity of affection for such child; (6) The capacity and disposition of each parent or person available to care for such child to give him or her love, affection, and guidance and to continue the education and rearing of such child; (7) The home environment of each parent or person available to care for such child considering the promotion of such child's nurturance and safety rather than superficial or material factors; (8) The stability of the family unit and the presence or absence of support systems within the community to benefit such child; (9) The mental and physical health of all individuals involved; (10) The home, school, and community record and history of such child, as well as any health or educational special needs of such child; (11) Such child's community ties, including church, school, and friends; (12) Such child's background and ties, including familial, cultural, and religious; (13) The least disruptive placement alternative for such child; (14) The uniqueness of every family and child; (15) The risks attendant to entering and being in substitute care; (16) Such child's wishes and long-term goals; (17) The preferences of the persons available to care for such child; (18) Any evidence of family violence, substance abuse, criminal history, or sexual, mental, or physical child abuse in any current, past, or considered home for such child; (19) Any recommendation by a court appointed custody evaluator or guardian ad litem; and (20) Any other factors considered by the court to be relevant and proper to its determination.

§ 15-11-108. Notice required at post adjudication hearings or reviews
(a) The court shall give to all parties written notice of the date, time, place, and purpose of the following postadjudication hearings or reviews: (1) Nonreunification hearings; (2) Disposition hearings; (3) Periodic review hearings; (4) Periodic reviews by judicial citizen review panel; (5) Permanency plan hearings; (6) Termination of parental rights hearings; and (7) Post termination of parental rights review hearings. (b) Issuance and service of summons, when appropriate, shall comply with the requirements of Code Sections 15-11-160 and 15-11-161. (c) Unless otherwise
provided in this chapter, written notice shall be delivered to the recipient at least 72 hours before the hearing or review by United States mail, e-mail, or hand delivery.

§ 15-11-109. Notice and Opportunity to be heard to foster parent, relative
caregiver
(a) In advance of each hearing or review, DFCS shall give written notice of the date, time, place, and purpose of the review or hearing, including the right to be heard, to the caregiver of a child, the foster parent of a child, any preadoptive parent, or any relative providing care for a child. The written notice shall be delivered to the recipient at least 72 hours before the review or hearing, except in the case of preliminary protective hearings or emergency hearings when such notice is not possible, by United States mail, e-mail, or hand delivery. (b) Notice of a hearing or review shall not be construed to require a legal custodian, foster parent, preadoptive parent, or relative caring for a child to be made a party to the hearing or review solely on the basis of such notice and opportunity to be heard.

§ 15-11-110. Continuance requirements
(a) Upon request of an attorney for a party, the court may continue any hearing under this article beyond the time limit within which the hearing is otherwise required to be held; provided, however, that no continuance shall be granted that is contrary to the interests of the child. In considering a child's interests, the court shall give substantial weight to a child's need for prompt resolution of his or her custody status, the need to provide a child with a stable environment, and the damage to a child of prolonged temporary placements. (b) Continuances shall be granted only upon a showing of good cause and only for that period of time shown to be necessary by the evidence presented at the hearing on the motion. Whenever any continuance is granted, the facts proved which require the continuance shall be entered in the court record. (c) A stipulation between attorneys or the convenience of the parties shall not constitute good cause. Except as otherwise provided by judicial rules governing attorney conflict resolution, a pending criminal prosecution or family law matter shall not constitute good cause. The need for discovery shall not constitute good cause. (d) In any case in which a child or his or her parent, guardian, or legal custodian is represented by an attorney and no objection is made to an order continuing any such hearing beyond the time limit, the absence of such an objection shall be deemed a consent to the continuance; provided, however, that even with consent, the court shall decide whether to grant the continuance in accordance with subsection (a) of this Code section.

§ 15-11-111. At Any Hearing Juvenile Court May Order
(a) At any hearing held with respect to a child, the court in its discretion, and based upon the evidence, may enter an order: (1) Accepting or rejecting any DFCS report; (2) Ordering an additional evaluation; or (3) Undertaking such other review as it deems necessary and appropriate to determine the disposition that is in the child's best interests. (b) The court's order: (1) May incorporate all or part of the DFCS report; and (2) Shall include findings of fact which reflect the court's consideration of the oral and written testimony offered by all parties, as well as nonparties, who are required to be provided with notice and a right to be heard in any hearing to be held with respect to a child, and DFCS.
Chapter 6  Permanency Plan Hearing

Contribution by Mary Hermann, JD, CWLS

<table>
<thead>
<tr>
<th>Authority</th>
<th>§ 15-11-102 (e, f)</th>
<th>Timing Permanency Plan Hearing</th>
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<tbody>
<tr>
<td></td>
<td>§ 15-11-230</td>
<td>Timing Permanency Plan Hearing</td>
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<td></td>
<td>§ 15-11-231</td>
<td>DFCS Report – Recommendation for Permanency</td>
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<td></td>
<td>§ 15-11-232</td>
<td>Order from Permanency Plan Hearing</td>
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<td></td>
<td>§ 15-11-233</td>
<td>Termination of Parental Rights Required and Exception</td>
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<tr>
<td></td>
<td>§ 15-11-2(5)</td>
<td>Aggravated Circumstances</td>
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<td>§ 15-11-2(53)</td>
<td>Permanent Plan</td>
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<td>§ 15-11-2(54)</td>
<td>Permanent Placement</td>
</tr>
</tbody>
</table>

| Purpose | • To determine the future legal status of each child in DFCS custody. § 15-11-230(a). |
|         | • To receive the permanent plan |
|         | • To determine whether reasonable efforts have been made to finalize the permanent plan |
|         | • Permanent Plan, § 15-11-2(53) |
|         |   o A specific written plan prepared by DFCS that is designed to ensure that a child is |
|         |     ▪ reunified with his or her family, or |
|         |     ▪ quickly placed in a long-term substitute home when he or she can’t be returned home or |
|         |     reunification is not in the child's best interests |
|         | • Permanent Placement, § 15-11-2 (54): |
|         |   o Return of the child to the legal custody of parent |
|         |   o Placement with an adoptive parent with a final adoption order |
|         |   o Placement with a permanent guardian |

| Pleadings | • DFCS Report – Recommendation for Permanency, § 15-11-231 |
|           | • Dependency petition |
|           | • Dependency adjudication order |
|           | • Case plan |
|           | • Diligent search |
|           | • Supplemental dispositional orders and judicial citizen panel review recommendations |
|           | • DFCS reports in reference to the permanency plan |
|           | • Social study and report §§ 15-11-190, 191 |
|           | • GAL report |

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Same as Dependency Adjudication Section 15-11-10(1)(C)</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>• Child under 18 years alleged to be a dependent in the state.</td>
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</table>
- Petition must state factual basis of jurisdiction.

§ 15-11-10(1)(G)
- Child remaining in foster care after 18 years old OR
- Child is 18 years or older and receiving independent living services.
- Limited jurisdiction to review the status of the child and the services provided to the child for independent living or foster care.

§ 15-11-12 Dual Jurisdiction Child
- Child may be delinquent and dependent or dependent and CHINS if a “factual basis” established.
- If the delinquent and dependency case or CHINS and dependency cases are consolidated the dependency time lines apply to the consolidated court action.

<table>
<thead>
<tr>
<th>Venue</th>
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<tbody>
<tr>
<td>§ 15-11-125</td>
</tr>
</tbody>
</table>
- A proceeding may be commenced
  - in the county where child legally resides or
  - in the county of child’s presence at commencement of action if the child is present without a custodian or the acts underlying the dependency occurred in that county.

Transfer of Venue
- Venue may be transferred to child’s county of legal residence for the convenience of parties.
- 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.

§ 15-11-105(h)
- If change of venue, GAL shall forward pertinent information to next GAL appointed.

<table>
<thead>
<tr>
<th>Transfer for Reunification Case Plan to County of Parent Residence</th>
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</thead>
<tbody>
<tr>
<td>§ 15-11-33</td>
</tr>
</tbody>
</table>
- Transfer to county of parent residence for reunification case plan
- Within 30 days of filing of the transfer order, transferring court shall provide to the receiving court:
  - certified copies of the adjudication order
  - order of disposition
  - order of transfer
  - case plan
  - any other court documents deemed necessary by the transferring court to enable the receiving court to assume jurisdiction over the matter.
- Transferring court shall retain jurisdiction until the receiving court acknowledges acceptance of the transfer.
- Compliance with this code section shall terminate jurisdiction in the transferring court and confer jurisdiction in the receiving court.
<table>
<thead>
<tr>
<th>Change of Venue GAL Duty</th>
<th>§ 15-11-105(h)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• If change of venue then GAL shall forward pertinent information to next GAL appointed.</td>
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<thead>
<tr>
<th>Court to Conduct Permanency Plan Hearing</th>
<th>§ 15-11-230(a)</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>• The court shall hold a permanency plan hearing to determine the future permanent legal status of each child in DFCS custody.</td>
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<table>
<thead>
<tr>
<th>One Judge — One Family</th>
<th>§ 15-11-3</th>
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<tbody>
<tr>
<td></td>
<td>• A single judge shall hear all successive cases or proceedings involving the same child or family.</td>
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<td></td>
<td>• Direct calendaring</td>
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<tr>
<th>Timing</th>
<th>§ 15-11-230(b)</th>
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<tbody>
<tr>
<td></td>
<td>• Within 30 days of DFCS filing nonreunification case plan</td>
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<tr>
<td></td>
<td>• Within 9 months of removal for child less than 7 years at filing of petition, then every 6 months</td>
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<td>• Within 12 months of removal for child who was 7 years or older at the time of the petition, then every 6 months</td>
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<td></td>
<td>• Sibling groups: if sibling group was removed at the same time and any child in the sibling group was younger than 7 years at the time of the petition, then permanency plan hearing must occur within 9 months of removal then every 6 months thereafter</td>
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<tr>
<th>§ 15-11-230(c)</th>
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<tr>
<td>• After initial permanency plan hearing, then at least every 6 months thereafter until the permanency plan and goal are achieved</td>
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<tr>
<th>Parties</th>
<th>Same as Adjudication, Disposition and Review Hearings</th>
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<tbody>
<tr>
<td></td>
<td>§ 15-11-230(d)</td>
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<tr>
<td></td>
<td>• Dependent child</td>
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<td></td>
<td>• Child’s parent, guardian, or legal custodian</td>
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<td></td>
<td>• State</td>
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<tr>
<th>Notice</th>
<th>§ 15-11-230(d)</th>
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<tbody>
<tr>
<td></td>
<td>• 5 Days advance written notice of the Permanency Plan Hearing to</td>
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<tr>
<td></td>
<td>○ Dependent child</td>
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<td></td>
<td>○ Child’s parent, guardian, or legal custodian</td>
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<td></td>
<td>○ Attorneys</td>
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<td>○ GAL</td>
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<td>○ Any foster parents, preadoptive parent or relatives providing care</td>
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<td>○ Other parties</td>
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<td>• Notice must state that the permanency plan recommended by DFCS will be submitted to the court for consideration as the order of the court.</td>
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<tr>
<th>Service</th>
<th>§ 15-11-108(a)</th>
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<tr>
<td></td>
<td>• The court shall give to all parties written notice of the date, time, place, and purpose of the following post-adjudication hearings or</td>
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reviews:
- Nonreunification hearings
- Disposition hearings
- Periodic review hearings
- Periodic reviews by judicial citizen review panel
- Permanency plan hearings
- TPR hearings
- Post-TPR review hearings

§ 15-11-108(b)
- Issuance and service of summons, when appropriate, shall comply with the requirements of § 15-11-160 and § 15-11-161.

§ 15-11-108(c)
- Unless otherwise provided in this chapter, written notice shall be delivered to the recipient at least 72 hours before the hearing or review by United States mail, e-mail, or hand delivery.

§ 15-11-160
- Copy of dependency petition (except publication)
- The court shall direct the issuance of a summons to
  - a child if 14 years of age or older
  - child's parent, guardian, or legal custodian
  - child's attorney and child's guardian ad litem
  - any other persons who appear to the court to be proper or necessary parties to the proceeding
- Summons must provide notice of a party’s right to counsel.
- Party other than child may waive summons by written stipulation or voluntary appearance at hearing.

§ 15-11-161
- If party is in Georgia and can be found, then personal service ASAP and at least 72 hours before the adjudication hearing. § 15-11-161(a).
- If party is in Georgia and cannot be found but address is known or can be known with due diligence, must be served at least 5 days before the adjudication hearing by registered or certified mail or statutory overnight delivery, return receipt requested. § 15-11-161(b).
- If party is outside Georgia with known address or known with due diligence, then must be served at least 5 days before the adjudication hearing by personal service or by registered or certified mail or statutory overnight delivery, return receipt requested. § 15-11-161(c).
- If, after due diligence, whereabouts of a party are unknown, then service by publication; hearing shall be no earlier than 5 days after final publication. § 15-11-161(d).
- Publication shall be 1 time per week for 4 weeks in legal organ of county where dependency pending. § 15-11-161(e).
- Party is defined at § 15-11-2 (52) as state, a child, parent,
guardian, legal custodian, or other person subject to any judicial proceeding except in delinquency then only a child and the state shall be a party

- **Parent** is defined at § 15-11-2 (51) as **legal father** or **legal mother** of a child.

**§ 15-11-161(f)**
- Service of summons may be made by any suitable person under the direction of the court.

---

**§ 15-11-231(a)**
- At least five days prior to the permanency plan hearing, DFCS shall submit a report to the court that
  - Recommends permanent plan and
  - Documents steps taken to finalize the permanency plan.
- DFCS Report shall include:
  - Name, address and telephone number of the child's parent, guardian, or legal custodian
  - Date of removal and date child placed in foster care
  - Location and type of foster care current or proposed
  - Basis for continued protective custody
  - Availability of placement with a fit and willing relative or other persons who have demonstrated an ongoing commitment to a child or why those placements are not appropriate
  - School stability information (did child change schools, is placement to maintain home school unavailable)
  - Plan ensuring safety and appropriateness of placement, description of services provided to child and family, what services are not available, services plan for child and family
  - Goal of the permanency plan:
    - Reunification
    - Referral for TPR
    - Permanent guardianship
    - Compelling reason for APPLA
  - If child is 14 or older, written transitional living plan that includes:
    - Anticipated age discharged from foster care
    - Anticipated amount of time available to prepare the child for the transition from foster care to independent living
    - Anticipated location and living situation of the child when discharged from foster care
    - Description of the assessment processes, tools and methods that have been or will be used to determine the programs and services that are or will be provided to assist the child in preparing for
<table>
<thead>
<tr>
<th>Permanency Plan Hearing Court Order Requirements</th>
<th>§ 15-11-232(a)</th>
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<tbody>
<tr>
<td>the transition from foster care to independent living</td>
<td>Court shall make the following written findings of fact:</td>
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<tr>
<td>• Rationale for each program or service that is or will be provided to assist the child in preparing for the transition from foster care to independent living, the time frames for delivering such programs or services, and the intended outcome of such programs or services</td>
<td>• Whether DFCS has made RE to finalize permanency plan</td>
</tr>
<tr>
<td>• If recommended permanency plan is TPR and adoption then a description of specific recruitment efforts for an adoptive placement</td>
<td>• Necessity of continuing the out-of-home placement</td>
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<td>• Compliance with the permanency plan by DFCS, parties and any other service providers</td>
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<td>• Efforts to involve additional appropriate service providers in planning to meet the special needs of the child and family</td>
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<td>• Efforts to eliminate the causes of the child’s removal or return the child to the home or obtain a permanent placement</td>
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<td>• Anticipated date to achieve permanency</td>
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<td>• Whether the placement is still appropriate if the child is placed out of state</td>
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<tr>
<td></td>
<td>• For children age 14 and older, the services needed to assist child in transition from foster care to adulthood</td>
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<thead>
<tr>
<th>Permanency Plan Incorporated into Court Order Shall Include</th>
<th>§ 15-11-232(b)</th>
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<tbody>
<tr>
<td>§ 15-11-232(b)</td>
<td>• Permanency plan incorporated into the court order shall address whether:</td>
</tr>
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<td>• child can be returned to the home</td>
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<td>• referral for TPR and adoption is appropriate</td>
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<td>• placement with a permanent guardian is appropriate</td>
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<td>• placement with fit and willing relative or other persons who have demonstrated an ongoing commitment to child is appropriate.</td>
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<td>• If the above options are not appropriate, the plan must explain why not.</td>
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<td>§ 15-11-232(c)</td>
<td>• If none of the above are in the child’s best interest, court must document why APPLA is most appropriate plan for child</td>
</tr>
</tbody>
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<thead>
<tr>
<th>Supplemental Court Order and Transition Plan for Child 90 Days Prior to Child’s 18th</th>
<th>§ 15-11-232(d)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supplemental court order must be issued within 30 days of permanency plan hearing adopting the plan that includes transition plan that is personalized at the direction of the child and includes specific options on</td>
<td>• housing</td>
</tr>
</tbody>
</table>
Birthday

- health insurance
- education
- local opportunities for mentors continuing support services
- work force supports and employment services
- See chapter 4 on review hearings.

When Termination of Parental Rights Shall be Filed

§15-11-233(a)
- DFCS shall file a TPR or join in TPR filed by another party and recruit, process and approve an adoptive resource when:
  - Child has been in care 15 of the most recent 22 months
  - Court determines parent has subjected child to aggravated circumstances, §15-11-2(5)
  - Parent has been convicted of:
    - murder of another child of the parent
    - voluntary manslaughter of another child of the parent
    - voluntary manslaughter of the other parent of the child
    - aiding or abetting, attempting, conspiring, or soliciting to commit murder or voluntary manslaughter of another child of the parent
    - aiding or abetting, attempting, conspiring, or soliciting to commit murder or voluntary manslaughter of the other parent of the child
    - committing felony assault resulting in serious bodily injury to the child or to another child of the parent
- Aggravated Circumstances, §15-11-2(5), exist when the parent has
  - Abandoned an infant
  - Attempted, conspired to attempt, or subjected a child of the parent to death or great bodily harm
  - Attempted, conspired to attempt, or subjected a child of the parent to torture, chronic abuse, sexual abuse, or sexual exploitation
  - Committed the murder or voluntary manslaughter of his or her child’s other parent or has been convicted of aiding or abetting, attempting, or soliciting the murder or voluntary manslaughter of his or her child’s other parent

When Termination of Parental Rights May Not Be in Child’s Best Interest

§15-11-233(b)
TPR may not be in the child’s best interests when
- Child is in a relative placement
- Compelling reasons are documented, such as
  - parent is successfully participating in reunification services
  - another permanency plan is more appropriate to meet the
child’s health and safety needs:

- Age 14 and older: child objects to TPR and court has personally questioned the child in chambers to confirm the child’s objection is a voluntary and knowing choice
- Age 16 and older: child specifically requests emancipation as the permanent plan
- Child has a significant bond with a disabled parent and child has an alternative committed caregiver who will facilitate visits with disabled parent and is committed to care for child until majority
- Child lives in a residential facility specifically designed to meet his or her needs and court determines the child’s needs could not be met in a less restrictive environment
  - Relative committed to long term placement but unwilling or unable to adopt and removal from the relative would be detrimental to the child
  - RE have not been provided by DFCS as determined by court or citizen review panel
  - Child is unaccompanied refugee or there are international legal obligations or foreign policy reasons that would preclude TPR
- DFCS has not provided the family with services necessary for reunification consistent with the specific time frames for the accomplishment of the case plan goals

A finding that TPR is not in the child’s best interests shall be based on present family circumstances and shall not preclude a different recommendation if the family circumstances change.

<table>
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<tr>
<th>Provisional Hearing Requirements</th>
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§ 15-11-163 Provisional Hearing
- The court may conduct a provisional hearing and issue an interlocutory order if one party is before the court and service by publication is required for the other party and
  - child is present at the provisional hearing.
  - summons to published party states final hearing date, time, location.
- Provisional hearing findings will become final if published party does not appear at calendared final hearing.

<table>
<thead>
<tr>
<th>Right to be Present, Heard and Present Evidence</th>
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§ 15-11-19
- Party has right to be present, heard, present evidence, cross examine witnesses, examine pertinent court files and records, and appeal orders of the court.
- “Party” includes child, except court may exclude child if not in the child’s best interest to be present.
- Party shall be advised of these rights at that person’s first
<table>
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<tr>
<th><strong>At Any Hearing Juvenile Court May Order</strong></th>
<th>§ 15-11-110</th>
</tr>
</thead>
</table>
| At any hearing, in the court’s discretion and based on evidence presented, the court may enter an order:  
  - accepting or rejecting any DFCS report.  
  - requiring an additional evaluation.  
  - requiring other reviews to determine the disposition that is in the child's best interests.  
  The court’s order  
  - may incorporate all or part of the DFCS report.  
  - shall include findings of fact reflecting the court's consideration of the oral and written testimony offered by parties and nonparties with a right to receive notice and be heard. |

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<tr>
<th><strong>Continuance Issues</strong></th>
<th>§ 15-11-111</th>
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| No continuance if contrary to child’s interest.  
  Court to consider and give substantial weight to the child’s need for prompt resolution of custody status, stable environment, and damage to child of prolonged temporary placements.  
  Showing of good cause and only for time necessary based on evidence presented on the record.  
  Stipulation of parties or need for discovery is not good cause  
  If no objection to continuance then consent. |

**Practice Note:** Need to state specific reasons for continuance on the record and 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

| **Important Considerations** | |
|-----------------------------| |
| Confirm elements of the permanent plan and whether plan is appropriate  
  Return to parent  
  Refer for TPR and adoption  
  Refer for permanent guardianship  
  If a compelling reason exists why none of the above are in the child’s best interest, then APPLA  
  Articulate steps taken to finalize permanent plan  
  If child is 14 or older, consider what is needed in the transition plan to take the child from foster care to independent living (ILP and written transitional living plan)  
  If child is in an out of state placement, is out of state placement still appropriate and in the child’s best interest? |
### Practice Notes

- If child is strongly bonded to family of origin or siblings, consider what visitation provisions can be incorporated in a permanent guardianship or whether a post-adoption contact agreement would be appropriate.
- Mediation may be a valuable tool to resolve visitation and post-adoption contact; the court may refer a case to mediation at any time.

### Code Sections

#### 15-11-2(5). Aggravated Circumstances

(5) 'Aggravated circumstances' means the parent has: (A) Abandoned an infant; (B) Attempted, conspired to attempt, or has subjected a child or his or her sibling to death or great bodily harm;
(C) Attempted, conspired to attempt, or has subjected a child or his or her sibling to torture, chronic abuse, sexual abuse, or sexual exploitation; or (D) Committed the murder or voluntary manslaughter of his or her child's other parent or has been convicted of aiding or abetting, attempting, or soliciting the murder or voluntary manslaughter of his or her child's other parent.

15-11-2(53). Permanency Plan

(53) 'Permanency plan' means a specific written plan prepared by DFCS designed to ensure that a child is reunified with his or her family or ensure that such child quickly attains a substitute long-term home when return to such child's family is not possible or is not in such child's best interests.

15-11-2(54). Permanent Placement

(54) 'Permanent placement' means: (A) Return of the legal custody of a child to his or her parent; (B) Placement of a child with an adoptive parent pursuant to a final order of adoption; or (C) Placement of a child with a permanent guardian.

15-11-26. Court Considerations for Best Interest of Child

Whenever a best interests determination is required, the court shall consider and evaluate all of the factors affecting the best interests of the child in the context of such child's age and developmental needs. Such factors shall include: (1) The physical safety and welfare of such child, including food, shelter, health, and clothing; (2) The love, affection, bonding, and emotional ties existing between such child and each parent or person available to care for such child; (3) The love, affection, bonding, and emotional ties existing between such child and his or her siblings, half siblings, and stepsiblings and the residence of such other children; (4) Such child's need for permanence, including such child's need for stability and continuity of relationships with his or her parent, siblings, other relatives, and any other person who has provided significant care to such child; (5) Such child's sense of attachments, including his or her sense of security and familiarity, and continuity of affection for such child; (6) The capacity and disposition of each parent or person available to care for such child to give him or her love, affection, and guidance and to continue the education and rearing of such child; (7) The home environment of each parent or person available to care for such child considering the promotion of such child's nurturance and safety rather than superficial or material factors; (8) The stability of the family unit and the presence or absence of support systems within the community to benefit such child; (9) The mental and physical health of all individuals involved; (10) The home, school, and community record and history of such child, as well as any health or educational special needs of such child; (11) Such child's community ties, including church, school, and friends; (12) Such child's background and ties, including familial, cultural, and religious; (13) The least disruptive placement alternative for such child; (14) The uniqueness of every family and child; (15) The risks attendant to entering and being in substitute care; (16) Such child's wishes and long-term goals; (17) The preferences of the persons available to care for such child; (18) Any evidence of family violence, substance abuse, criminal history, or sexual, mental, or physical child abuse in any current, past, or considered home for such child; (19) Any recommendation by a court appointed custody evaluator or guardian ad litem; and (20) Any other factors considered by the court to be relevant and proper to its determination.
15-11-102. Time Frames for Hearing Types (emphasis added for Permanency Plan Hg)
(a) A preliminary protective hearing shall be held promptly and no later than 72 hours after a child is placed in foster care, provided that, if the 72 hour time frame expires on a weekend or legal holiday, such hearing shall be held on the next day which is not a weekend or legal holiday. (b) If a child was not taken into protective custody or is released from foster care at a preliminary protective hearing, the following time frames apply: (1) A petition for dependency shall be filed within 30 days of the child's preliminary protective hearing; (2) Summons shall be served at least 72 hours before the dependency adjudication hearing; (3) The dependency adjudication hearing shall be held no later than 60 days after the filing of a petition for dependency; and (4) If the child's dispositional hearing is not held in conjunction with the dependency adjudication hearing, it shall be held and completed within 30 days after the conclusion of the dependency adjudication hearing. (c) If a child is not released from foster care at the preliminary protective hearing, the following time frames apply: (1) A petition for dependency shall be filed within five days of the child's preliminary protective hearing; (2) Summons shall be served at least 72 hours before the dependency adjudication hearing; (3) The dependency adjudication hearing shall be held no later than ten days after the filing of a petition for dependency; (4) DFCS shall submit to the court its written report within 30 days of the date a child who is placed in the custody of DFCS is removed from the home and at each subsequent review of the disposition order. If the DFCS report does not contain a plan for reunification services, a nonreunification hearing shall be held no later than 30 days from the time the report is filed; and (5) If a dispositional hearing is not held in conjunction with the dependency adjudication hearing, it shall be held and completed within 30 days after the conclusion of the dependency adjudication hearing. (d) An initial periodic review hearing shall be held within 75 days following a child's removal from his or her home. An additional periodic review shall be held within four months following such initial review. (e) Permanency plan hearings shall be held no later than 30 days after DFCS has submitted a written report to the court which does not provide a plan for reunification services or: (1) For children under seven years of age at the time a petition for dependency is filed, no later than nine months after such child has entered foster care, whichever comes first. Thereafter a permanency plan hearing shall be held every six months while such child continues in DFCS custody or more frequently as deemed necessary by the court until the court determines that such child's permanency plan and goal have been achieved; or (2) For children seven years of age and older at the time a petition is filed, no later than 12 months after such child is considered to have entered foster care, whichever comes first. Thereafter a permanency plan hearing shall be held every six months while such child continues in DFCS custody or more frequently as deemed necessary by the court until the court determines that such child's permanency plan and goal have been achieved. (f) A supplemental order of the court adopting a child's permanency plan shall be entered within 30 days after the court has determined that reunification efforts need not be made by DFCS.

(a) The court shall hold a permanency plan hearing to determine the future permanent legal status of each child in DFCS custody. (b) A permanency plan hearing, which considers in-state and out-of-state placement options for a child adjudicated as a dependent child, shall be held: (1) No later than 30 days after DFCS has submitted a written report to the court which does not contain a plan for reunification services; (2) For children under seven years of age at the time a petition is filed, no later than nine months after such child has entered foster care; (3) For
children seven years of age and older at the time a petition is filed, no later than 12 months after such child has entered foster care; or (4) For a child in a sibling group whose members were removed from the home at the same time and in which one member of the sibling group was under seven years of age at the time a petition for dependency was filed, the permanency plan hearing shall be held no later than nine months after such child has entered foster care. (c) After the initial permanency plan hearing has occurred, a permanency plan hearing shall be held not less frequently than every six months during the time a child adjudicated as a dependent child continues in DFCS custody or more frequently as deemed necessary by the court until the court determines that such child's permanency plan and goal have been achieved. (d) A child adjudicated as a dependent child, his or her parent, guardian, or legal custodian, attorney, guardian ad litem, if any, foster parents if there are foster parents, any preadoptive parent or relatives providing care for such child, and other parties shall be given written notice of a permanency plan hearing at least five days in advance of such hearing and shall be advised that the permanency plan recommended by DFCS will be submitted to the court for consideration as the order of the court. (e) The court shall consult with the child adjudicated as a dependent child, in an age-appropriate manner, regarding the proposed permanency plan for such child.

15-11-231. DFCS Report for Permanency Plan Hearing and Transitional Living Plan Requirements  
At least five days prior to the permanency plan hearing, DFCS shall submit for the court's consideration a report recommending a permanency plan for a child adjudicated as a dependent child. The report shall include documentation of the steps to be taken by DFCS to finalize the permanent placement for such child and shall include, but not be limited to: (1) The name, address, and telephone number of such child's parent, guardian, or legal custodian; (2) The date on which such child was removed from his or her home and the date on which such child was placed in foster care; (3) The location and type of home or facility in which such child is currently held or placed and the location and type of home or facility in which such child will be placed; (4) The basis for the decision to hold such child in protective custody or to place such child outside of his or her home; (5) A statement as to the availability of a safe and appropriate placement with a fit and willing relative of such child or other persons who have demonstrated an ongoing commitment to a child or a statement as to why placement with the relative or other person is not safe or appropriate; (6) If as a result of the placement such child has been or will be transferred from the school in which such child is or most recently was enrolled, documentation that a placement that would maintain such child in that school is unavailable, inappropriate, or that such child's transfer to another school would be in such child's best interests; (7) A plan for ensuring the safety and appropriateness of the placement and a description of the services provided to meet the needs of such child and his or her family, including a discussion of services that have been investigated and considered and are not available or likely to become available within a reasonable time to meet the needs of such child or, if available, why such services are not safe or appropriate; (8) The goal of the permanency plan which shall include: (A) Whether and, if applicable, when such child shall be returned to his or her parent; (B) Whether and, if applicable, when such child shall be referred for termination of parental rights and adoption; (C) Whether and, if applicable, when such child shall be placed with a permanent guardian; or (D) In the case in which DFCS has documented a compelling reason that none of the foregoing options would be in the best interests of the child, whether, and if applicable, when such child shall be placed in another planned permanent living arrangement; (9) If a child adjudicated as a
dependent child is 14 years of age or older, a description of the programs and services that are or will be provided to assist such child in preparing for the transition from foster care to independent living. The description shall include all of the following: (A) The anticipated age at which such child will be discharged from foster care; (B) The anticipated amount of time available in which to prepare such child for the transition from foster care to independent living; (C) The anticipated location and living situation of such child on discharge from foster care; (D) A description of the assessment processes, tools, and methods that have been or will be used to determine the programs and services that are or will be provided to assist such child in preparing for the transition from foster care to independent living; and (E) The rationale for each program or service that is or will be provided to assist such child in preparing for the transition from foster care to independent living, the time frames for delivering such programs or services, and the intended outcome of such programs or services; and (10) When the recommended permanency plan is referral for termination of parental rights and adoption or placement in another home, a description of specific recruitment efforts such as the use of state, regional, and national adoption exchanges, including electronic exchange systems, to facilitate orderly and timely in-state and interstate placements.

15-11-232. Permanency Plan Hearing Order Requirements
(a) At the permanency plan hearing, the court shall make written findings of fact that include the following: (1) Whether DFCS has made reasonable efforts to finalize the permanency plan which is in effect at the time of the hearing; (2) The continuing necessity for and the safety and appropriateness of the placement; (3) Compliance with the permanency plan by DFCS, parties, and any other service providers; (4) Efforts to involve appropriate service providers in addition to DFCS staff in planning to meet the special needs of a child adjudicated as a dependent child and his or her parent, guardian, or legal custodian; (5) Efforts to eliminate the causes for the placement of a child adjudicated as a dependent child outside of his or her home and toward returning such child safely to his or her home or obtaining a permanent placement for such child; (6) The date by which it is likely that a child adjudicated as a dependent child will be returned to his or her home, placed for adoption, or placed with a permanent guardian or in some other alternative permanent placement; (7) Whether, in the case of a child adjudicated as a dependent child placed out of state, the out-of-state placement continues to be appropriate and in the best interests of such child; and (8) In the case of a child adjudicated as a dependent child who is 14 years of age or older, the services needed to assist such child to make a transition from foster care to independent living. (b) The permanency plan incorporated in the court’s order shall include: (1) Whether and, if applicable, when a child adjudicated as a dependent child shall be returned to his or her parent; (2) Whether and, if applicable, when a child adjudicated as a dependent child shall be referred for termination of parental rights and adoption; (3) Whether and, if applicable, when a child adjudicated as a dependent child shall be placed with a permanent guardian; or (4) Whether there is a safe and appropriate placement with a fit and willing relative of a child adjudicated as a dependent child or other persons who have demonstrated an ongoing commitment to a child or a statement as to why placement with such relative or other person is not safe or appropriate. (c) If the court finds that there is a compelling reason that it would not be in a child’s best interests to be returned to his or her parent, referred for termination of parental rights and adoption, or placed with a permanent guardian, then the court’s order shall document the compelling reason and provide that such child should be placed in another planned permanent living arrangement as defined in the court’s order. (d) A
supplemental order of the court adopting the permanency plan including all requirements of the permanency plan as provided in Code Section 15-11-231 shall be entered following the permanency hearing and in no case later than 30 days after the court has determined that reunification efforts shall not be made by DFCS. The supplemental order shall include a requirement that the DFCS case manager and staff and, as appropriate, other representatives of a child adjudicated as a dependent child provide such child with assistance and support in developing a transition plan that is personalized at the direction of such 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 such child may elect in the 90 day period immediately prior to the date on which he or she will attain 18 years of age.

15-11-233. When Termination of Parental Rights is to Be Filed
(a) Except as provided in subsection (b) of this Code section, DFCS shall file a petition to terminate the parental rights of a parent of a child adjudicated as a dependent child 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 if: (1) A child adjudicated as a dependent child has been in foster care under the responsibility of DFCS for 15 of the most recent 22 months; (2) The court has made a determination that the parent has subjected his or her child to aggravated circumstances; or (3) The court has made a determination that the parent of a child adjudicated as a dependent child has been convicted of: (A) The murder of another child of such parent; (B) Voluntary manslaughter of another child of such parent; (C) Voluntary manslaughter of the other parent of such child; (D) Aiding or abetting, attempting, conspiring, or soliciting to commit murder or voluntary manslaughter of another child of such parent; (E) Aiding or abetting, attempting, conspiring, or soliciting to commit murder or voluntary manslaughter of the other parent of such child; or (F) Committing felony assault that has resulted in serious bodily injury to such child or to another child of such parent. (b) Termination of parental rights may not be in the best interests of a child adjudicated as a dependent child when: (1) Such child is being cared for by his or her relative; (2) The case plan documents a compelling reason for determining that filing such a petition would not be in the best interests of such child. Such compelling reasons may include, but not be limited to: (A) A parent of such child is successfully participating in services that will make it possible for his or her child to safely return home; (B) Another permanency plan is better suited to meet the health and safety needs of such child. Documentation that another permanent plan is better suited to meet the health and safety needs of such child may include documentation that: (i) Such child is 14 years of age or older and objects to termination of parental rights. Prior to accepting a child's objection, the court shall personally question such child in chambers to determine whether the objection is a voluntary and knowing choice; (ii) Such child is 16 years of age or older and specifically requests that emancipation be established as his or her permanent plan; (iii) The parent of such child and such child have a significant bond, but such parent is unable to care for such child because of an emotional or physical disability and such child's caregiver has committed to raising such child to the age of majority and facilitating visitation with such disabled parent; or (iv) Such child is in a residential treatment facility that provides services specifically designed to address his or her treatment needs and the court determines that his or her needs could not be served by a less restrictive placement; (C) Such child is living with his or her relative who is unable or unwilling to adopt such child, but who is willing and capable of
providing such child with a stable and permanent home environment and the removal of such child from the physical custody of his or her relative would be detrimental to such child's emotional well-being; (D) The court or judicial citizen review panel, in a prior hearing or review, determined that while the case plan was to reunify the family, DFCS did not make reasonable efforts; or (E) Such child is an unaccompanied refugee or there are international legal obligations or foreign policy reasons that would preclude terminating parental rights; or (3) DFCS has not provided to the family of such child services deemed necessary for his or her safe return to his or her home, consistent with the specific time frames for the accomplishment of the case plan goals. (c) The recommendation by DFCS that termination of parental rights is not in the best interests of a child shall be based on the present family circumstances of such child and shall not preclude a different recommendation at a later date if the family circumstances of a child adjudicated as a dependent child change.
## Chapter 7  Nonreunification Hearing

*Contribution by Mary Hermann, JD, CWLS*

<table>
<thead>
<tr>
<th>Authority</th>
<th>§ 15-11-203 No Reunification Efforts required circumstances</th>
<th>§ 15-11-204 Nonreunification Hearing procedure</th>
</tr>
</thead>
</table>
| Purpose   | • Determine if reunification services should continue to be offered to the family.  
• Determine if offering reunification services to the family continues to be in the child’s best interest.  
• Determine if the continuation of reunification plan is “appropriate.”  
• Nonreunification finding is required for juvenile court to grant a permanent guardianship, § 15-11-240(a)(1), when parents have not consented.  
• Determine whether the presumption that reunification services would be detrimental to the child is applicable. |
| Pleadings | • **Permanency plan hearing** may be held at same time, § 15-11-204(c)  
• DFCS Report – Recommendation for permanency, § 15-11-231  
• Dependency adjudication order  
• Case plan  
• Diligent search  
• Supplemental dispositional orders and judicial citizen panel review recommendations  
• DFCS reports in reference to the permanency plan  
• Social study and report  § 15-11-190, 191  
• GAL report |
| Jurisdiction | Same as Dependency Adjudication  
§ 15-11-10(1)(C)  
• Child under 18 years alleged to be a dependent in the state.  
• Petition must state factual basis of jurisdiction.  
§ 15-11-10(1)(G)  
• Child remaining in foster care after 18 years old OR  
• Child is 18 years or older and receiving independent living services.  
• Limited jurisdiction to review the status of the child and the services provided to the child for independent living or foster care.  
§ 15-11-12 Dual Jurisdiction Child  
• Child may be delinquent and dependent or dependent and CHINS if a “factual basis” established.  
• If the delinquent and dependency case or CHINS and dependency cases are consolidated the dependency time lines apply to the consolidated court action. |
<table>
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<th>Venue</th>
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| **Same as Adjudication, Disposition and Review Hearings**

**§ 15-11-125, Venue**
- A proceeding may be commenced
  - in the county where child legally resides or
  - in the county of child’s presence at commencement of action if the child is present without a custodian or the acts underlying the dependency occurred in that county.
- Transfer of Venue
  - Venue may be transferred to child’s county of legal residence for the convenience of parties.
  - 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.

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<tr>
<th>Timing</th>
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| **§ 15-11-204(a)**
- Nonreunification hearing required when DFCS plan does not contain reunification services.
- Court to review the plan and determine that reunification services are not appropriate.

**§ 15-11-204(b)**
- Nonreunification hearing required to be held within 30 days of nonreunification case plan or report to court
- Notice by Summons to parties required, including child if 14 or older & to specified nonparties

**§ 15-11-204(c)**
- **Permanency plan hearing** may be held at same time as nonreunification hearing

<table>
<thead>
<tr>
<th>Parties</th>
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| **§ 15-11-204(b)**
- Dependent child
- Child’s parent, guardian, or legal custodian
- State

<table>
<thead>
<tr>
<th>Notice</th>
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| **§ 15-11-204(b)**
Notice by summons must be provided to parties, including child if age 14 or older, and to specified nonparties entitled to notice.

<table>
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<tr>
<th>Service</th>
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| **§15-11-108(a)**
- The court shall give all parties written notice of the date, time, place, and purpose of nonreunification hearings.

**§ 15-11-108(b)**
- Issuance and service of summons, when appropriate, shall comply with the requirements of **§ 15-11-160** and **§ 15-11-161**.

**§ 15-11-108(c)**
- Unless otherwise provided in this chapter, written notice shall be delivered to the recipient at least 72 hours before the hearing or review by United States mail, e-mail, or hand delivery.

**§ 15-11-160**
- Copy of dependency petition (except publication)
- The court shall direct the issuance of a summons to
  - a child if 14 years of age or older
  - child's parent, guardian, or legal custodian
  - child's attorney and child's guardian ad litem
  - any other persons who appear to the court to be proper or necessary parties to the proceeding
- Summons must provide notice of a party’s right to counsel.
- Party other than child may waive summons by written stipulation or voluntary appearance at hearing.

§ 15-11-161
- If party is in Georgia and can be found, then personal service ASAP and at least 72 hours before the adjudication hearing. § 15-11-161(a).
- If party is in Georgia and cannot be found but address is known or can be known with due diligence, must be served at least 5 days before the adjudication hearing by registered or certified mail or statutory overnight delivery, return receipt requested. § 15-11-161(b).
- If party is outside Georgia with known address or known with due diligence, then must be served at least 5 days before the adjudication hearing by personal service or by registered or certified mail or statutory overnight delivery, return receipt requested. § 15-11-161(c).
- If, after due diligence, whereabouts of a party are unknown, then service by publication; hearing shall be no earlier than 5 days after final publication. § 15-11-161(d).
- Publication shall be 1 time per week for 4 weeks in legal organ of county where dependency pending. § 15-11-161(e).
- **Party** is defined at § 15-11-2 (52) as state, a child, parent, guardian, legal custodian, or other person subject to any judicial proceeding except in delinquency then only a child and the state shall be a party
- **Parent** is defined at § 15-11-2 (51) as legal father or legal mother of a child.

§ 15-11-161(f)
- Service of summons may be made by any suitable person under the direction of the court.

<table>
<thead>
<tr>
<th>When RE Not Required</th>
<th>§ 15-11-203</th>
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</table>
|                      | - Court may direct that RE to eliminate the need for placement **shall not be required or shall cease** if the court determines and makes written findings of fact that a parent  
  - has subjected this child to aggravated circumstances, § 15-11-2(5).  
  - has been convicted of the murder of another child of the parent.  
  - has been convicted of the voluntary manslaughter of |
### Permanency Plan Hearing Required within 30 Days

- another child of the parent.
- has been convicted of aiding or abetting, attempting, conspiring, or soliciting to commit murder or voluntary manslaughter of another child of the parent.
- has been convicted of committing a felony assault that results in serious bodily injury to the child or another child of the parent.
- has been convicted of rape, sodomy, aggravated sodomy, child molestation, aggravated child molestation, incest, sexual battery, or aggravated sexual battery of the child or another child of the parent.
- is required to register as a sex offender and that preservation of a parent-child relationship is not in the child's best interests.
- has had an involuntary termination of parental rights to a sibling of the child and the circumstances leading to such termination of parental rights to that sibling have not been resolved.

- Permanency plan hearing required within 30 days and RE to finalize permanency considered.
- See chapter 12 on nonreunification hearings and chapter 11 on permanency plan hearings.

### DFCS has Burden of Proof at Nonreunification Hearing

#### § 15-11-204(c)
- At the nonreunification hearing
  - DFCS shall notify the court whether and when TPR will be filed.
  - The court shall conduct a permanency plan hearing to consider in-state and out-of-state permanent placement options for the child and incorporate a permanency plan for the child in the court’s order.

#### § 15-11-204(d)
- DFCS has the burden of proving by clear and convincing evidence that a reunification plan is not appropriate, considering the health and safety of the child and child’s need for permanence.
- Presumption that reunification is detrimental to a child and reunification services should not be provided if the court finds by clear and convincing evidence that
  - parent has unjustifiably failed to comply with a previously ordered reunification plan.
  - child has previously been removed 2 times and reunification was previously made available 2 times.
  - a ground for terminating parental rights exists.
  - any of the circumstances in §15-11-203 exist, making it unnecessary to provide reasonable efforts to reunify.

### Provisional Hearing

#### § 15-11-163 Provisional Hearing
- The court may conduct a provisional hearing and issue an
| Requirements | interlocutory order if one party is before the court and service by publication is required for the other party and  
| | o child is present at the provisional hearing.  
| | o summons to published party states final hearing date, time, location.  
| | o served party is required to appear at provisional hearing.  
| | • Provisional hearing findings will become final if published party does not appear at calendared final hearing. |
| **Right to Be Present, Heard and Present Evidence** | § 15-11-19  
| | • Party has right to be present, heard, present evidence, cross examine witnesses, examine pertinent court files and records, and appeal orders of the court.  
| | • “Party” includes child, except court may exclude child if not in the child’s best interest to be present.  
| | • Party shall be advised of these rights at that person’s first appearance. |
| **At Any Hearing Juvenile Court May Order** | § 15-11-111  
| | At any hearing, in the court’s discretion and based on evidence presented, the court may enter an order:  
| | • accepting or rejecting any DFCS report.  
| | • requiring an additional evaluation.  
| | • requiring other reviews to determine the disposition that is in the child's best interests.  
| | The court’s order  
| | • may incorporate all or part of the DFCS report.  
| | • shall include findings of fact reflecting the court's consideration of the oral and written testimony offered by parties and nonparties with a right to be noticed and heard. |
| **Continuance Issues** | § 15-11-110  
| | • No continuance if contrary to child’s interest.  
| | • Court to consider and give substantial weight to the child’s need for prompt resolution of custody status, stable environment, and damage to child of prolonged temporary placements.  
| | • Showing of good cause and only for time necessary based on evidence presented on the record.  
| | • Stipulation of parties or need for discovery is not good cause  
| | • If no objection to continuance then consent.  

**Practice Note:** Need to state specific reasons for continuance on the record and in continuance order.  

• Case should be active even during the continuance period:  
  o Further investigation  
  o Necessary witness  
  o Begin services to allow child to return home
<table>
<thead>
<tr>
<th>Home evaluation of relative</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>§ 15-11-26 Court Considerations for Best Interest of Child</th>
</tr>
</thead>
<tbody>
<tr>
<td>Court to consider all factors affecting the child’s best interest in the context of the child’s age and developmental needs, including the following 20 factors:</td>
</tr>
<tr>
<td>41. Physical safety and welfare, food, shelter, health and clothing</td>
</tr>
<tr>
<td>42. Love, affection, bonding, and emotional ties existing between child and parent or person available to care for the child</td>
</tr>
<tr>
<td>43. Sibling bond, including half siblings and step siblings</td>
</tr>
<tr>
<td>44. Child's need for permanence, stability and continuity of relationships</td>
</tr>
<tr>
<td>45. Child's attachments, child’s sense of security and familiarity, and continuity of affection for the child</td>
</tr>
<tr>
<td>46. Parental capacity</td>
</tr>
<tr>
<td>47. Home environment of each parent or person available to care for the child considering the promotion of the child's nurturance and safety rather than superficial or material factors</td>
</tr>
<tr>
<td>48. Stability of the family unit and community support systems</td>
</tr>
<tr>
<td>49. Mental and physical health of all individuals involved</td>
</tr>
<tr>
<td>50. Home, school and community record; history of child, child’s special needs</td>
</tr>
<tr>
<td>51. Community ties, church, school and friends</td>
</tr>
<tr>
<td>52. Child's background and ties, including familial, cultural and religious</td>
</tr>
<tr>
<td>53. The least disruptive placement alternative</td>
</tr>
<tr>
<td>54. Uniqueness of every family and child</td>
</tr>
<tr>
<td>55. Risks associated with being in substitute care</td>
</tr>
<tr>
<td>56. Child's wishes and long-term goals</td>
</tr>
<tr>
<td>57. Preferences of the persons available to care for the child</td>
</tr>
<tr>
<td>58. Evidence of family violence, substance abuse, criminal history, or sexual, mental, or physical child abuse</td>
</tr>
<tr>
<td>59. Recommendation by a court appointed custody evaluator or GAL</td>
</tr>
<tr>
<td>60. Any other factors considered by the court to be relevant and proper to its determination</td>
</tr>
</tbody>
</table>

**Practice Notes**

- Nonreunification is **not** a necessary step prior to TPR. If TPR and adoption is the goal then a nonreunification hearing is redundant and might actually delay TPR.
- Nonreunification should only be granted where DFCS can show by clear and convincing evidence that reunification services would not appropriate considering the
  - health and safety of the child and
  - the child's need for permanence.
- Nonreunification should **not** be a matter of convenience for DFCS not to have to work with a non-complying or difficult parent.
- If Nonreunification is granted, terms can still be dictated such as visits or contact with parent, siblings, extended family, if in the child’s best interest.
- Nonreunification does not end the child’s or parent’s right to visit or for DFCS to facilitate those visits.
- Nonreunification is required for permanent guardianships and for permanent guardianship subsidies.

Code Sections - OCGA

15-11-26. Court Considerations for Best Interest of Child
Whenever a best interests determination is required, the court shall consider and evaluate all of the factors affecting the best interests of the child in the context of such child's age and developmental needs. Such factors shall include: (1) The physical safety and welfare of such child, including food, shelter, health, and clothing; (2) The love, affection, bonding, and emotional ties existing between such child and each parent or person available to care for such child; (3) The love, affection, bonding, and emotional ties existing between such child and his or her siblings, half siblings, and stepsiblings and the residence of such other children; (4) Such child's need for permanence, including such child's need for stability and continuity of relationships with his or her parent, siblings, other relatives, and any other person who has provided significant care to such child; (5) Such child's sense of attachments, including his or her sense of security and familiarity, and continuity of affection for such child; (6) The capacity and disposition of each parent or person available to care for such child to give him or her love, affection, and guidance and to continue the education and rearing of such child; (7) The home environment of each parent or person available to care for such child considering the promotion of such child's nurturance and safety rather than superficial or material factors; (8) The stability of the family unit and the presence or absence of support systems within the community to benefit such child; (9) The mental and physical health of all individuals involved; (10) The home, school, and community record and history of such child, as well as any health or educational special needs of such child; (11) Such child's community ties, including church, school, and friends; (12) Such child's background and ties, including familial, cultural, and religious; (13) The least disruptive placement alternative for such child; (14) The uniqueness of every family and child; (15) The risks attendant to entering and being in substitute care; (16) Such child's wishes and long-term goals; (17) The preferences of the persons available to care for such child; (18) Any evidence of family violence, substance abuse, criminal history, or sexual, mental, or physical child abuse in any current, past, or considered home for such child; (19) Any recommendation by a court appointed custody evaluator or guardian ad litem; and (20) Any other factors considered by the court to be relevant and proper to its determination.

15-11-203. No Reunification Efforts required circumstances
(a) The court may direct that reasonable efforts to eliminate the need for placement of an alleged dependent child shall not be required or shall cease if the court determines and makes written findings of fact that a parent of an alleged dependent child: (1) Has subjected his or her child to aggravated circumstances; (2) Has been convicted of the murder of another child of such parent; (3) Has been convicted of the voluntary manslaughter of another child of such parent; (4) Has been convicted of aiding or abetting, attempting, conspiring, or soliciting to commit murder or voluntary manslaughter of another child of such parent; (5) Has been convicted of committing a felony assault that results in serious bodily
injury to the child or another child of such parent; (6) Has been convicted of rape, sodomy, aggravated
sodomy, child molestation, aggravated child molestation, incest, sexual battery, or aggravated sexual
battery of the alleged dependent child or another child of the parent; (7) Is required to register as a sex
offender and that preservation of a parent-child relationship is not in the alleged dependent child's best
interests; or (8) Has had his or her rights to a sibling of the alleged dependent child terminated
involuntarily and the circumstances leading to such termination of parental rights to that sibling have not
been resolved. (b) If the court determines that one or more of the circumstances enumerated in subsection
(a) of this Code section exist or DFCS has submitted a written report to the court which does not contain a
plan for reunification services, then: (1) A permanency plan hearing shall be held for a child adjudicated
as a dependent child within 30 days; and (2) Reasonable efforts shall be made to place a child adjudicated
as a dependent child in a timely manner in accordance with the permanency plan and to complete
whatever steps are necessary to finalize the permanent placement of such child.

15-11-204. Nonreunification Hearing procedure
(a) If the DFCS report does not contain a plan for reunification services, the court shall hold a
nonreunification hearing to review the report and the determination that a plan for reunification services is
not appropriate. (b) The nonreunification hearing shall be held no later than 30 days from the time the
DFCS report is filed. Notice of the nonreunification hearing shall be provided, by summons, to the child
adjudicated as a dependent child if he or she is 14 years of age or older, his or her parent, guardian, or
legal custodian, attorney, guardian ad litem, if any, and specified nonparties entitled to notice. (c) At the
nonreunification hearing: (1) DFCS shall notify the court whether and when it intends to proceed with
termination of parental rights; and (2) The court shall also hold a permanency plan hearing, at which the
court shall consider in-state and out-of-state permanent placement options for the child adjudicated as a
dependent child and shall incorporate a permanency plan for such child in its order. (d) DFCS shall have
the burden of demonstrating by clear and convincing evidence that a reunification plan is not appropriate
considering the health and safety of the child adjudicated as a dependent child and such child's need for
permanence. There shall be a presumption that reunification is detrimental to a child adjudicated as a
dependent child and reunification services should not be provided if the court finds by clear and
convincing evidence that: (1) Such child's parent has unjustifiably failed to comply with a previously
ordered plan designed to reunite the family; (2) An alleged dependent child has been removed from his or
her home on at least two previous occasions and reunification services were made available on those
occasions; (3) A ground for terminating parental rights exists; or (4) Any of the circumstances set out in
subsection (a) of Code Section 15-11-203 exist, making it unnecessary to provide reasonable efforts to
reunify. (e) If the court has entered an order finding that reasonable efforts to reunify a child adjudicated
as a dependent child with his or her family are not required but the court finds further that referral for
termination of parental rights and adoption is not in the best interests of such child, the court may, upon
proper petition, place such child in the custody of a permanent guardian pursuant to the provisions of this
article.

15-11-102. Time Frames for Hearing Types (emphasis added for
Nonreunification Hearing)
(a) A preliminary protective hearing shall be held promptly and no later than 72 hours after a child is
placed in foster care, provided that, if the 72 hour time frame expires on a weekend or legal holiday, such
hearing shall be held on the next day which is not a weekend or legal holiday. (b) If a child was not taken
into protective custody or is released from foster care at a preliminary protective hearing, the following time frames apply: (1) A petition for dependency shall be filed within 30 days of the child's preliminary protective hearing; (2) Summons shall be served at least 72 hours before the dependency adjudication hearing; (3) The dependency adjudication hearing shall be held no later than 60 days after the filing of a petition for dependency; and (4) If the child's dispositional hearing is not held in conjunction with the dependency adjudication hearing, it shall be held and completed within 30 days after the conclusion of the dependency adjudication hearing. (c) If a child is not released from foster care at the preliminary protective hearing, the following time frames apply: (1) A petition for dependency shall be filed within five days of the child's preliminary protective hearing; (2) Summons shall be served at least 72 hours before the dependency adjudication hearing; (3) The dependency adjudication hearing shall be held no later than ten days after the filing of a petition for dependency; (4) DFCS shall submit to the court its written report within 30 days of the date a child who is placed in the custody of DFCS is removed from the home and at each subsequent review of the disposition order. If the DFCS report does not contain a plan for reunification services, a nonreunification hearing shall be held no later than 30 days from the time the report is filed; and (5) If a dispositional hearing is not held in conjunction with the dependency adjudication hearing, it shall be held and completed within 30 days after the conclusion of the dependency adjudication hearing. (d) An initial periodic review hearing shall be held within 75 days following a child's removal from his or her home. An additional periodic review shall be held within four months following such initial review. (e) Permanency plan hearings shall be held no later than 30 days after DFCS has submitted a written report to the court which does not provide a plan for reunification services or: (1) For children under seven years of age at the time a petition for dependency is filed, no later than nine months after such child is considered to have entered foster care, whichever comes first. Thereafter a permanency plan hearing shall be held every six months while such child continues in DFCS custody or more frequently as deemed necessary by the court until the court determines that such child's permanency plan and goal have been achieved; or (2) For children seven years of age and older at the time a petition is filed, no later than 12 months after such child is considered to have entered foster care, whichever comes first. Thereafter a permanency plan hearing shall be held every six months while such child continues in DFCS custody or more frequently as deemed necessary by the court until the court determines that such child's permanency plan and goal have been achieved. (f) A supplemental order of the court adopting a child's permanency plan shall be entered within 30 days after the court has determined that reunification efforts need not be made by DFCS.
Chapter 8  Termination of Parental Rights and Post-TPR Reviews

Contribution by Stephany L. Zaic, JD, CWLS

<table>
<thead>
<tr>
<th>Authority</th>
<th>§§ 15-11-260 through 15-11-323, 15-11-700</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purpose</td>
<td>§ 15-11-260</td>
</tr>
<tr>
<td></td>
<td>• To protect a child who has been adjudicated as a dependent child from a parent who is unwilling or unable to provide safety and care adequate to meet the child’s physical, emotional, and mental health needs by providing a judicial process for the termination of all parental rights and responsibilities</td>
</tr>
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<td></td>
<td>• To eliminate the need for a child who has been adjudicated as a dependent child to wait unreasonable periods of time for his or her parent to correct the conditions which prevent the child’s return to the family</td>
</tr>
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<td></td>
<td>• To ensure that the continuing needs for proper physical, mental, and emotional growth and development are the decisive considerations in all proceedings for a child who has been alleged or adjudicated to be a dependent child</td>
</tr>
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<td></td>
<td>• To ensure that the constitutional rights of all parties are recognized and enforced in all proceedings conducted pursuant to this article while ensuring that the fundamental needs of a child are not subjugated to the interests of others</td>
</tr>
<tr>
<td></td>
<td>• To encourage stability in the life of a child who has been adjudicated as a dependent child and has been removed from his or her home by ensuring that all proceedings are conducted expeditiously to achieve permanency for the child as quickly as possible</td>
</tr>
<tr>
<td></td>
<td>• Termination of parental rights allows a child to achieve permanency through adoption</td>
</tr>
</tbody>
</table>

| Pleadings | |
|-----------| |
|           | • TPR petition must: |
|           |   o be verified & endorsed by the court. |
|           |   o state clearly the effect of a TPR order in conformity with § 15-11-261. |
|           |   o conform to § 15-11-280 (contents of petition). |
|           |   o include executed consent or executed voluntary surrender as an attachment. |
|           | • § 15-11-280(d): Putative Father Registry certificate (Putative Father Registry, found at § 19-11-9) |

Practice Note: Subpoena from Vital Records the child’s birth certificate and any paternity acknowledgement or administrative legitimation documents, see Legitimation Chapter.

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>§ 15-11-10</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• Juvenile court has exclusive jurisdiction over juvenile matters and is</td>
</tr>
</tbody>
</table>
the sole court for the termination of the legal parent-child relationship and the rights of the biological father.

- Exception: Superior court has exclusive jurisdiction to terminate the legal parent-child relationship in conjunction with adoptions, as set forth in Chapters 6 through 9 of Title 19.

### Venue

<table>
<thead>
<tr>
<th>§ 15-11-270</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commenced in the county that has jurisdiction over the related dependency proceedings.</td>
</tr>
<tr>
<td>May be transferred to the county in which the parent legally resides.</td>
</tr>
</tbody>
</table>

### Timing of Filing of Petition

**§ 15-11-233**
DFCS shall file the TPR petition on a child who has been adjudicated a dependent if

- the child has been in DFCS’ temporary custody 15 out of 22 months; or
- a court has found that the parent subjected the child to aggravated circumstances; or
- the court has determined that the parent has been convicted of any of the following:
  - murder or voluntary manslaughter of child’s sibling or half-sibling
  - aiding or abetting, attempting, conspiring or soliciting to commit murder or voluntary manslaughter of the child’s sibling or half-sibling
  - voluntary manslaughter of the child’s other parent
  - aiding or abetting, attempting, conspiring or soliciting to commit murder or voluntary manslaughter of the child’s other parent
  - committing felony assault that resulted in serious injury to child or other parent.

TPR may not be in the child’s best interests when:

- Child is in a relative placement
- Compelling reasons are documented, such as
  - parent is successfully participating in reunification services
  - another permanency plan is more appropriate to meet the child’s health and safety needs:
    - Age 14 and older: child objects to TPR and court has personally questioned the child in chambers to confirm the child’s objection is a voluntary and knowing choice
    - Age 16 and older: child specifically requests emancipation as the permanent plan
    - Child has a significant bond with a disabled parent and child has an alternative committed caregiver who will facilitate visits with disabled parent and is committed to care for child until majority
    - Child lives in a residential facility specifically
<table>
<thead>
<tr>
<th><strong>Timing of Hearing and Disposition Order</strong></th>
<th>§ 15-11-301</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Unless just cause is shown for a delay, court must conduct the TPR hearing and the disposition hearing within 90 days of the date the petition is filed.</td>
<td></td>
</tr>
<tr>
<td>- Unless just cause is shown for the delay, court must issue the order of disposition within 30 days after the conclusion of the TPR hearing.</td>
<td></td>
</tr>
<tr>
<td>- Failure to comply with these timing requirements is a ground to invalidate an otherwise proper TPR order <strong>only</strong> if the court finds that the delay caused substantial prejudice to a party.</td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Parties</strong></th>
<th>§ 15-11-2(52)</th>
</tr>
</thead>
<tbody>
<tr>
<td>- “Party” means the state, child, parent, guardian, legal custodian or other person subject to any judicial proceeding under Chapter 11, except delinquency proceedings under Article 6.</td>
<td></td>
</tr>
<tr>
<td>§ 15-11-262(e) and 15-11-103</td>
<td></td>
</tr>
<tr>
<td>- Guardians ad litem (lay and attorney) are not parties.</td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Service &amp; Notice</strong></th>
<th>§ 15-11-281 and 15-11-282</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Summons, with a copy of the petition attached, shall be issued to the mother, legal or biological father, guardian, legal custodian, child’s attorney, and child’s attorney guardian ad litem.</td>
<td></td>
</tr>
<tr>
<td>- Summons shall be issued to anyone else proper or necessary to the proceedings.</td>
<td></td>
</tr>
<tr>
<td>- If the child is 14 years of age or older, the child shall be <strong>provided (not served)</strong> with direct notice and a copy of the petition.</td>
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</tr>
<tr>
<td>- Summons shall include notice of the effect of a TPR order – notice language pursuant to § 15-11-284.</td>
<td></td>
</tr>
<tr>
<td>- Any party except the child may waive service of the summons by written waiver of service or by voluntary appearance at the hearing.</td>
<td></td>
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</tbody>
</table>

- Designed to meet his or her needs and court determines the child’s needs could not be met in a less restrictive environment
  - Relative committed to long term placement but unwilling or unable to adopt and removal from the relative would be detrimental to the child
  - RE have not been provided by DFCS as determined by court or citizen review panel
  - Child is unaccompanied refugee or there are international legal obligations or foreign policy reasons that would preclude TPR
  - DFCS has not provided the family with services necessary for reunification consistent with the specific time frames for the accomplishment of the case plan goals

A finding that TPR is not in the child’s best interests shall be based on present family circumstances and shall not preclude a different recommendation if the family circumstances change.
### Timing of Service

- Party to be served is within Georgia and can be found: personal service at least 30 days before TPR hearing.
- Party to be served is within Georgia and cannot be found, but mailing address is known or can be found with due diligence: service by certified, registered or statutory overnight mail at least 30 days before TPR hearing.
- Party to be served is outside of Georgia, but address is known or can be found with due diligence: personal service or service by certified, registered or statutory overnight mail at least 30 days before TPR hearing.
- Party to be served may be inside or outside Georgia but cannot be located after due diligence: service by publication completed at least 31 days before TPR hearing.

### § 15-11-283

- Service is required on legal father unless he has surrendered all parental rights to child.
  - “Legal father” (defined under § 15-11-2(43)) is a male who has not surrendered or had parental rights terminated and who
    - legally adopted the child.
    - was married to the biological mother when the child was conceived or born, unless paternity disproved.
    - married the legal mother after child’s birth and recognized child as his own, unless paternity disproved.
    - was determined to be father by paternity order.
    - obtained legitimation order.
    - legitimated the child pursuant to § 19-7-22.
- Service is required on the biological father where:
  - paternity previously established by court order
  - identity is known to petitioner or petitioner’s attorney
  - paternity acknowledged on Putative Father Registry
  - paternity indicated as possibility on Putative Father Registry
  - mother’s affidavit or evidence presented during hearing shows biological father has
    - lived with the child
    - provided financial support for the child
    - made efforts to legitimate the child
    - provided mother with financial support or medical care during pregnancy or during hospitalization for child’s birth.

### Notice to Father

- Legal or biological father is within Georgia and can be found: personal service at least 30 days before TPR hearing.
- Legal or biological father is outside of Georgia, but address is known or can be found with due diligence: personal service or service by certified, registered or statutory overnight mail at least 30 days before TPR hearing.
| days before TPR hearing.  
| Legal or biological father may be inside or outside Georgia but cannot be located after due diligence: service by publication completed at least 31 days before TPR hearing.  

**Practice note:** Under the juvenile code effective 1/1/14, notice **cannot** be provided by registered, certified or statutory overnight mail to a father who is in Georgia and cannot be found, but whose mailing address is known or can be found with due diligence.

**Language of Notice**  
- Must notify biological father that he may lose parental rights and will not have standing to object unless, within 30 days of receipt of notice, he files  
  - petition for legitimation; and  
  - notice of filing of legitimation petition with court.

**Notice not Required and Resulting Termination**  
- Notice is not required where the identity of the biological father is unknown to petitioner or petitioner’s attorney, and service requirements on biological father as described above are not met.  
- Mother’s affidavit must be completed.  
- If no rebuttable evidence, then court may terminate biological father’s parental rights.

**Notice Given and Resulting Termination**  
- If notice is required and properly given, the court may terminate biological father’s parental rights where the legitimation petition is  
  - not filed within 30 days of receipt of notice.  
  - filed timely but dismissed for failure to prosecute.  
  - filed timely but the petition is denied by court.

| § 15-11-300  
| DFCS must provide written notice to caregiver of child, foster parents, preadoptive parent and relative caring for child.  
| Notice must include  
  - date, time, place and purpose of hearing; and  
  - right to be heard.  
| Notice must be delivered by mail, email or hand delivery.  
| Notice must be given at least 72 hours before hearing.

| § 15-11-285  
| If person named in TPR and properly served fails without reasonable cause to appear for hearing or fails to bring child if directed by summons, court may issue rule nisi for show cause hearing.  
| If summons cannot be served or if person served fails to obey the summons, court may issue order taking child into protective custody.

| § 15-11-265  
| Once the TPR petition has been filed, the parent who voluntarily
<table>
<thead>
<tr>
<th><strong>Practice note:</strong> Only applies if the child has been adjudicated as a dependent child.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Mediation</strong></td>
</tr>
<tr>
<td><strong>§ 15-11-20 through 25</strong></td>
</tr>
<tr>
<td>• Court may refer TPR proceeding to mediation.</td>
</tr>
<tr>
<td>• Court may stay TPR proceeding following mediation referral.</td>
</tr>
<tr>
<td>• Mediation must be scheduled within 30 days of the court’s referral.</td>
</tr>
<tr>
<td>• Mediation agreement shall be made an order of the court unless the court, after further hearing, determines by clear and convincing evidence the mediation agreement is not in the child’s best interests.</td>
</tr>
<tr>
<td><strong>Standard of Proof</strong></td>
</tr>
<tr>
<td><strong>§ 15-11-303</strong></td>
</tr>
<tr>
<td>• Clear and convincing evidence of the ground(s) for termination (15-11-310(a) and that termination of parental rights is in the best interests of the child 15-11-310(b)</td>
</tr>
<tr>
<td><strong>Evidence</strong></td>
</tr>
<tr>
<td><strong>§ 15-11-17</strong></td>
</tr>
<tr>
<td>• Hearings shall be conducted in accordance with Title 24, the evidence code.</td>
</tr>
<tr>
<td><strong>Rights of Parties</strong></td>
</tr>
<tr>
<td><strong>§ 15-11-19</strong></td>
</tr>
<tr>
<td>• Party has right to be present, heard, present evidence, cross examine witnesses, examine pertinent court files and records, and appeal orders of the court.</td>
</tr>
<tr>
<td>• “Party” includes child, except court may exclude child if not in the child’s best interest to be present.</td>
</tr>
<tr>
<td>• Party shall be advised of these rights at that person’s first appearance</td>
</tr>
<tr>
<td><strong>§ 15-11-700(g)</strong></td>
</tr>
<tr>
<td>• The Court may temporarily exclude any child from a TPR hearing except while allegations of the child’s delinquency or CHINS conduct are being heard.</td>
</tr>
<tr>
<td><strong>Right to Attorney</strong></td>
</tr>
<tr>
<td><strong>§15-11-262(i): Right to counsel for party other than a child</strong></td>
</tr>
<tr>
<td>• Party should be informed of right to counsel before any hearing that could result in loss of parental rights.</td>
</tr>
<tr>
<td>• Party must be given opportunity to retain attorney.</td>
</tr>
<tr>
<td>• Party must be given opportunity to apply for court-appointed counsel and be appointed an attorney if the parent is found indigent.</td>
</tr>
<tr>
<td><strong>Practice notes:</strong></td>
</tr>
<tr>
<td>• Obtain a written waiver and a waiver on the record if the party declines legal representation. Also ensure the party is advised by the court of the party’s rights under § 15-11-19 (see “Rights of Parties” just above).</td>
</tr>
<tr>
<td>• To ensure the due process rights of an incarcerated parent, obtain transport order or ensure parent applies for court-appointed counsel.</td>
</tr>
</tbody>
</table>
§ 15-11-262: Child’s Right to Counsel

- Child and any other party to a TPR have the right to an attorney at all stages of the proceedings
- Court shall appoint an attorney for a child in a TPR as soon as practicable and before the first court hearing that may substantially affect the interests of the child
- Child’s attorney owes to a child the duties imposed by the attorney-client relationship
- GAL may be appointed at the request of the child’s attorney or upon the court’s own motion if
- GAL is necessary to assist the court in determining the best interests of the child
  - Child’s attorney and GAL may be the same person unless or until a conflict of interest
  - GAL role same as § 15-11-106
  - Appointment lasts through appeals unless excused by court
  - Neither child nor child representative can waive child’s attorney
  - Same child attorney when possible throughout dependency actions
- Parties other than child, may waive attorney, hire attorney or apply for court appointed

§ 15-11-264

- Parties may seek discovery from one another by making a **written request** for the following, provided the party has actual possession of the documents:
  - Information for each witness likely to be called to testify at the hearing
  - Copy of any formal written statement made by the child or any witness that the party intends to call as witness at the hearing
  - Scientific or other report which is intended to be introduced or pertains to physical evidence intended to be introduced at the hearing
  - Any drug screen of the child or the parent/guardian/legal custodian
  - Any case plan for the child or the parent/guardian/legal custodian
  - Any visitation schedule related to the child
  - Photographs and any physical evidence intended to be introduced at the hearing
  - Copies of any law enforcement incident reports regarding the occurrence that forms basis of petition for dependency
  - Any other relevant evidence not requiring consent or a court order.
- Upon presentation of a **court order or release of information**, Discovery

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**Trial Notebook for Child Welfare Attorneys – March 31, 2014**
parties shall have access to the following documents from one another, provided the party has actual possession of the documents:

- Psychological evaluation; developmental assessment; physical, mental, or emotional health assessment of child or child’s family or parent
- Child’s school records
- Child’s medical records
- Any family team meeting or multi-disciplinary team meeting report concerning the child or the parent/guardian/legal custodian
- Supplemental law enforcement reports regarding occurrence that forms basis of petition for dependency
- Immigration records concerning the child
- Transcripts, recordings and summaries of any oral statement made by child or any witness.
- Exceptions: child abuse and neglect report received by DFCS and anything covered by attorney work product.

- **Reciprocal discovery obligations**: If a party requests the above discovery, that party must promptly make the following available:
  - Names and contact information for each witness to occurrence that forms basis of party’s defense or claim;
  - Scientific or other report which is intended to be introduced or that pertains to physical evidence intended to be introduced at the hearing;
  - Photographs and any physical evidence intended to be introduced at the hearing; and
  - Copy of any written statement made by any witness that the party intends to call as a witness at the hearing.

- **Timing of discovery responses**:
  - Responses are due no later than 5 days after request is made, or
  - 72 hours prior to any hearing.
  - Except when later compliance is required based upon the timing of the discovery request.
  - If discovery request is made less than 48 hours before the adjudicatory hearing, responses are to be produced in a timely manner.

- **If a party fails to respond to the above discovery requests, the requesting party may file a motion for discovery.**
  - Motion must certify that request for discovery or consent for release was made and was refused, despite good faith efforts by the requesting party.
  - Order granting motion must also require reciprocal discovery.
  - Court may deny motion for discovery in whole or in part or may set conditions on discovery responses if the Court finds
that disclosure of information would
- jeopardize the safety of a party, witness or confidential informant.
- create substantial threat of physical or economic harm to a witness or other person.
- endanger existence of physical evidence.
- disclose privileged information.
- impede criminal prosecution.

- **Deposition of the child** is only permitted pursuant to court order.
- When the other party **fails to respond to an order** granting motion for discovery, the court may
  - grant a continuance request.
  - prohibit party from introducing into evidence the information not disclosed.
  - enter such other order as court deems just under circumstances.

### Expedited Hearings

**§ 15-11-301**
- Unless just cause is shown for delay, all hearings contemplated by Article 4, TPR, must be held within 90 days of the filing date of the TPR petition.
- Exception: ongoing post-TPR court reviews required under **§ 15-11-322** are excluded from this 90-day requirement.
- Unless just cause is shown for delay, the TPR order of disposition must be issued by the court no later than 30 days after the conclusion of the TPR hearing.
- Failure to comply with these time requirements is only a ground to invalidate an otherwise proper TPR order if the court determines the delay resulted in substantial prejudice to a party.

### Grounds for TPR

**§ 15-11-310**
- Court first determines whether a statutory ground for TPR has been proven:
  - Parental written consent to TPR, accepted by the court, or voluntary surrender
  - Aggravated circumstances as defined by **§ 15-11-2(5)**
  - Wanton and wilful parental failure to comply for 12 months or more with a child support order issued by a court in any state
  - Abandonment as defined by **§ 15-11-2(1)**
  - Four-prong evaluation:
    - Child is a dependent child due to lack of proper parental care and control;
    - reasonable efforts to remedy dependency were unsuccessful or not required;
    - dependency is likely to continue or is not likely to be remedied; and
    - continued dependency will/is likely to cause serious
physical, mental, emotional or moral harm to child.

- If a statutory ground for TPR has been proven, the court then determines whether TPR is in the child’s best interest.
- Exception: when the proven statutory ground is the aggravated circumstance of murder of the child’s other parent, presumption that TPR is in child’s best interests
- Best interests evaluation must include:
  - Child’s sense of attachments
  - Child’s wishes and long-term goals
  - Child’s need for permanence
  - Any other factors considered by the court to be relevant, including the factors identified in § 15-11-26.

### § 15-11-311
The court shall consider:

- Parental inability to adequately parent child due to
  - a medically verified deficiency of parent’s physical, mental or emotional health;
  - parent’s excessive use or history of chronic unrehabilitated substance abuse.
- Parent’s felony conviction and imprisonment which has a demonstrably negative effect on parent-child relationship, including convictions for
  - Murder of child’s sibling or half-sibling
  - Voluntary manslaughter of child’s sibling or half-sibling
  - Voluntary manslaughter of child’s other parent
  - Aiding or abetting, attempting, conspiring or soliciting to commit murder or voluntary manslaughter of child’s sibling or half-sibling
  - Aiding or abetting, attempting, conspiring or soliciting to commit murder or voluntary manslaughter of child’s other parent
  - Felony assault that results in serious bodily injury to the child, child’s sibling or child’s half-sibling.
- Parent’s current or past egregious conduct toward child, child’s sibling or child’s half-sibling;
- Parent’s current or past physical, mental or emotional neglect of child, child’s sibling or child’s half-sibling; and
- Substantial evidence that parental neglect or abuse resulted in serious bodily injury or death of child’s sibling or half-sibling.
- For children not in the parent’s custody, whether the parent, without justifiable cause, failed significantly for 6 months prior to the date of the TPR hearing to
  - develop and maintain a parental bond with the child;
  - provide financial support for child as required by law and court order, if one exists; and
  - comply with a court-ordered reunification case plan.
**Practice Note:** Examine reasons why parent did not comply, how many opportunities the parent had to comply, analysis of reasonable efforts.

### Impact of Lack of Reasonable Efforts

<table>
<thead>
<tr>
<th>§ 15-11-233(b)(3)</th>
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<tbody>
<tr>
<td>• TPR may not be in best interests of child <strong>adjudicated as dependent</strong> when</td>
</tr>
<tr>
<td>o DFCS did not provide child’s family with services deemed necessary for child’s safe return home within time frames defined in case plan for parent’s accomplishment of case plan goals.</td>
</tr>
<tr>
<td>o Exception: where court issued an order pursuant to § 15-11-203 that reasonable efforts are not required.</td>
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<table>
<thead>
<tr>
<th>§ 15-11-202(f)</th>
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</thead>
<tbody>
<tr>
<td>• Court’s reasonable efforts evaluation shall include whether services to child and family were</td>
</tr>
<tr>
<td>o relevant to the safety and protection of the child</td>
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<tr>
<td>o adequate to meet the needs of the child and the child’s family</td>
</tr>
<tr>
<td>o culturally and linguistically appropriate</td>
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<tr>
<td>o available and accessible</td>
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<tr>
<td>o consistent and timely</td>
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<tr>
<td>o realistic under the circumstances.</td>
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### Access to Hearings and Records

<table>
<thead>
<tr>
<th>§ 15-11-700(j)</th>
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<tbody>
<tr>
<td>• General public is excluded from the TPR hearing.</td>
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<table>
<thead>
<tr>
<th>§ 15-11-704</th>
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<tbody>
<tr>
<td>• General public may only inspect court files and records on TPR cases upon order of the court.</td>
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### Confidentiality of Testimony

<table>
<thead>
<tr>
<th>§ 15-11-302</th>
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<tbody>
<tr>
<td>• Record of testimony of the parties obtained in any hearing under TPR Article is <strong>not</strong> admissible in any civil, criminal or proceedings in any other court against person named as respondent for any purpose.</td>
</tr>
<tr>
<td>• Exceptions:</td>
</tr>
<tr>
<td>o When used in subsequent dependency or termination proceedings in case involving the same child</td>
</tr>
<tr>
<td>o When used in subsequent dependency or termination proceedings in case involving the same respondent</td>
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### Order following TPR Hearing

<table>
<thead>
<tr>
<th>§ 15-11-320</th>
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<tr>
<td>• Order terminating parental rights shall</td>
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<tr>
<td>o include written findings of fact for the statutory ground for TPR and the court’s best interests evaluation.</td>
</tr>
<tr>
<td>o be conclusive and binding on all parties from the order’s date of entry.</td>
</tr>
<tr>
<td>o grant custody of the child in accordance with § 15-11-321.</td>
</tr>
<tr>
<td>o inform parent whose rights have been terminated about parent’s right to use the services of the Georgia Adoption Reunion Registry.</td>
</tr>
</tbody>
</table>
• If the court denies TPR but finds the child(ren) dependent, the court may include any of the following options in the disposition order:
  o Remain with parent, guardian, or legal custodian subject to court conditions
  o Grant or transfer temporary legal custody to any of these persons or entities:
    ▪ Any individual, including a biological parent, 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 such child
    ▪ An agency or other private organization licensed or authorized by law to receive and provide care for the child
    ▪ Any public agency authorized by law to receive and provide care for the child
  • Exception: “public agency” shall not include DJJ or an individual in another state with or without supervision by an appropriate officer pursuant to the requirements of § 39-4-4, ICPC.
  o Transfer jurisdiction in accordance with. § 39-4-4, ICPC
  o Order child and parent, guardian, or legal custodian to participate in counseling to prevent future dependency
  o Order the child’s parent, guardian, or legal custodian to participate in a court approved educational or counseling program designed to enhance parental ability
  o Order DFCS to implement, and child's parent, guardian, or legal custodian to cooperate with, any plan approved by the court
  o Order temporary child support

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<thead>
<tr>
<th>§ 15-11-261</th>
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<tbody>
<tr>
<td>• TPR order is without limit as to duration.</td>
</tr>
<tr>
<td>• TPR order divests parent and child of all legal rights, power, privileges, immunities, duties and obligations to each other <strong>except</strong></td>
</tr>
<tr>
<td>o right of the child to receive child support from the parent until adoption order is issued.</td>
</tr>
<tr>
<td>o right of the child to inherit from the parent until adoption order is issued.</td>
</tr>
<tr>
<td>o right of the child to pursue civil action against the parent.</td>
</tr>
<tr>
<td>• Following TPR order, parent has no right to notice regarding adoption proceedings and no right to object to the adoption.</td>
</tr>
<tr>
<td>• Child’s relationship with siblings is not terminated until adoption order is issued.</td>
</tr>
<tr>
<td>• Relatives who are such through parent whose rights were terminated remain child’s relatives for purposes of placement and permanency plan until adoption order is issued.</td>
</tr>
</tbody>
</table>
### Custody of Child Following Grant of TPR Petition or Surrender of Parental Rights

<table>
<thead>
<tr>
<th>Practice Note:</th>
<th>§ 15-11-321</th>
</tr>
</thead>
</table>
| If TPR granted by court, parent should have final visit with child if appropriate and under the supervision of DFCS. | - Following court’s issuance of TPR order or parent’s voluntary surrender, court must order child’s placement based upon best interest evaluation and in accordance with child’s court-approved permanency plan.  
- Best interests evaluation shall include all of the following:  
  o Child’s need for a placement that offers the greatest degree of legal permanency and security  
  o Least disruptive placement for the child  
  o Child’s sense of attachment and need for continuity of relationships  
  o Value of biological and familial connections  
  o Any other factors the court determines to be relevant. |

<table>
<thead>
<tr>
<th>Continuing Court Reviews</th>
<th>§ 15-11-322</th>
</tr>
</thead>
</table>
| If petition for adoption is not filed within 6 months of the above-referenced court ruling pursuant to § 15-11-321, the court shall review adoption efforts at least every 6 months. | - Court shall:  
  o make written findings as to whether reasonable efforts were made to achieve permanency for the child.  
  o assess whether, in light of any change in circumstances, the child’s permanency plan is still appropriate.  
  o issue any orders necessary to further the child’s permanency. |

| Post-TPR Court Actions | See Chapter 9 for Post-TPR Matters |

### Code Sections

#### § 15-11-2. Definitions

As used in this chapter, the term:  

1. 'Abandonment' or 'abandoned' means any conduct on the part of a parent, guardian, or legal custodian showing an intent to forgo parental duties or relinquish parental claims. Intent to forgo parental duties or relinquish parental claims may be evidenced by: (A) Failure, for a period of at least six months, to communicate meaningfully with a child; (B) Failure, for a period of at least six months, to maintain regular visitation with a child; (C) Leaving a child with another person without provision for his or her support for a period of at least six months; (D) Failure, for a period of at least six months, to participate in any court ordered plan or program designed to reunite a child's parent, guardian, or legal custodian with his or her child; (E) Leaving a child without affording means of identifying such child or his or her parent, guardian, or legal custodian and: (i) The identity of such child's parent, guardian, or legal custodian cannot be ascertained despite diligent searching; and (ii) A parent, guardian, or legal custodian has not
come forward to claim such child within three months following the finding of such child; (F) Being absent from the home of his or her child for a period of time that creates a substantial risk of serious harm to a child left in the home; (G) Failure to respond, for a period of at least six months, to notice of child protective proceedings; or (H) Any other conduct indicating an intent to forgo parental duties or relinquish parental claims.

(5) 'Aggravated circumstances' means the parent has: (A) Abandoned an infant; (B) Attempted, conspired to attempt, or has subjected a child or his or her sibling to death or great bodily harm; (C) Attempted, conspired to attempt, or has subjected a child or his or her sibling to torture, chronic abuse, sexual abuse, or sexual exploitation; or (D) Committed the murder or voluntary manslaughter of his or her child's other parent or has been convicted of aiding or abetting, attempting, or soliciting the murder or voluntary manslaughter of his or her child's other parent.

((52) 'Party' means the state, a child, parent, guardian, legal custodian, or other person subject to any judicial proceeding under this chapter; provided, however, that for purposes of Article 6 of this chapter, only a child and the state shall be a party.

§ 15-11-10. Exclusive original jurisdiction
Except as provided in Code Section 15-11-560, the juvenile court shall have exclusive original jurisdiction over juvenile matters and shall be the sole court for initiating action: (1) Concerning any child who: (A) Is alleged to be a delinquent child; (B) Is alleged to be a child in need of services; (C) Is alleged to be a dependent child; (D) Is alleged to be in need of treatment or commitment as a mentally ill or developmentally disabled child; (E) Is alleged to have committed a juvenile traffic offense as defined in Code Section 15-11-630; (F) Has been placed under the supervision of the court or on probation to the court; provided, however, that such jurisdiction shall be for the purpose of completing, effectuating, and enforcing such supervision or a probation begun prior to such child's seventeenth birthday; (G) Has remained in foster care after such child's eighteenth birthday or who is receiving independent living services from DFCS after such child's eighteenth birthday; provided, however, that such jurisdiction shall be for the purpose of reviewing the status of such child and the services being provided to such child as a result of such child's independent living plan or status as a child in foster care; or (H) Requires a comprehensive services plan in accordance with Code Section 15-11-658; or (2) Involving any proceedings: (A) For obtaining judicial consent to the marriage, employment, or enlistment in the armed services of any child if such consent is required by law; (B) For permanent guardianship brought pursuant to the provisions of Article 3 of this chapter; (C) Under Code Section 39-3-2, the Interstate Compact on Juveniles, or any comparable law, enacted or adopted in this state; (D) For the termination of the legal parent-child relationship and the rights of the biological father who is not the legal father of the child in accordance with Article 2 of this chapter; provided, however, that such jurisdiction shall not affect the superior court's exclusive jurisdiction to terminate the legal parent-child relationship as set forth in Chapters 6 through 9 of Title 19; (E) For emancipation brought pursuant to the provisions of Article 10 of this chapter; (F) Under Article 8 of this chapter, relating to prior notice to a parent, guardian, or legal custodian relative to an unemancipated minor's decision to seek an abortion; or (G) Brought by a local board of education pursuant to Code Section 20-2-766.1, relating to court orders requiring
that a parent, guardian, or legal custodian attend a conference or participate in programs or treatment to improve a student's behavior.

§ 15-11-17. Conduct of hearings; anonymity on appeal
(a) All hearings under this chapter shall be conducted by the court without a jury. Any hearing may be adjourned from time to time within the discretion of the court. (b) Except as otherwise provided, all hearings shall be conducted in accordance with Title 24. (c) Proceedings shall be recorded by stenographic notes or by electronic, mechanical, or other appropriate means capable of accurately capturing a full and complete record of all words spoken during the proceedings. (d) 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 chapter in any county within the judicial circuit. When a superior court judge sits as a juvenile court judge, hearings in connection with any proceeding under this chapter may be heard before such judge in any county within the judicial circuit over which the judge presides.

§ 15-11-19. Rights of parties to proceedings
(a) A party has the right to be present, to be heard, to present evidence material to the proceedings, to cross-examine witnesses, to examine pertinent court files and records, and to appeal the orders of the court; provided, however, that the court shall retain the discretion to exclude a child from any part or parts of any proceeding under Article 3 of this chapter if the court determines that it is not in such child's best interests to be present. An attorney for an excluded child shall not be excluded from the proceedings. (b) A person afforded rights under this chapter shall be advised of such rights at that person's first appearance before the court.

§ 15-11-20. Referral for mediation
(a) At any time during a proceeding under this chapter, the court may refer a case to mediation. (b) When referring a case to mediation, the court shall take into consideration the guidelines from the Georgia Commission of Dispute Resolution for mediating cases involving domestic violence or family violence. (c) A referral order shall recite that while the parties shall attend a scheduled mediation session and shall attempt to mediate in good faith, such parties shall not be required to reach an agreement. (d) Victims in a delinquency case referred to mediation may attend and participate in such mediation, but shall not be required to do so as a condition of such case being heard by the juvenile court.

§ 15-11-21. Selection and appointment of mediator
(a) Once an order referring a case to mediation has been signed, the court shall appoint a mediator from a list of court approved mediators who are registered with the Georgia Office of Dispute Resolution to mediate juvenile court cases. (b) The court shall appoint a qualified mediator within five days of signing the order referring the case to mediation.

§ 15-11-22. Agreement to mediate; procedure
(a) The parties shall sign and date a written agreement to mediate. The agreement to mediate shall identify the controversies between the parties, affirm the parties' intent to resolve such controversies through mediation, and specify the circumstances under which mediation may continue. The agreement to mediate shall specify the confidentiality requirements of mediation
and the exceptions to confidentiality in mediation as such are set forth in the Supreme Court of Georgia Alternative Dispute Resolution Rules and appendices. (b) A mediator shall not knowingly assist the parties in reaching an agreement which would be unenforceable for reasons such as fraud, duress, the absence of bargaining ability, unconscionability, or lack of court jurisdiction. (c) Prior to the parties signing an agreement to mediate, the mediator shall advise the parties that each of them may obtain review by an attorney of any agreement reached as a result of the mediation. (d) The mediator shall at all times be impartial.

§ 15-11-23. Stay of proceeding pending mediation; time limitations
(a) Upon issuing a referral to mediation the court may stay the proceeding. (b) Mediation shall occur as soon as practicable and be scheduled within 30 days of the order referring the matter to mediation unless the time frame is extended by the court. (c) The court may extend the timeline for scheduling a mediation for an additional 30 days.

§ 15-11-24. Termination of mediation
(a) Either party in a mediation may withdraw from or terminate further participation in mediation at any time. (b) A mediator shall terminate mediation when: (1) The mediator concludes that the participants are unable or unwilling to participate meaningfully in the process; (2) The mediator concludes that a party lacks the capacity to perceive and assert his or her own interests to the degree that a fair agreement cannot be reached; (3) The mediator concludes that an agreement is unlikely; or (4) The mediator concludes that a party is a danger to himself or herself or others.

§ 15-11-25. Approval of mediation agreements; exceptions
(a) All mediation agreements shall be presented to the juvenile court judge for approval. (b) The mediation agreement shall be made an order of the court unless, after further hearing, the court determines by clear and convincing evidence that the agreement is not in the best interests of the child.

§ 15-11-26. Best interests of child
Whenever a best interests determination is required, the court shall consider and evaluate all of the factors affecting the best interests of the child in the context of such child's age and developmental needs. Such factors shall include: (1) The physical safety and welfare of such child, including food, shelter, health, and clothing; (2) The love, affection, bonding, and emotional ties existing between such child and each parent or person available to care for such child; (3) The love, affection, bonding, and emotional ties existing between such child and his or her siblings, half siblings, and stepsiblings and the residence of such other children; (4) Such child's need for permanence, including such child's need for stability and continuity of relationships with his or her parent, siblings, other relatives, and any other person who has provided significant care to such child; (5) Such child's sense of attachments, including his or her sense of security and familiarity, and continuity of affection for such child; (6) The capacity and disposition of each parent or person available to care for such child to give him or her love, affection, and guidance and to continue the education and rearing of such child; (7) The home environment of each parent or person available to care for such child considering the promotion of such child's nurturance and safety rather than superficial or material factors; (8) The stability of the family unit and the presence or absence of support systems within the community to benefit such child; (9) The mental and physical health of all individuals involved; (10) The
home, school, and community record and history of such child, as well as any health or educational special needs of such child; (11) Such child's community ties, including church, school, and friends; (12) Such child's background and ties, including familial, cultural, and religious; (13) The least disruptive placement alternative for such child; (14) The uniqueness of every family and child; (15) The risks attendant to entering and being in substitute care; (16) Such child's wishes and long-term goals; (17) The preferences of the persons available to care for such child; (18) Any evidence of family violence, substance abuse, criminal history, or sexual, mental, or physical child abuse in any current, past, or considered home for such child; (19) Any recommendation by a court appointed custody evaluator or guardian ad litem; and (20) Any other factors considered by the court to be relevant and proper to its determination.

§ 15-11-103. Right to attorney
(a) A child and any other party to a proceeding under this article shall have the right to an attorney at all stages of the proceedings under this article. (b) The court shall appoint an attorney for an alleged dependent child. The appointment shall be made as soon as practicable to ensure adequate representation of such child and, in any event, before the first court hearing that may substantially affect the interests of such child. (c) A child's attorney owes to his or her client the duties imposed by the law of this state in an attorney-client relationship. (d) If an attorney has been appointed to represent a child in a prior proceeding under this chapter, the court, when possible, shall appoint the same attorney to represent such child in any subsequent proceeding. (e) An attorney appointed to represent a child in a dependency proceeding shall continue the representation in any subsequent appeals unless excused by the court. (f) Neither a child nor a representative of a child may waive a child's right to an attorney in a dependency proceeding. (g) A party other than a child shall be informed of his or her right to an attorney prior to any hearing. A party other than a child shall be given an opportunity to: (1) Obtain and employ an attorney of such party's own choice; (2) Obtain a court appointed attorney if the court determines that such party is an indigent person; or (3) Waive the right to an attorney.

§ 15-11-202. Reasonable efforts by DFCS to preserve or reunify families
(a) Except as provided in subsection (a) of Code Section 15-11-203, reasonable efforts shall be made to preserve or reunify families: (1) Prior to the placement of an alleged dependent child in DFCS custody to prevent the need for removing him or her from his or her home; or (2) To eliminate the need for removal and make it possible for a child alleged to be or adjudicated as a dependent child to return safely to his or her home at the earliest possible time. (b) In determining the type of reasonable efforts to be made to a child alleged to be or adjudicated as a dependent child and in making such reasonable efforts, such child's health and safety shall be the paramount concern. (c) Appropriate services to meet the needs of a child alleged to be or adjudicated as a dependent child and his or her family may include those provided by DFCS and other services available in the community. (d) The court shall be required to review the appropriateness of DFCS's reasonable efforts at each stage of the proceedings. (e)(1) At the preliminary protective hearing, DFCS has the burden of demonstrating that: (A) It has made reasonable efforts to prevent placement of an alleged dependent child in foster care; (B) There are no appropriate services or efforts which could allow an alleged dependent child to safely remain in the home given the particular circumstances of such child and his or her family at the time of his or her removal and so the absence of such efforts was justifiable; or (C) Reasonable efforts to prevent placement and to reunify an alleged dependent child with his or her family are
not required because of the existence of one or more of the circumstances enumerated in subsection (a) of Code Section 15-11-203. (2) At the adjudication hearing, DFCS has the burden of demonstrating that: (A) It has made reasonable efforts to eliminate the need for removal of an alleged dependent child from his or her home and to reunify such child with his or her family at the earliest possible time; or (B) Reasonable efforts to prevent placement and to reunify an alleged dependent child with his or her family are not required because of the existence of one or more of the circumstances enumerated in subsection (a) of Code Section 15-11-203. (3) At each other hearing, DFCS has the burden of demonstrating that: (A) It has made reasonable efforts to eliminate the need for removal of a child alleged to be or adjudicated as a dependent child from his or her home and to reunify such child with his or her family at the earliest possible time; or (B) It has made reasonable efforts to finalize an alternative permanent home for a child alleged to be or adjudicated as a dependent child. (f) When determining whether reasonable efforts have been made, the court shall consider whether services to the child alleged to be or adjudicated as a dependent child and his or her family were: (1) Relevant to the safety and protection of such child; (2) Adequate to meet the needs of such child and his or her family; (3) Culturally and linguistically appropriate; (4) Available and accessible; (5) Consistent and timely; and (6) Realistic under the circumstances. (g) A finding that reasonable efforts have not been made shall not preclude the entry of an order authorizing a child alleged to be or adjudicated as a dependent child's placement when the court finds that placement is necessary for the protection of such child. (h) When efforts to prevent the need for a child alleged to be or adjudicated as a dependent child's placement were precluded by an immediate threat of harm to such child, the court may make a finding that reasonable efforts were made if it finds that the placement of such child in the absence of such efforts was justifiable. (i) Reasonable efforts to place a child adjudicated as a dependent child for adoption or with a guardian or legal custodian may be made concurrently with reasonable efforts to reunify. When DFCS decides to concurrently make reasonable efforts for both reunification and permanent placement away from the parent, guardian, or legal custodian of a child adjudicated as a dependent child, DFCS shall disclose its decision and both plans to all parties and obtain approval from the court. When DFCS proceeds on both plans, the court's review of reasonable efforts shall include efforts under both plans. (j) An order placing or continuing the placement of a child alleged to be or adjudicated as a dependent child in DFCS custody shall contain, but not be limited to, written findings of facts stating: (1) That such child's continuation in or return to his or her home would be contrary to his or her welfare; (2) Whether reasonable efforts have been made to prevent or eliminate the need for placement of such child, unless the court has determined that such efforts are not required or shall cease; and (3) Whether reasonable efforts should continue to be made to prevent or eliminate the need for placement of such child, unless the court has previously determined that such efforts are not required or shall cease.

§ 15-11-203. When reasonable efforts by DFCS not required
(a) The court may direct that reasonable efforts to eliminate the need for placement of an alleged dependent child shall not be required or shall cease if the court determines and makes written findings of fact that a parent of an alleged dependent child: (1) Has subjected his or her child to aggravated circumstances; (2) Has been convicted of the murder of another child of such parent; (3) Has been convicted of the voluntary manslaughter of another child of such parent; (4) Has been convicted of aiding or abetting, attempting, conspiring, or soliciting to commit murder or voluntary manslaughter of another child of such parent; (5) Has been convicted of committing a
felony assault that results in serious bodily injury to the child or another child of such parent; (6) Has been convicted of rape, sodomy, aggravated sodomy, child molestation, aggravated child molestation, incest, sexual battery, or aggravated sexual battery of the alleged dependent child or another child of the parent; (7) Is required to register as a sex offender and that preservation of a parent-child relationship is not in the alleged dependent child's best interests; or (8) Has had his or her rights to a sibling of the alleged dependent child terminated involuntarily and the circumstances leading to such termination of parental rights to that sibling have not been resolved. (b) If the court determines that one or more of the circumstances enumerated in subsection (a) of this Code section exist or DFCS has submitted a written report to the court which does not contain a plan for reunification services, then: (1) A permanency plan hearing shall be held for a child adjudicated as a dependent child within 30 days; and (2) Reasonable efforts shall be made to place a child adjudicated as a dependent child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of such child.

§ 15-11-233. Termination of parental rights; exceptions
(a) Except as provided in subsection (b) of this Code section, DFCS shall file a petition to terminate the parental rights of a parent of a child adjudicated as a dependent child 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 if: (1) A child adjudicated as a dependent child has been in foster care under the responsibility of DFCS for 15 of the most recent 22 months; (2) The court has made a determination that the parent has subjected his or her child to aggravated circumstances; or (3) The court has made a determination that the parent of a child adjudicated as a dependent child has been convicted of: (A) The murder of another child of such parent; (B) Voluntary manslaughter of another child of such parent; (C) Voluntary manslaughter of the other parent of such child; (D) Aiding or abetting, attempting, conspiring, or soliciting to commit murder or voluntary manslaughter of another child of such parent; (E) Aiding or abetting, attempting, conspiring, or soliciting to commit murder or voluntary manslaughter of the other parent of such child; or (F) Committing felony assault that has resulted in serious bodily injury to such child or to another child of such parent. (b) Termination of parental rights may not be in the best interests of a child adjudicated as a dependent child when: (1) Such child is being cared for by his or her relative; (2) The case plan documents a compelling reason for determining that filing such a petition would not be in the best interests of such child. Such compelling reasons may include, but not be limited to: (A) A parent of such child is successfully participating in services that will make it possible for his or her child to safely return home; (B) Another permanency plan is better suited to meet the health and safety needs of such child. Documentation that another permanent plan is better suited to meet the health and safety needs of such child may include documentation that: (i) Such child is 14 years of age or older and objects to termination of parental rights. Prior to accepting a child's objection, the court shall personally question such child in chambers to determine whether the objection is a voluntary and knowing choice; (ii) Such child is 16 years of age or older and specifically requests that emancipation be established as his or her permanent plan; (iii) The parent of such child and such child have a significant bond, but such parent is unable to care for such child because of an emotional or physical disability and such child's caregiver has committed to raising such child to the age of majority and facilitating visitation with such disabled parent; or (iv) Such child is in a residential treatment facility that provides services
specifically designed to address his or her treatment needs and the court determines that his or her needs could not be served by a less restrictive placement; (C) Such child is living with his or her relative who is unable or unwilling to adopt such child, but who is willing and capable of providing such child with a stable and permanent home environment and the removal of such child from the physical custody of his or her relative would be detrimental to such child's emotional well-being; (D) The court or judicial citizen review panel, in a prior hearing or review, determined that while the case plan was to reunify the family, DFCS did not make reasonable efforts; or (E) Such child is an unaccompanied refugee or there are international legal obligations or foreign policy reasons that would preclude terminating parental rights; or (3) DFCS has not provided to the family of such child services deemed necessary for his or her safe return to his or her home, consistent with the specific time frames for the accomplishment of the case plan goals.

(c) The recommendation by DFCS that termination of parental rights is not in the best interests of a child shall be based on the present family circumstances of such child and shall not preclude a different recommendation at a later date if the family circumstances of a child adjudicated as a dependent child change.

§ 15-11-260. Purpose of article
(a) The purpose of this article is: (1) To protect a child who has been adjudicated as a dependent child from his or her parent who is unwilling or unable to provide safety and care adequate to meet such child's physical, emotional, and mental health needs by providing a judicial process for the termination of all parental rights and responsibilities; (2) To eliminate the need for a child who has been adjudicated as a dependent child to wait unreasonable periods of time for his or her parent to correct the conditions which prevent his or her return to the family; (3) To ensure that the continuing needs of a child who has been alleged or adjudged to be a dependent child for proper physical, mental, and emotional growth and development are the decisive considerations in all proceedings; (4) To ensure that the constitutional rights of all parties are recognized and enforced in all proceedings conducted pursuant to this article while ensuring that the fundamental needs of a child are not subjugated to the interests of others; and (5) To encourage stability in the life of a child who has been adjudicated as a dependent child and has been removed from his or her home by ensuring that all proceedings are conducted expeditiously to avoid delays in resolving the status of the parent and in achieving permanency for such child. (b) Nothing in this article shall be construed as affecting the rights of a parent who is not the subject of the proceedings.

§ 15-11-261. Scope, effect, and duration of order terminating parental rights
(a) An order terminating the parental rights of a parent shall be without limit as to duration and shall divest the parent and his or her child of all legal rights, powers, privileges, immunities, duties, and obligations with respect to each other, except: (1) The right of such child to receive child support from his or her parent until a final order of adoption is entered; (2) The right of such child to inherit from and through his or her parent. The right of inheritance of such child shall be terminated only by a final order of adoption; and (3) The right of such child to pursue any civil action against his or her parent. (b) When an order terminating the parent and child relationship has been issued, the parent whose right has been terminated shall not thereafter be entitled to notice of proceedings for the adoption of his or her child by another, nor has the parent any right to object to the adoption or otherwise to participate in such proceedings. (c) The relationship between a child and his or her siblings shall not be severed until that relationship is
terminated by final order of adoption. (d) A relative whose relationship to a child is derived through the parent whose parental rights are terminated shall be considered to be a relative of such child for purposes of placement of, and permanency plan for, such child until such relationship is terminated by final order of adoption.

§ 15-11-262. Right to attorney and appointment of guardian ad litem
(a) A child and any other party to a proceeding under this article shall have the right to an attorney at all stages of the proceedings under this article. (b) The court shall appoint an attorney for a child in a termination of parental rights proceeding. The appointment shall be made as soon as practicable to ensure adequate representation of such child and, in any event, before the first court hearing that may substantially affect the interests of such child. (c) A child's attorney owes to a child the duties imposed by the law of this state in an attorney-client relationship. (d) The court may appoint a guardian ad litem for a child in a termination proceeding at the request of such child's attorney or upon the court's own motion if it determines that a guardian ad litem is necessary to assist the court in determining the best interests of such child; provided, however, that such guardian ad litem may be the same person as the child's attorney unless or until there is a conflict of interest between the attorney's duty to such child as such child's attorney and the attorney's considered opinion of such child's best interests as guardian ad litem. (e) The role of a guardian ad litem in a termination of parental rights proceeding shall be the same role as provided for in all dependency proceedings under Article 3 of this chapter. (f) If an attorney has been appointed to represent a child in a prior proceeding under this chapter, the court, when possible, shall appoint the same attorney to represent such child in any subsequent proceeding. (g) An attorney appointed to represent a child in a termination proceeding shall continue the representation in any subsequent appeals unless excused by the court. (h) Unless authorized by the court, neither a child or a representative of a child may waive the right to any attorney in a termination proceeding. (i) A party other than a child shall be informed of his or her right to an attorney prior to the adjudication hearing and prior to any other hearing at which a party could be subjected to the loss of residual parental rights. A party other than a child shall be given an opportunity to: (1) Obtain and employ an attorney of the party's own choice; (2) To obtain a court appointed attorney if the court determines that the party is an indigent person; or (3) Waive the right to an attorney.

§ 15-11-263. Physical and mental examinations
(a) Upon motion of any party or the court, the court may require a physical or mental evaluation of a child adjudicated as a dependent child or his or her parent, stepparent, guardian, or legal custodian. (b) The cost of any ordered evaluation shall be paid by the moving party unless apportioned by the court, in its discretion, to any other party or parties.

§ 15-11-264. Discovery
(a) In all cases under this article, any party shall, upon written request to the party having actual custody, control, or possession of the material to be produced, have full access to the following for inspection, copying, or photographing: (1) The names and telephone numbers of each witness likely to be called to testify at the hearing by another party; (2) A copy of any formal written statement made by the child adjudicated as a dependent child or any witness that relates to the subject matter concerning the testimony of the witness that a party intends to call as a witness at the hearing; (3) Except as otherwise provided in subsection (b) of this Code section, any
scientific or other report which is intended to be introduced at any hearing or that pertains to physical evidence which is intended to be introduced; (4) Any drug screen concerning the child adjudicated as a dependent child or his or her parent, guardian, or legal custodian; (5) Any case plan concerning the child adjudicated as a dependent child or his or her parent, guardian, or legal custodian; (6) Any visitation schedule related to the child who is adjudicated as a dependent child; (7) Photographs and any physical evidence which are intended to be introduced at any hearing; (8) Copies of the police incident report regarding an occurrence which forms part or all of the basis of the petition; and (9) Any other relevant evidence not requiring consent or a court order under subsection (b) of this Code section. (b) Upon presentation of a court order or written consent from the appropriate person or persons permitting access to the party having actual custody, control, or possession of the material to be produced, any party shall have access to the following for inspection, copying, or photographing: (1) Any psychological, developmental, physical, mental or emotional health, or other assessments of the child adjudicated as a dependent child or the family, parent, guardian, or legal custodian of such child; (2) Any school record concerning the child adjudicated as a dependent child; (3) Any medical record concerning the child adjudicated as a dependent child; (4) Transcriptions, recordings, and summaries of any oral statement of the child adjudicated as a dependent child or of any witness, except child abuse reports that are confidential pursuant to Code Section 19-7-5 and work product of counsel; (5) Any family team meeting report or multidisciplinary team meeting report concerning the child adjudicated as a dependent child or his or her parent, guardian, or legal custodian; (6) Supplemental police reports, if any, regarding an occurrence which forms part of all of the basis of the petition; and (7) Immigration records concerning the child adjudicated as a dependent child. (c) If a party requests disclosure of information pursuant to subsection (a) or (b) of this Code section, it shall be the duty of such party to promptly make the following available for inspection, copying, or photographing to every other party: (1) The names and last known addresses and telephone numbers of each witness to the occurrence which forms the basis of the party's defense or claim; (2) Any scientific or other report which is intended to be introduced at the hearing or that pertains to physical evidence which is intended to be introduced; (3) Photographs and any physical evidence which are intended to be introduced at the hearing; and (4) A copy of any written statement made by any witness that relates to the subject matter concerning the testimony of the witness that the party intends to call as a witness. (d) A request for discovery or reciprocal discovery shall be complied with promptly and not later than five days after the request is received or 72 hours prior to any hearing except when later compliance is made necessary by the timing of the request. If the request for discovery is made fewer than 48 hours prior to an adjudicatory hearing, the discovery response shall be produced in a timely manner. If, subsequent to providing a discovery response in compliance with this Code section, the existence of additional evidence is found, it shall be promptly provided to the party making the discovery request. (e) If a request for discovery or consent for release is refused, application may be made to the court for a written order granting discovery. Motions for discovery shall certify that a request for discovery or consent was made and was unsuccessful despite good faith efforts made by the requesting party. An order granting discovery shall require reciprocal discovery. Notwithstanding the provisions of subsection (a) or (b) of this Code section, the court may deny, in whole or in part, or otherwise limit or set conditions concerning the discovery response upon a sufficient showing by a person or entity to whom a request for discovery is made that disclosure of the information would: (1) Jeopardize the safety of a party, witness, or confidential informant; (2) Create a substantial threat of physical or economic harm to a witness
or other person; (3) Endanger the existence of physical evidence; (4) Disclose privileged information; or (5) Impede the criminal prosecution of a minor who is being prosecuted as an adult or the prosecution of an adult charged with an offense arising from the same transaction or occurrence. (f) No deposition shall be taken of a child adjudicated as a dependent child unless the court orders the deposition, under such conditions as the court may order, on the ground that the deposition would further the purposes of this part. (g) If at any time during the course of the proceedings it is brought to the attention of the court that a person or entity has failed to comply with an order issued pursuant to this Code section, the court may grant a continuance, prohibit the party from introducing in evidence the information not disclosed, or enter such other order as the court deems just under the circumstances. (h) Nothing contained in this Code section shall prohibit the court from ordering the disclosure of any information that the court deems necessary for proper adjudication. (i) Any material or information furnished to a party pursuant to this Code section shall remain in the exclusive custody of the party and shall only be used during the pendency of the case and shall be subject to such other terms and conditions as the court may provide.

§ 15-11-265. Suspension of right of voluntary surrender of parental rights
Once a petition to terminate parental rights has been filed, the parent of a child adjudicated as a dependent child shall thereafter be without authority to execute an act of surrender or otherwise to affect the custody of his or her child except such parent may: (1) Execute an act of surrender in favor of the department; and (2) Consent to a judgment terminating his or her parental rights.

§ 15-11-270. Venue
(a) A proceeding under this article shall be commenced in the county that has jurisdiction over the related dependency proceedings. (b) For the convenience of the parties, the court may transfer proceedings to the county in which the parent of a child adjudicated as a dependent child legally resides. If a 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.

§ 15-11-280. Petition; style; contents; putative fathers
(a) A petition to terminate parental rights and all subsequent court documents in such proceeding shall be entitled 'In the interest of___, a child.', except upon appeal, in which event the anonymity of a child shall be preserved by use of appropriate initials. The petition shall be in writing. (b) The petition to terminate parental rights shall be made, verified, and endorsed by the court as provided in Article 3 of this chapter for a petition alleging dependency. (c) A petition to terminate parental rights shall: (1) State clearly that an order for termination of parental rights is requested and that the effect of the order will conform to Code Section 15-11-261; (2) State the statutory ground, as provided in Code Section 15-11-310, on which the petition is based; and (3) Set forth plainly and with particularity: (A) The facts which bring a child within the jurisdiction of the court, with a statement that it is in the best interests of such child and the public that the proceeding be brought; (B) The name, age, date of birth, and residence address of the child named in the petition; (C) The name and residence address of the parent, guardian, or legal custodian of such child; or, if the parent, guardian, or legal custodian of the child named in the petition to terminate parental rights does not reside or cannot be found within the state or if such place of residence address is unknown, the name of any known adult relative of such child.
residing within the county or, if there is none, the known adult relative of such child residing nearest to the location of the court; (D) Whether the child named in the petition is in protective custody and, if so, the place of his or her foster care and the time such child was taken into protective custody; and (E) Whether any of the information required by this paragraph is unknown. (d) When a petition to terminate parental rights seeks termination of the rights of a biological father who is not the legal father and who has not surrendered his rights to his child, the petition shall include a certificate from the putative father registry disclosing the name, address, and social security number of any registrant acknowledging paternity of the child named in the petition or indicating the possibility of paternity of a child of the child's mother for a period beginning no more than two years immediately preceding such child's date of birth. The 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. (e) A copy of a voluntary surrender or written consent, if any, previously executed by a parent of the child named in the petition to terminate parental rights shall be attached to the petition.

§ 15-11-281. Issuance of summons
(a) The court shall direct the issuance of a summons to the mother, legal father or biological father, guardian, legal custodian, attorney, and guardian ad litem, if any, of the child named in the petition to terminate parental rights 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. A copy of such 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 such petition can be obtained. (b) The court shall direct notice and a copy of the petition be provided to the child named in the petition if the child is 14 years of age or older. (c) The summons shall include the notice of effect of a termination judgment as set forth in Code Section 15-11-284 and shall state that a party is entitled to an attorney in the proceedings and that the court will appoint an attorney if the party is an indigent person. (d) The court may endorse upon the summons an order directing the parent, guardian, or legal custodian of the child named in the petition to appear personally at the hearing or directing the person having the physical custody or control of such child to bring such child to the hearing. (e) A party other than the child named in the petition may waive service of summons by written stipulation or by voluntary appearance at the hearing.

§ 15-11-282. Service of summons
(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 as soon as possible and at least 30 days before the termination of parental rights hearing. (b) If a party to be served is within this state and cannot be found but his or her address is known or can be ascertained with due diligence, the summons shall be served upon such party at least 30 days before the termination of parental rights hearing by mailing him or her a copy by registered or certified mail or statutory overnight delivery, return receipt requested. (c) If a party to be served is outside this state but his or her address is known or can be ascertained with due diligence, service of the summons shall be made at least 30 days before the termination of parental rights hearing either by delivering a copy to such party personally or by mailing a copy to him or her by registered or certified mail or statutory overnight delivery, return receipt request. (d) If, after due diligence, a party to be served with a
summons cannot be found and such party's 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. The termination of parental rights hearing shall not be earlier than 31 days after the date of the last publication. (e)(1) Service by publication shall be made once a week for four consecutive weeks in the legal organ of the county where the petition to terminate parental rights has been filed. Service shall be deemed complete upon the date of the last publication. (2) When served by publication, the notice shall contain the names of the parties, except that the anonymity of a child shall be preserved by the use of appropriate initials, and the date the petition to terminate parental rights was filed. The notice shall indicate the general nature of the allegations and where a copy of the petition to terminate parental rights can be obtained and require the party to be served by publication to appear before the court at the time fixed to answer the allegations of the petition to terminate parental rights. (3) The petition to terminate parental rights shall be available to the parent whose rights are sought to be terminated free of charge from the court during business hours or, upon request, shall be mailed to such parent. (4) Within 15 days after the filing of the order of service by publication, the clerk of court shall mail a copy of the notice, a copy of the order of service by publication, and a copy of the petition to terminate parental rights to the absent parent's last known address. (f) Service of the summons may be made by any suitable person under the direction of the court. (g) 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.

§ 15-11-283. Notice to father
(a) Unless he has surrendered all parental rights to his child, a summons shall be served on the legal father of a child named in the petition brought pursuant to this article or the biological father: (1) Whose paternity has been previously established in a judicial proceeding to which the father was a party; (2) Whose identity is known to the petitioner or the petitioner's attorney; (3) Who is a registrant on the putative father registry and has acknowledged paternity of the child named in the petition brought pursuant to this article; (4) Who is a registrant on the putative father registry who has indicated possible paternity of the child named in the petition brought pursuant to this article that was born to such child's mother during a period beginning no more than two years immediately preceding such child's date of birth; or (5) Who, if the court finds from the evidence including but not limited to the affidavit of the mother of a child named in the petition brought pursuant to this article, has performed any of the following acts: (A) Lived with such child; (B) Contributed to such child's support; (C) Made any attempt to legitimate such child; or (D) Provided support or medical care for such mother either during her pregnancy or during her hospitalization for the birth of such child. (b) Notice shall be given to the biological father or legal father by the following methods: (1) If the biological father or legal father is within this state and can be found, the summons shall be served upon him personally as soon as possible and least 30 days before the termination of parental rights hearing; (2) If the biological father or legal father is outside this state but his address is known or can be ascertained with due diligence, service of summons shall be made at least 30 days before the termination of parental rights hearing either by delivering a copy to him personally or by mailing a copy to him by registered or certified mail or statutory overnight delivery, return receipt requested; or (3) If, after due diligence, the biological father or legal father to be served with summons cannot be found and his address cannot be ascertained, whether he is within or outside this state, the court may order service of summons upon him by publication. The termination of parental rights
hearing shall not be earlier than 31 days after the date of the last publication. Service by
publication shall be as follows: (A) Service by publication shall be made once a week for four
consecutive weeks in the legal organ of the county where the petition to terminate parental rights
has been filed and of the county of the biological father's last known address. Service shall be
deemed complete upon the date of the last publication; (B) When served by publication, the
notice shall contain the names of the parties, except that the anonymity of a child shall be
preserved by the use of appropriate initials, and the date the petition to terminate parental rights
was filed. The notice shall indicate the general nature of the allegations and where a copy of the
petition to terminate parental rights can be obtained and require the biological father or legal
father to appear before the court at the time fixed to answer the allegations of the petition to
terminate parental rights; (C) The petition to terminate parental rights shall be available to the
biological father or legal father whose rights are sought to be terminated free of charge from the
court during business hours or, upon request, shall be mailed to the biological father or legal
father; and (D) Within 15 days after the filing of the order of service by publication, the clerk of
court shall mail a copy of the notice, a copy of the order of service by publication, and a copy of
the petition to terminate parental rights to the biological father's or legal father's last known
address. (c) The notice shall advise the biological father who is not the legal father that he may
lose all rights to the child named in a petition brought pursuant to this article and will not be
entitled to object to the termination of his rights to such child unless, within 30 days of receipt of
notice, he files: (1) A petition to legitimate such child; and (2) Notice of the filing of the petition
to legitimate with the court in which the termination of parental rights proceeding is pending. (d)
If the identity of the biological father whose rights are sought to be terminated is not known to
the petitioner or the petitioner's attorney and the biological father would not be entitled to notice
in accordance with subsection (a) of this Code section, then it shall be rebuttably presumed that
he is not entitled to notice of the proceedings. The court shall be authorized to require the
mother to execute an affidavit supporting the presumption or show cause before the court if she
refuses. Absent evidence rebutting the presumption, no further inquiry or notice shall be
required by the court, and the court may enter an order terminating the rights of the biological
father. (e) The court may enter an order terminating all the parental rights of a biological father,
including any right to object thereafter to such proceedings: (1) Who fails to file a timely petition
to legitimate the child named in a petition brought pursuant to this article and notice in
accordance with subsection (c) of this Code section; (2) Whose petition to legitimate is
subsequently dismissed for failure to prosecute; or (3) Whose petition to legitimate does not
result in a court order finding that he is the legal father of the child named in a petition brought
pursuant to this article.

§ 15-11-284. Notice of effect of termination judgment
The notice required to be given to the mother, the biological father, and legal father of the child
shall state: 'NOTICE OF EFFECT OF TERMINATION JUDGMENT Georgia law provides that
you can permanently lose your rights as a parent. A petition to terminate parental rights has been
filed requesting the court to terminate your parental rights to your child. A copy of the petition to
terminate parental rights is attached to this notice. A court hearing of your case has been
scheduled for the _____ day of __________, _____, at (time of day), at the_________Court of
County. If you fail to appear, the court can terminate your rights in your absence. If the
court at the trial finds that the facts set out in the petition to terminate parental rights are true and
that termination of your rights will serve the best interests of your child, the court can enter a
judgment ending your rights to your child. If the judgment terminates your parental rights, you will no longer have any rights to your child. This means that you will not have the right to visit, contact, or have custody of your child or make any decisions affecting your child or your child's earnings or property. Your child will be legally freed to be adopted by someone else. Even if your parental rights are terminated: (1) You will still be responsible for providing financial support (child support payments) for your child's care unless and until your child is adopted; and (2) Your child can still inherit from you unless and until your child is adopted. This is a very serious matter. You should contact an attorney immediately so that you can be prepared for the court hearing. You have the right to hire an attorney and to have him or her represent you. If you cannot afford to hire an attorney, the court will appoint an attorney if the court finds that you are an indigent person. Whether or not you decide to hire an attorney, you have the right to attend the hearing of your case, to call witnesses on your behalf, and to question those witnesses brought against you. If you have any questions concerning this notice, you may call the telephone number of the clerk's office which is __________.

§ 15-11-285. Sanctions for failure to obey summons
(a) If any person named in and properly served with a summons shall without reasonable cause fail to appear or, when directed in the summons, to bring the child named in the petition pursuant to this article before the court, then the court may issue a rule nisi against the person, directing the person to appear before the court to show cause why he or she should not be held in contempt of court. (b) If a 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 named in the petition pursuant to this article into protective custody.

§ 15-11-300. Notice of hearings to specified parties
(a) In advance of each hearing to terminate parental rights, DFCS shall give written notice of the date, time, place, and purpose of the hearing to the caregiver of the child at issue, the foster parents of such child, if any, any preadoptive parent, or any relative providing care for such child, including the right to be heard. The written notice shall be delivered to the recipient at least 72 hours before the review or hearing by United States mail, e-mail, or hand delivery. (b) This Code section shall not be construed to require a caregiver, foster parent, preadoptive parent, or relative caring for the child at issue to be made a party to the hearing solely on the basis of such notice and right to be heard.

§ 15-11-301. Expedited hearings; orders
(a) If 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. (b) If no just cause for delay has been shown by written finding of fact by the court, 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. (c) All hearings contemplated by this article shall be recorded by stenographic notes or by electronic, mechanical, or other appropriate means capable of accurately capturing a full and complete record of all words spoken during the hearings. If no just cause for delay has been shown, the court reporter shall provide a transcript of the hearings no later than 30 days after a notice of appeal is filed. (d) This Code section shall not affect the right to request a rehearing or the right to appeal the juvenile court's order. (e) Failure to comply with the time requirements of this Code section shall not be grounds to invalidate an otherwise
proper order terminating parental rights unless the court determines that such delay resulted in substantial prejudice to a party.

§ 15-11-302. Confidentiality of testimony of parties  
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 dependency or termination proceedings involving the same child or dependency or termination proceedings involving the same respondent.

§ 15-11-303. Standard of proof  
In all proceedings under this article, the standard of proof to be adduced to terminate parental rights shall be by clear and convincing evidence.

§ 15-11-310. Grounds for determining termination of parental rights  
(a) In considering the termination of parental rights, the court shall first determine whether one of the following statutory grounds for termination of parental rights has been met: (1) The parent has given written consent to termination which has been acknowledged by the court or has voluntarily surrendered his or her child for adoption; (2) The parent has subjected his or her child to aggravated circumstances; (3) The parent has wantonly and willfully failed to comply for a period of 12 months or longer with a decree to support his or her child that has been entered by a court of competent jurisdiction of this or any other state; (4) A child is abandoned by his or her parent; or (5) A child is a dependent child due to lack of proper parental care or control by his or her parent, reasonable efforts to remedy the circumstances have been unsuccessful or were not required, such cause of dependency is likely to continue or will not likely be remedied, and the continued dependency will cause or is likely to cause serious physical, mental, emotional, or moral harm to such child. (b) If any of the statutory grounds for termination has been met, the court shall then consider whether termination is in a child's best interests after considering the following factors: (1) Such child's sense of attachments, including his or her sense of security and familiarity, and the continuity of affection for such child; (2) Such child's wishes and long-term goals; (3) Such child's need for permanence, including his or her need for stability and continuity of relationships with a parent, siblings, and other relatives; and (4) Any other factors, including the factors set forth in Code Section 15-11-26, considered by the court to be relevant and proper to its determination. (c) If the court determines that a parent has subjected his or her child to aggravated circumstances because such parent has committed the murder of the other parent of such child, the court shall presume that termination of parental rights is in the best interests of the child.

§ 15-11-311. Determination of whether child is without proper parental care and control  
(a) In determining whether a child is without proper parental care and control, the court shall consider, without being limited to, the following: (1) A medically verified deficiency of such child's parent's physical, mental, or emotional health that is of such duration or nature so as to render such parent unable to provide adequately for his or her child; (2) Excessive use of or history of chronic unrehabilitated substance abuse with the effect of rendering a parent of such child incapable of providing adequately for the physical, mental, emotional, or moral condition
and needs of his or her child; (3) A felony conviction and imprisonment of a parent of such child for an offense which has a demonstrably negative effect on the quality of the parent-child relationship including, but not limited to, any of the following: (A) Murder of another child of such parent; (B) Voluntary manslaughter of another child of such parent; (C) Voluntary manslaughter of the other parent of his or her child; (D) Aiding or abetting, attempting, conspiring, or soliciting to commit murder or voluntary manslaughter of another child of such parent; (E) Aiding or abetting, attempting, conspiring, or soliciting to commit murder or voluntary manslaughter of the other parent of his or her child; or (F) Committing felony assault that results in serious bodily injury to his or her child or another child of such parent; (4) Egregious conduct or evidence of past egregious conduct of a physically, emotionally, or sexually cruel or abusive nature by such parent toward his or her child or toward another child of such parent; (5) Physical, mental, or emotional neglect of his or her child or evidence of past physical, mental, or emotional neglect by the parent of such child or another child of such parent; and (6) Serious bodily injury or death of a sibling of his or her child under circumstances which constitute substantial evidence that such injury or death resulted from parental neglect or abuse.

(b) In determining whether a child who is not in the custody and care of his or her parent is without proper parental care and control, the court shall also consider, without being limited to, whether such parent, without justifiable cause, has failed significantly for a period of six months prior to the date of the termination hearing: (1) To develop and maintain a parental bond with his or her child in a meaningful, supportive manner; (2) To provide for the care and support of his or her child as required by law or judicial decree; and (3) To comply with a court ordered plan designed to reunite such parent with his or her child. (c) A parent's reliance on prayer or other religious nonmedical means for healing in lieu of medical care, in the exercise of religious beliefs, shall not be the sole basis for determining a parent to be unwilling or unable to provide safety and care adequate to meet his or her child's physical, emotional, and mental health needs as provided in paragraph (1) of subsection (a) of this Code section or as depriving such child of proper parental care or control for purposes of this Code section and Code Section 15-11-310.

§ 15-11-320. Termination of parental rights; findings; standard of proof
(a) When the court finds that any ground set out in Code Section 15-11-310 is proved by clear and convincing evidence and that termination of parental rights is in a child's best interests, it shall order the termination of the parent's rights. (b) The court's order shall: (1) Contain written findings on which the order is based, including the factual basis for a determination that grounds for termination of parental rights exist and that termination is in the best interests of the child; (2) Be conclusive and binding on all parties from the date of entry; (3) Grant custody of the child at issue in accordance with Code Section 15-11-321; and (4) Inform the parent whose rights have been terminated of his or her right to use the services of the Georgia Adoption Reunion Registry; however, failure to include such information shall not affect the validity of the judgment. (c) If the court does not order the termination of parental rights but the court finds that there is clear and convincing evidence that a child is a dependent child, the court may enter a disposition order in accordance with the provisions of Article 3 of this chapter. (d) 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 within 15 days of the filing of such order.

§ 15-11-321. Custody of child following termination proceedings or surrender of parental rights
(a) When a court enters an order terminating the parental rights of a parent or accepts a parent's voluntary surrender of parental rights, or a petition for termination of parental rights is withdrawn because a parent has executed an act of surrender in favor of the department, a placement may be made only if the court finds that such placement is in the best interests of the child and in accordance with such child's court approved permanency plan created pursuant to Code Sections 15-11-231 and 15-11-232. In determining which placement is in a child's best interests, the court shall enter findings of fact reflecting its consideration of the following: (1) Such child's need for a placement that offers the greatest degree of legal permanence and security; (2) The least disruptive placement for such child; (3) Such child's sense of attachment and need for continuity of relationships; (4) The value of biological and familial connections; and (5) Any other factors the court deems relevant to its determination. (b) A guardian or legal custodian shall submit to the jurisdiction of the court for purposes of placement. (c) A placement effected under the provisions of this Code section shall be conditioned upon the person who is given custody or who is granted an adoption of a child whose parents have had their parental rights terminated or surrendered agreeing to abide by the terms and conditions of the order of the court. (d) In addition to its rights as a legal custodian, the department has the authority to consent to the adoption of a child whose parents have had their parental rights terminated or surrendered.

§ 15-11-322. Continuing court review when child not adopted
(a) If a petition seeking the adoption of a child whose parents have had their parental rights terminated or surrendered is not filed within six months after the date of the disposition order, the court shall then, and at least every six months thereafter so long as such child remains unadopted, review the circumstances of such child to determine what efforts have been made to assure that such child will be adopted. The court shall: (1) Make written findings regarding whether reasonable efforts have been made to move such child to permanency; (2) Evaluate whether, in light of any change in circumstances, the permanency plan for such child remains appropriate; and (3) Enter such orders as it deems necessary to further adoption or if appropriate, other permanency options, including, but not limited to, another placement. (b) In those cases in which a child whose parents have had their parental rights terminated or surrendered was placed with a guardian, within 60 days after such appointment and within 60 days after each anniversary date of such appointment, the guardian shall file with the court a personal status report of such child which shall include: (1) A description of such child's general condition, changes since the last report, and such child's needs; (2) All addresses of such child during the reporting period and the living arrangements of such child for all addresses; and (3) Recommendations for any modification of the guardianship order.

15-11-323. Reinstatement of Parental Rights procedures
(a) A child who has not been adopted after the passage of at least three years from the date the court terminated parental rights or the parent voluntarily surrendered parental rights to DFCS and for whom the court has determined that adoption is no longer the permanent plan may petition the court to reinstate parental rights pursuant to the modification of orders procedure prescribed by Code Section 15-11-32. Such child may file the petition to reinstate parental rights prior to the expiration of such three-year period if the department or licensed child-placing agency that is responsible for the custody and supervision of such child and such child stipulate that such child is no longer likely to be adopted. A child 14 years of age or older shall sign the petition in the absence of a showing of good cause as to why such child could not do so. (b) If it appears that
the best interests of a child may be promoted by reinstatement of parental rights, the court shall order that a hearing be held and shall cause notice to be served by United States mail to DFCS, the attorney of record, guardian ad litem, if any, and foster parents, if any, of the child whose parental rights were terminated or surrendered and the child's former parent whose parental rights were terminated or surrendered. The former parent and foster parents, if any, shall have a right to be heard at the hearing to reinstate parental rights but shall not be parties at such hearing, and such hearing may be conducted in their absence. A child's motion shall be dismissed if his or her former parent cannot be located or if such parent objects to the reinstatement. (c) The court shall grant the petition if it finds by clear and convincing evidence that a child is no longer likely to be adopted and that reinstatement of parental rights is in the child's best interests. In determining whether reinstatement is in the child's best interests the court shall consider, but not be limited to, the following: (1) Whether a parent whose rights are to be reinstated is a fit parent and has remedied his or her deficits as provided in the record of the prior termination proceedings and prior termination order; (2) The age and maturity of a child and the ability of such child to express his or her preference; (3) Whether the reinstatement of parental rights will present a risk to a child's health, welfare, or safety; and (4) Other material changes in circumstances, if any, that may have occurred which warrant the granting of the petition. (d) If the court grants the petition to reinstate parental rights, a review hearing shall be scheduled within six months. During such period, the court may order that a child be immediately placed in the custody of his or her parent or, if the court determines that a transition period is necessary and such child is in DFCS custody at the time of the order, order DFCS to provide transition services to the family as appropriate. (e) An order granted under this Code section reinstates a parent's rights to his or her child. Such reinstatement shall be a recognition that the situation of the parent and his or her child has changed since the time of the termination of parental rights and reunification is now appropriate. (f) This Code section is intended to be retroactive and applied to any child who is under the jurisdiction of the court at the time of the hearing regardless of the date parental rights were terminated.

§ 15-11-700. Admission to hearings of general public and media
(a) As used in this Code section, the term 'dependency proceeding' means a court proceeding stemming from a petition alleging that a child is a dependent child. (b) The general public shall be admitted to: (1) An adjudicatory hearing involving an allegation of a class A designated felony act or class B designated felony act; (2) An adjudicatory hearing involving an allegation of delinquency brought in the interest of any child who has previously been adjudicated for committing a delinquent act; 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 dependency; (3) Any child support hearing; (4) Any hearing in a legitimation action filed pursuant to Code Section 19-7-22; (5) At the court's discretion, any dispositional hearing involving any proceeding under this article; or (6) Any hearing in a dependency proceeding, except as otherwise provided in subsection (c) of this Code section. (c) The court may close the hearing in a dependency proceeding only upon making a finding upon the record and issuing a signed order stating the reason or reasons for closing all or part of a hearing in such proceeding and stating that: (1) The proceeding involves an allegation of an act which, if done by an adult, would constitute a sexual offense under Chapter 6 of Title 16; or (2) It is in the best interests of the child. In making such a determination, the court shall consider such factors as: (A) The age of the child alleged or adjudicated as a dependent
child; (B) The nature of the allegations; (C) The effect that an open court proceeding will have on the court's ability to reunite and rehabilitate the family unit; and (D) Whether the closure is necessary to protect the privacy of a child, of a foster parent or other caretaker of a child, or of a victim of domestic violence. (d) The court may close a hearing or exclude a person from a hearing in any proceeding on its own motion, by motion of a party to the proceeding, or by motion of the child who is the subject of the proceeding or the child's attorney or guardian ad litem. (e) Only the parties, their counsel, witnesses, persons accompanying a party for his or her assistance, the victim, 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 to hearings from which the public is excluded; provided, however, that when the conduct alleged in the dependency proceeding could give rise to a criminal or delinquent act prosecution, attorneys for the prosecution and the defense shall be admitted. (f) The court may refuse to admit a person to a hearing in any proceeding upon making a finding upon the record and issuing a signed order that the person's presence at the hearing would: (1) Be detrimental to the best interests of the child who is a party to the proceeding; (2) Impair the fact-finding process; or (3) Be otherwise contrary to the interest of justice. (g) The court may temporarily exclude any child from a termination of parental rights hearing except while allegations of his or her delinquency or child in need of services conduct are being heard. (h) Any request for installation and use of electronic recording, transmission, videotaping, or motion picture or still photography of any judicial proceeding shall be made to the court at least two days in advance of the hearing. The request shall be evaluated by the court pursuant to the standards set forth in Code Section 15-1-10.1. (i) The judge may order the media not to release identifying information concerning any child or family members or foster parent or other caretaker of a child involved in hearings open to the public. (j) The general public shall be excluded from proceedings in juvenile court unless such hearing has been specified as one in which the general public shall be admitted to pursuant to this Code section.

§ 15-11-704. Public inspection of court files and records; use in subsequent juvenile or criminal prosecution
(a) Except as provided in subsection (b) of this Code section and Code Sections 15-11-705 and 15-11-706, all files and records of the court in a proceeding under this chapter shall be open to inspection only upon order of the court. (b) The general public shall be allowed to inspect court files and records for any proceeding that was open to the public pursuant to paragraphs (1) through (5) of subsection (b) of Code Section 15-11-700. (c) A judge may permit authorized representatives of recognized organizations compiling statistics for proper purposes to inspect and make abstracts from official records under whatever conditions upon their use and distribution such judge may deem proper and may punish by contempt any violation of those conditions. (d) A judge shall permit authorized representatives of DJJ, the Governor's Office for Children and Families, and the Council of Juvenile Court Judges to inspect and extract data from any court files and records for the purpose of obtaining statistics on children and to make copies pursuant to the order of the court. (e) Except as otherwise provided in Code Sections 15-11-701 and 15-11-703, the complaint, petition, order of adjudication, and order of disposition in any delinquency case shall be disclosed upon request of the prosecuting attorney or the accused for use preliminarily to or in conjunction with a subsequent juvenile or criminal proceeding in a court of record.

§ 19-7-22. (For effective date, see note.) Petition for legitimation of child;
requirement that mother be named as a party; court order; effect; claims for custody or visitation; third-party action for legitimation in response to petition to establish paternity

(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) (For effective date, see note.) A legitimation petition may be filed, pursuant to Code Section 15-11-11, in the juvenile court of the county in which a dependency 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 Services, 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 Services 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.
Chapter 9  Post-Termination of Parental Rights Matters

Contribution by Stephany L. Zaic, JD, CWLS

Reinstatement of Parental Rights

<table>
<thead>
<tr>
<th>Authority</th>
<th>§ 15-11-323</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purpose</td>
<td></td>
</tr>
<tr>
<td>§ 15-11-1</td>
<td>To re-establish the legal relationship between the child and former parents following a termination of parental rights</td>
</tr>
<tr>
<td>§ 15-11-1</td>
<td>To secure for each child who comes within the jurisdiction of the juvenile court such care and guidance as will secure the child’s moral, emotional, mental and physical welfare as well as the safety of the child and the community.</td>
</tr>
<tr>
<td>§ 15-11-1</td>
<td>To enable the child to live in security and stability.</td>
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<tr>
<td>§ 15-11-1</td>
<td>To determine and ensure the best interests of the child.</td>
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<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>§ 15-11-32(b)</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 15-11-32(b)</td>
<td>Court has authority to hear petition.</td>
</tr>
<tr>
<td>§ 15-11-32(b)</td>
<td>Court’s order may be changed, modified or vacated when changed circumstances so require in the child’s best interests.</td>
</tr>
<tr>
<td>§ 15-11-10(1)(C)</td>
<td>Child under 18 years alleged to be a dependent in the state.</td>
</tr>
<tr>
<td>§ 15-11-10(1)(G)</td>
<td>Petition must state factual basis of jurisdiction.</td>
</tr>
<tr>
<td>§ 15-11-10(1)(G)</td>
<td>Child remaining in foster care after 18 years old or</td>
</tr>
<tr>
<td>§ 15-11-10(1)(G)</td>
<td>Child is 18 years or older and receiving independent living services.</td>
</tr>
<tr>
<td>§ 15-11-10(1)(G)</td>
<td>Limited jurisdiction to review the status of the child and the services provided to the child for independent living or foster care.</td>
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<thead>
<tr>
<th>§ 15-11-12 Dual Jurisdiction Child</th>
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<thead>
<tr>
<th>Petition</th>
<th>§ 15-11-16 and § 15-11-323(a)</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 15-11-16 and § 15-11-323(a)</td>
<td>Right to file petition for reinstatement of parental rights belongs solely to the child.</td>
</tr>
<tr>
<td>§ 15-11-16 and § 15-11-323(a)</td>
<td>Requirements for a child to be able to file petition – allege in the petition:</td>
</tr>
<tr>
<td>§ 15-11-16 and § 15-11-323(a)</td>
<td>Child has not been adopted after at least 3 years from the date the court terminated parental rights or the date the parent voluntarily surrendered to DFCS</td>
</tr>
<tr>
<td>§ 15-11-16 and § 15-11-323(a)</td>
<td>Prior to the expiration of the 3-year time period, DFCS or</td>
</tr>
<tr>
<td>Endorsement and Rule Nisi</td>
<td></td>
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<tr>
<td>--------------------------</td>
<td></td>
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<tr>
<td><strong>§ 15-11-323(b)</strong></td>
<td></td>
</tr>
<tr>
<td>• Court will execute endorsement and issue notice of hearing if it appears child’s best interests may be promoted by reinstatement.</td>
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<thead>
<tr>
<th>Venue</th>
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<tr>
<td><strong>§ 15-11-4</strong></td>
</tr>
<tr>
<td>• Where procedures are not provided in this chapter, the court shall proceed in accordance with Chapter 11 of Title 9 in all other matters except a delinquency proceeding. However, venue is addressed in Chapter 10 of the Civil Practice Act.</td>
</tr>
</tbody>
</table>

| **§ 15-11-125** |
| A proceeding may be commenced |
| • in the county where child legally resides or |
| • in the county of child’s presence at commencement of action if the child is present without a custodian or the acts underlying the dependency occurred in that county. |

<table>
<thead>
<tr>
<th>Transfer of Venue</th>
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<tbody>
<tr>
<td>• Venue may be transferred to child’s county of legal residence for the convenience of parties.</td>
</tr>
<tr>
<td>• 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.</td>
</tr>
</tbody>
</table>

| **§ 15-11-105(h)** |
| If change of venue, GAL shall forward pertinent information to next GAL appointed. |

| Practice Note: County where TPR was granted is most likely the county who has legal custody of the child following the TPR. |

<table>
<thead>
<tr>
<th>Parties</th>
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<tbody>
<tr>
<td><strong>§ 15-11-323(b)</strong></td>
</tr>
<tr>
<td>• Parties are the child and DFCS.</td>
</tr>
<tr>
<td>• Child’s former parents and child’s foster parents have a right to be heard during the hearing on the petition, but they are not parties to the proceeding: the hearing may be conducted in their absence.</td>
</tr>
</tbody>
</table>

| **§ 15-11-262(e) and 15-11-103** |
| • Court is not required to appoint a GAL in reinstatement proceedings. |
| • If appointed, GALs (lay and attorney) are not parties. |

<table>
<thead>
<tr>
<th>Service and Notice</th>
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<tbody>
<tr>
<td><strong>§ 15-11-323(b)</strong></td>
</tr>
<tr>
<td>• Court must serve notice of the hearing by U.S. mail on the</td>
</tr>
</tbody>
</table>
following: DFCS, child’s attorney of record, GAL if any, child’s foster parents, and child’s former parents.

<table>
<thead>
<tr>
<th>Mediation</th>
<th>§ 15-11-20 through 25</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• Court may refer reinstatement proceeding to mediation.</td>
</tr>
<tr>
<td></td>
<td>• Court may stay reinstatement proceeding following mediation referral.</td>
</tr>
<tr>
<td></td>
<td>• Mediation must be scheduled within 30 days of the court’s referral.</td>
</tr>
<tr>
<td></td>
<td>• Mediation agreement shall be made the order of the court unless the court, after further hearing, determines by clear and convincing evidence the mediation agreement is not in the child’s best interests.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Standard of Proof</th>
<th>§ 15-11-323(c)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• Clear and convincing evidence that child is no longer likely to be adopted and reinstatement is in child’s best interests.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Evidence</th>
<th>§ 15-11-17</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• Hearings shall be conducted in accordance with Title 24 Rules of Evidence, §§ 24-1-103 to 24-10-1003.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Rights of Parties</th>
<th>§ 15-11-19</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• Parties have a right to be present, to be heard, to present evidence material to the proceedings, to cross-examine witnesses, to examine pertinent court files and records, and to appeal the orders of the court.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Right to Attorney</th>
<th>§15-11-262(a) Child’s Right to Counsel</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• Child has the right to an attorney at all stages of the proceedings under Article 4.</td>
</tr>
<tr>
<td></td>
<td>• Attorney-client relationship duties owed.</td>
</tr>
<tr>
<td></td>
<td>• Unless approved by the court, the child and the child’s representative cannot waive the child’s right to an attorney.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Right to Attorney</th>
<th>§15-11-262(i) and 15-11-323(b)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• Former parents and the child’s foster parents do not have a right to an attorney under Article 4.</td>
</tr>
<tr>
<td></td>
<td>• Former parents and the child’s foster parents are not parties to the reinstatement proceeding.</td>
</tr>
<tr>
<td></td>
<td>• Neither former parents nor the child’s foster parents have a due process right under the United States Constitution or the State of Georgia Constitution.</td>
</tr>
</tbody>
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<table>
<thead>
<tr>
<th>Discovery</th>
<th>§ 15-11-264</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• Upon written request to the party having actual custody, control, or possession of the material to be produced, any party shall have full access to the following for inspection, copying, or photographing:</td>
</tr>
<tr>
<td></td>
<td>o Information for each witness likely to be called to testify at the hearing</td>
</tr>
<tr>
<td></td>
<td>o Any formal written statement made by the child or any witness that the party intends to call as witness at the hearing</td>
</tr>
</tbody>
</table>
• Scientific or other report which is intended to be introduced or pertaining to physical evidence intended to be introduced at the hearing
  o Drug screen of the child or the former parent
  o Any case plan for the child or the former parent
  o Any visitation schedule related to the child
  o Photographs and any physical evidence intended to be introduced at the hearing
  o Any other relevant evidence not requiring consent or a court order.

• Upon presentation of a court order or release of information, parties shall have access to the following documents from one another, provided the party has actual possession of the documents:
  o Psychological evaluation; developmental assessment; physical, mental, or emotional health assessment of child or child’s former parent
  o Child’s school records
  o Child’s medical records
  o Any family team meeting or multi-disciplinary team meeting report concerning the child or the former parent
  o Immigration records concerning child
  o Transcripts, recordings and summaries of any oral statement made by child or any witness.
  o Exceptions: child abuse and neglect report received by DFCS and anything covered by attorney work product.

• Reciprocal discovery obligations: If a party requests the above discovery, that party must promptly make the following available
  o Names and contact information for each witness to occurrence that forms basis of party’s defense or claim
  o Scientific or other report which is intended to be introduced or pertaining to physical evidence intended to be introduced at the hearing
  o Photographs and any physical evidence intended to be introduced at the hearing
  o Copy of any written statement made by any witness that the party intends to call as a witness at the hearing.

• Timing of discovery responses:
  o Responses due no later than 5 days after request is made, or
  o 72 hours prior to any hearing,
  o Except when later compliance is required based upon the timing of the discovery request.
  o If discovery request is made less than 48 hours before the adjudicatory hearing, responses to be produced in a timely manner.

• If a party fails to respond to the above discovery requests, option to file motion for discovery.
<table>
<thead>
<tr>
<th>Grounds for Dismissal</th>
<th>§ 15-11-323(b)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• Court shall dismiss child’s reinstatement petition if</td>
</tr>
<tr>
<td></td>
<td>o former parent cannot be located or</td>
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<tr>
<td></td>
<td>o former parent objects to reinstatement.</td>
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</table>

<table>
<thead>
<tr>
<th>Grounds for Granting of Petition</th>
<th>§ 15-11-26 and 323(c) and (e)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• Court shall grant petition if:</td>
</tr>
<tr>
<td></td>
<td>o court finds child is no longer likely to be adopted and</td>
</tr>
<tr>
<td></td>
<td>o reinstatement is in child’s best interests.</td>
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<tr>
<td></td>
<td>• Court must find that the situation between parent and child has</td>
</tr>
<tr>
<td></td>
<td>changed since the TPR order, and reunification is now appropriate.</td>
</tr>
<tr>
<td></td>
<td>• Best interests evaluation shall include:</td>
</tr>
<tr>
<td></td>
<td>o whether former parent is a fit parent and has sufficiently</td>
</tr>
<tr>
<td></td>
<td>addressed parental deficits identified in TPR proceedings</td>
</tr>
<tr>
<td></td>
<td>and TPR order.</td>
</tr>
<tr>
<td></td>
<td>o child’s age, maturity and ability to express a parental</td>
</tr>
<tr>
<td></td>
<td>preference.</td>
</tr>
<tr>
<td></td>
<td>o whether reinstatement will present a risk to the child’s</td>
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<td></td>
<td>health, welfare and safety.</td>
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<tr>
<td></td>
<td>o any other material changes in circumstances that would</td>
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<td></td>
<td>warrant reinstatement.</td>
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<tr>
<td></td>
<td>o factors identified in § 15-11-26.</td>
</tr>
<tr>
<td>Access to Hearings and Records</td>
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<tr>
<td>--------------------------------</td>
<td></td>
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<tr>
<td>§ 15-11-700(j)</td>
<td></td>
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<tr>
<td>• General public is excluded from the reinstatement hearing.</td>
<td></td>
</tr>
<tr>
<td>§ 15-11-704</td>
<td></td>
</tr>
<tr>
<td>• General public may only inspect court files and records on reinstatement cases upon order of the court.</td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Confidentiality of Testimony</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 15-11-302</td>
</tr>
<tr>
<td>• Record of testimony of the parties obtained in any hearing under TPR Article is <strong>not</strong> admissible in any civil, criminal or proceedings in any other court against person named as respondent for any purpose.</td>
</tr>
<tr>
<td>• Exception: when used in subsequent dependency or termination proceedings in case involving the same child.</td>
</tr>
<tr>
<td>• Exception: when used in subsequent dependency or termination proceedings in case involving the same respondent.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Order following Reinstatement Hearing</th>
</tr>
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<tbody>
<tr>
<td>§ 15-11-323(d) and (e)</td>
</tr>
<tr>
<td>• Following the grant of the child’s reinstatement petition, court may order that the child is immediately placed in parent’s custody.</td>
</tr>
<tr>
<td>• If court determines a transition period is necessary and the child is in DFCS’ permanent custody prior to the reinstatement order, court may order DFCS to provide transition services to the family as appropriate.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Impact of Order Granting Petition</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 15-11-323(e)</td>
</tr>
<tr>
<td>• Reinstates all legal rights, power, privileges, immunities, duties and obligations of parent and child to each other.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Post-Reinstatement Review Hearing</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 15-11-323(d)</td>
</tr>
<tr>
<td>• Following the court’s reinstatement of parental rights, a review hearing shall be scheduled (not held) within 6 months.</td>
</tr>
<tr>
<td>• If court ordered DFCS to provide transition services to the family following the reinstatement of parental rights, those transition services can be reviewed in the hearing.</td>
</tr>
</tbody>
</table>

**Practice note:** The reinstatement statutory provision does not include a reasonable efforts requirement for the transition services provided by DFCS.

---

**Post-Adoption Contact Agreements**

<table>
<thead>
<tr>
<th>Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 19-8-27</td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>Definitions</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 19-8-27(a) and (d)(1)</td>
</tr>
<tr>
<td>• “Birth relative” means:</td>
</tr>
<tr>
<td>o Mother, legal father, and biological father who is not the legal father</td>
</tr>
<tr>
<td>o Grandparent, full or half-brother, full or half-sister who</td>
</tr>
</tbody>
</table>
| **What is a Post-Adoption Contact Agreement?** | is related by blood or by marriage to the child who is being or has been adopted  
  o Grandparent, full or half-brother, full or half-sister who is related by adoption to the child who is being or has been adopted.  
  **Parties:**  
  o The people who signed the post-adoption contact agreement; could include any of the birth relatives, as defined above  
  o Shall include the child if the child is 14 years of age or older at the time of the filing of a legal proceeding regarding the post-adoption contact agreement.  
  o Party does not include any third-party beneficiary to the post-adoption contact agreement. |
| **Jurisdiction** | **§§ 19-8-2 and 19-8-27(a)(4)**  
  • Petition for adoption is filed with the superior court in the county where the petitioner resides.  
  • The superior court that granted the adoption petition has jurisdiction over the post-adoption contact agreement and continuing jurisdiction for the purposes of enforcement and modification or termination of the agreement.  
  • The parties to the agreement may expressly waive the right to enforce, modify or terminate the agreement. |
| | **§ 19-8-27(B)(1) and (2)**  
  • The agreement is a vehicle by which the birth relatives, the adoptive parents, and the child, if 14 years or older, can agree to ongoing opportunities otherwise not available to the birth relatives.  
  **Practice notes:**  
  • The agreement should be drafted such that it is clearly based upon the best interests of the child, rather than the preferences of the birth relatives or the adoptive parents.  
  • The agreement can include revised or increasing forms of contact as the child gets older. The agreement can also set a time (for example, when the child reaches a specific age) when the parties agree to revisit and consider a modification of the terms of the agreement.  
  • The agreement is voluntary.  
  o A birth parent’s decision to place a child for adoption cannot be contingent upon the execution of a post-adoption contact agreement.  
  o A birth parent cannot be promised contact with the child through an agreement in order to convince the birth parent to place the child for adoption. |
Ongoing opportunities are statutorily defined to include visitation, contact, the sharing of information regarding the child, and the sharing of information regarding the birth relatives.

**Practice notes:**
- Contact can include meetings between the birth relatives and adoptive parents, the exchange of age-appropriate letters and cards, gifts telephone calls, social media exchanges, photos, videos and emails.
- Language regarding social media exchanges should address both contact between the child and the birth relatives, and any limitations on the birth relatives’ distribution of information regarding the child through social media.
- Post-adoption contact can be limited to the sharing of information (e.g., the child’s developmental milestones, health of the child and the birth relatives, and the child’s interests) between the birth relatives and the adoptive parents, or contact can be as broad as the parties agree to (e.g., celebrating the child’s birthdays together). The agreement needs to clearly describe the intent of the parties.
- The agreement should clearly define the form of contact, frequency of contact, and location of contact.
- The agreement should identify how the adoptive parents will have ongoing access to the genetic and medical information of the birth relatives when the information is needed for the care of the child. For example, the birth parent could agree to provide the adoptive parents with information on any developments in the health of the mother, the mother’s extended family, and the mother’s other children.
- The agreement is a format for preserving the child’s connection to his or her ethnic and cultural heritage. The agreement should identify how this goal will be accomplished.
- The agreement will define the role of the birth relatives in the child’s life. Therefore, the agreement needs to define the parties’ boundaries in basic and understandable terms.
- Boundaries should include how the agreement will be impacted by the relocation of the birth relatives or the adoptive parents.
- If appropriate, the attorney can encourage pre-adoptive or adoptive parents to explore the possibilities of a post-adoption contact agreement with a therapist skilled in adoption issues.

<table>
<thead>
<tr>
<th>Required Language in the Agreement</th>
<th>§ 19-8-27(c)</th>
</tr>
</thead>
<tbody>
<tr>
<td>- The post-adoption contact agreement must include the following language verbatim in at least 14 point boldface type:</td>
<td>- The post-adoption contact agreement must include the following language verbatim in at least 14 point boldface type:</td>
</tr>
<tr>
<td>o After the entry of a decree for adoption, an adoption cannot be set aside due to the failure of an adopting</td>
<td>o After the entry of a decree for adoption, an adoption cannot be set aside due to the failure of an adopting</td>
</tr>
<tr>
<td>Requirements for Enforceability</td>
<td></td>
</tr>
<tr>
<td>--------------------------------</td>
<td></td>
</tr>
<tr>
<td>§ 19-8-27(b)(1) and (3)</td>
<td></td>
</tr>
<tr>
<td>- The agreement must be in writing.</td>
<td></td>
</tr>
<tr>
<td>- The agreement must be signed by all parties to the agreement including</td>
<td></td>
</tr>
<tr>
<td>- birth relatives.</td>
<td></td>
</tr>
<tr>
<td>- the child if the child is 14 years or older at the time of execution of the agreement.</td>
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<thead>
<tr>
<th>Filing with the Court</th>
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</thead>
<tbody>
<tr>
<td>§ 19-8-27(b)(5) and (d)(2)</td>
</tr>
<tr>
<td>- At any point in time, any party to the agreement can file the original agreement with the superior court that has or had jurisdiction over the adoption if the agreement either allows for court enforcement or the agreement is silent on the issue of enforcement.</td>
</tr>
<tr>
<td>- The agreement can be filed with the court before or after the court’s issuance of the final adoption order.</td>
</tr>
<tr>
<td>- At any point in time, any party to the modified agreement (see below) can file the original modified agreement with the superior court that has or had jurisdiction over the adoption if the agreement either allows for court enforcement or the agreement is silent on the issue of enforcement.</td>
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<thead>
<tr>
<th>Voluntary Modification or Termination</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 19-8-27(d)(2)</td>
</tr>
<tr>
<td>- At any time, parties can agree to voluntarily modify or terminate the agreement.</td>
</tr>
<tr>
<td>- Voluntary modification or voluntary termination of the agreement must be in writing.</td>
</tr>
<tr>
<td>- Voluntary modification or voluntary termination of the agreement must be signed by all of the parties.</td>
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<thead>
<tr>
<th>Court Enforcement or Termination</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 19-8-27(b)(5), (e) and (h)</td>
</tr>
<tr>
<td>- If the agreement either allows for court enforcement or the agreement is silent on the issue of enforcement, then any party to the agreement can file a petition to enforce or terminate the agreement.</td>
</tr>
<tr>
<td>- Petition must be filed with the superior court that has or had jurisdiction over the adoption.</td>
</tr>
<tr>
<td>- Standard of proof: Preponderance of the evidence.</td>
</tr>
<tr>
<td>- Ruling: To enforce or terminate the agreement, court must find that enforcement or termination is necessary to serve the best interests of the child.</td>
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</table>
### Court Modification

<table>
<thead>
<tr>
<th><strong>§ 19-8-27(f) and (h)</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>If the agreement either allows for court modification or the agreement is silent on the issue of modification, then only the adoptive parents can file a petition for modification of the agreement.</td>
</tr>
<tr>
<td>Petition must be filed with the superior court that has or had jurisdiction over the adoption.</td>
</tr>
<tr>
<td>Standard of proof: Preponderance of the evidence.</td>
</tr>
<tr>
<td>Ruling: To modify the agreement, court must find that modification is necessary to serve the best interests of the child and there has been a material change in circumstances since the agreement was executed.</td>
</tr>
<tr>
<td>Costs and expenses of litigation: Reasonable costs of the proceeding are the responsibility of the party who filed the action unless court finds a party, other than the child, failed to comply with the agreement without good cause shown.</td>
</tr>
</tbody>
</table>

### Mediation

<table>
<thead>
<tr>
<th><strong>§ 19-8-27(g) and (h)</strong></th>
</tr>
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<tbody>
<tr>
<td>Court has the authority to refer a proceeding for the enforcement, modification or termination of the agreement to mediation or other alternative dispute resolution.</td>
</tr>
</tbody>
</table>

**Practice note:** Address in the agreement whether the parties agree to participate in mediation prior to litigation.

- Reasonable costs of mediation are the responsibility of the party who filed the action unless court finds a party, other than the child, failed to comply with the agreement without good cause shown.

### Relief Not Available

<table>
<thead>
<tr>
<th><strong>§ 19-8-27(i)</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>If a birth relative, adoptive parent, or the child fails to comply with the original or the modified agreement, the court cannot:</td>
</tr>
</tbody>
</table>
  - Set aside the adoption order |
  - Rescind the surrender of parental rights by the mother, legal father or biological father |
  - Modify an order terminating parental rights |
  - Modify any other prior order |

### Code Sections

<table>
<thead>
<tr>
<th><strong>§ 15-11-1. Purpose of chapter</strong></th>
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<tbody>
<tr>
<td>The purpose of this chapter is to secure for each child who comes within the jurisdiction of the</td>
</tr>
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</table>
juvenile court such care and guidance, preferably in his or her own home, as will secure his or her moral, emotional, mental, and physical welfare as well as the safety of both the child and community. It is the intent of the General Assembly to promote a juvenile justice system that will protect the community, impose accountability for violations of law, provide treatment and rehabilitation, and equip juvenile offenders with the ability to live responsibly and productively. It is the intent of the General Assembly to preserve and strengthen family relationships, countenancing the removal of a child from his or her home only when state intervention is essential to protect such child and enable him or her to live in security and stability. In every proceeding, this chapter seeks to guarantee due process of law, as required by the Constitutions of the United States and the State of Georgia, through which every child and his or her parent and all other interested parties are assured fair hearings at which legal rights are recognized and enforced. Above all, this chapter shall be liberally construed to reflect that the paramount child welfare policy of this state is to determine and ensure the best interests of its children.

§ 15-11-4. Other laws apply to chapter
Where procedures are not provided in this chapter, the court shall proceed in accordance with:

1. Title 17 in a delinquency proceeding; and
2. Chapter 11 of Title 9 in all other matters.

§ 15-11-16. Commencement of proceedings
(a) A proceeding under this chapter may be commenced:

1. By an order of transfer of a case from another court as provided in Code Section 15-11-11 or 15-11-567, subsection (f) of Code Section 29-2-6, or subsection (b) of Code Section 29-2-8;
2. By the summons, notice to appear, or other citation in a proceeding charging a juvenile traffic offense or a violation of the laws, rules, and regulations governing the Department of Natural Resources Game and Fish Division; or
3. By the filing of a petition for legitimation under Code Section 15-11-11, or in other cases by the filing of a complaint or a petition as provided in Articles 3, 4, 6, 7, 9, and 11 of this chapter.
(b) The petition and all other documents in the proceeding shall be entitled "In the interest of , a child," except upon appeal.
(c) On appeal, the anonymity of a child, and where appropriate, a victim or witness who is under the age of 18 years, shall be preserved by appropriate use of a child's, victim's, or witness's initials as appropriate.

§ 15-11-17. Conduct of hearings; anonymity on appeal
(a) All hearings under this chapter shall be conducted by the court without a jury. Any hearing may be adjourned from time to time within the discretion of the court.
(b) Except as otherwise provided, all hearings shall be conducted in accordance with Title 24.
(c) Proceedings shall be recorded by stenographic notes or by electronic, mechanical, or other appropriate means capable of accurately capturing a full and complete record of all words spoken during the proceedings.
(d) 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 chapter in any county within the judicial circuit. When a superior court
judge sits as a juvenile court judge, hearings in connection with any proceeding under this chapter may be heard before such judge in any county within the judicial circuit over which the judge presides.

§ 15-11-19. Rights of parties to proceedings
(a) A party has the right to be present, to be heard, to present evidence material to the proceedings, to cross-examine witnesses, to examine pertinent court files and records, and to appeal the orders of the court; provided, however, that the court shall retain the discretion to exclude a child from any part or parts of any proceeding under Article 3 of this chapter if the court determines that it is not in such child's best interests to be present. An attorney for an excluded child shall not be excluded from the proceedings.
(b) A person afforded rights under this chapter shall be advised of such rights at that person's first appearance before the court.

§ 15-11-20. Referral for mediation
(a) At any time during a proceeding under this chapter, the court may refer a case to mediation.
(b) When referring a case to mediation, the court shall take into consideration the guidelines from the Georgia Commission of Dispute Resolution for mediating cases involving domestic violence or family violence.
(c) A referral order shall recite that while the parties shall attend a scheduled mediation session and shall attempt to mediate in good faith, such parties shall not be required to reach an agreement.
(d) Victims in a delinquency case referred to mediation may attend and participate in such mediation, but shall not be required to do so as a condition of such case being heard by the juvenile court.

§ 15-11-21. Selection and appointment of mediator
(a) Once an order referring a case to mediation has been signed, the court shall appoint a mediator from a list of court approved mediators who are registered with the Georgia Office of Dispute Resolution to mediate juvenile court cases.
(b) The court shall appoint a qualified mediator within five days of signing the order referring the case to mediation.

§ 15-11-22. Agreement to mediate; procedure
(a) The parties shall sign and date a written agreement to mediate. The agreement to mediate shall identify the controversies between the parties, affirm the parties’ intent to resolve such controversies through mediation, and specify the circumstances under which mediation may continue. The agreement to mediate shall specify the confidentiality requirements of mediation and the exceptions to confidentiality in mediation as such are set forth in the Supreme Court of Georgia Alternative Dispute Resolution Rules and appendices.
(b) A mediator shall not knowingly assist the parties in reaching an agreement which would be unenforceable for reasons such as fraud, duress, the absence of bargaining ability, unconscionability, or lack of court jurisdiction.
(c) Prior to the parties signing an agreement to mediate, the mediator shall advise the parties that each of them may obtain review by an attorney of any agreement reached as a result of the mediation.
(d) The mediator shall at all times be impartial.

§ 15-11-23. Stay of proceeding pending mediation; time limitations
(a) Upon issuing a referral to mediation the court may stay the proceeding.
(b) Mediation shall occur as soon as practicable and be scheduled within 30 days of the order referring the matter to mediation unless the time frame is extended by the court.
(c) The court may extend the timeline for scheduling a mediation for an additional 30 days.

§ 15-11-24. Termination of mediation
(a) Either party in a mediation may withdraw from or terminate further participation in mediation at any time.
(b) A mediator shall terminate mediation when:
   (1) The mediator concludes that the participants are unable or unwilling to participate meaningfully in the process;
   (2) The mediator concludes that a party lacks the capacity to perceive and assert his or her own interests to the degree that a fair agreement cannot be reached;
   (3) The mediator concludes that an agreement is unlikely; or
   (4) The mediator concludes that a party is a danger to himself or herself or others.

§ 15-11-25. Approval of mediation agreements; exceptions
(a) All mediation agreements shall be presented to the juvenile court judge for approval.
(b) The mediation agreement shall be made an order of the court unless, after further hearing, the court determines by clear and convincing evidence that the agreement is not in the best interests of the child.

§ 15-11-26. Best interests of child
Whenever a best interests determination is required, the court shall consider and evaluate all of the factors affecting the best interests of the child in the context of such child's age and developmental needs. Such factors shall include:
   (1) The physical safety and welfare of such child, including food, shelter, health, and clothing;
   (2) The love, affection, bonding, and emotional ties existing between such child and each parent or person available to care for such child;
   (3) The love, affection, bonding, and emotional ties existing between such child and his or her siblings, half siblings, and stepsiblings and the residence of such other children;
   (4) Such child's need for permanence, including such child's need for stability and continuity of relationships with his or her parent, siblings, other relatives, and any other person who has provided significant care to such child;
   (5) Such child's sense of attachments, including his or her sense of security and familiarity, and continuity of affection for such child;
   (6) The capacity and disposition of each parent or person available to care for such child to give him or her love, affection, and guidance and to continue the education and rearing of such child;
   (7) The home environment of each parent or person available to care for such child considering the promotion of such child's nurturance and safety rather than superficial or material factors;
   (8) The stability of the family unit and the presence or absence of support systems within the community to benefit such child;
(9) The mental and physical health of all individuals involved;
(10) The home, school, and community record and history of such child, as well as any health
or educational special needs of such child;
(11) Such child's community ties, including church, school, and friends;
(12) Such child's background and ties, including familial, cultural, and religious;
(13) The least disruptive placement alternative for such child;
(14) The uniqueness of every family and child;
(15) The risks attendant to entering and being in substitute care;
(16) Such child's wishes and long-term goals;
(17) The preferences of the persons available to care for such child;
(18) Any evidence of family violence, substance abuse, criminal history, or sexual, mental, or
physical child abuse in any current, past, or considered home for such child;
(19) Any recommendation by a court appointed custody evaluator or guardian ad litem; and
(20) Any other factors considered by the court to be relevant and proper to its determination.

§ 15-11-32. Modification or vacation of orders

(a) An order of the court shall be set aside if:
   (1) It appears that it was obtained by fraud or mistake sufficient therefor in a civil action;
   (2) The court lacked jurisdiction over a necessary party or 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 interests of a child except an order of dismissal following a
contested adjudicatory hearing.
(c) Except as otherwise provided in Code Section 15-11-602, an order committing a child to DJJ
may only be modified after such child has been transferred to DJJ custody upon motion of DJJ.
(d) An order of adjudication of delinquency by a court may be modified or vacated if the child
was adjudicated for a delinquent act for a sexual crime as defined in Code Section 16-3-6 and
such crime resulted from the child being:
   (1) Trafficked for sexual servitude in violation of Code Section 16-5-46; or
   (2) A victim of sexual exploitation as defined in Code Section 49-5-40.
(e) Any party to the proceeding, the probation officer, or any other person having supervision or
legal custody of or an interest in a child may petition the court for the relief provided in this
Code section. Such petition shall set forth in clear and concise language the grounds upon which
the relief is requested.
(f) After a petition seeking relief under this Code section is filed, the court shall fix a time for
hearing and shall cause notice to be served on the parties to the proceeding or those affected by
the relief sought. After the hearing, the court shall deny or grant relief as the evidence warrants.

§ 15-11-103. Right to attorney

(a) A child and any other party to a proceeding under this article shall have the right to an
attorney at all stages of the proceedings under this article.
(b) The court shall appoint an attorney for an alleged dependent child. The appointment shall be
made as soon as practicable to ensure adequate representation of such child and, in any event,
before the first court hearing that may substantially affect the interests of such child.
(c) A child's attorney owes to his or her client the duties imposed by the law of this state in an
attorney-client relationship.
(d) If an attorney has been appointed to represent a child in a prior proceeding under this chapter, the court, when possible, shall appoint the same attorney to represent such child in any subsequent proceeding.
(e) An attorney appointed to represent a child in a dependency proceeding shall continue the representation in any subsequent appeals unless excused by the court.
(f) Neither a child nor a representative of a child may waive a child's right to an attorney in a dependency proceeding.
(g) A party other than a child shall be informed of his or her right to an attorney prior to any hearing. A party other than a child shall be given an opportunity to:
   (1) Obtain and employ an attorney of such party's own choice;
   (2) Obtain a court appointed attorney if the court determines that such party is an indigent person; or
   (3) Waive the right to an attorney.

§ 15-11-262. Right to attorney and appointment of guardian ad litem
(a) A child and any other party to a proceeding under this article shall have the right to an attorney at all stages of the proceedings under this article.
(b) The court shall appoint an attorney for a child in a termination of parental rights proceeding. The appointment shall be made as soon as practicable to ensure adequate representation of such child and, in any event, before the first court hearing that may substantially affect the interests of such child.
(c) A child's attorney owes to a child the duties imposed by the law of this state in an attorney-client relationship.
(d) The court may appoint a guardian ad litem for a child in a termination proceeding at the request of such child's attorney or upon the court's own motion if it determines that a guardian ad litem is necessary to assist the court in determining the best interests of such child; provided, however, that such guardian ad litem may be the same person as the child's attorney unless or until there is a conflict of interest between the attorney's duty to such child as such child's attorney and the attorney's considered opinion of such child's best interests as guardian ad litem.
(e) The role of a guardian ad litem in a termination of parental rights proceeding shall be the same role as provided for in all dependency proceedings under Article 3 of this chapter.
(f) If an attorney has been appointed to represent a child in a prior proceeding under this chapter, the court, when possible, shall appoint the same attorney to represent such child in any subsequent proceeding.
(g) An attorney appointed to represent a child in a termination proceeding shall continue the representation in any subsequent appeals unless excused by the court.
(h) Unless authorized by the court, neither a child or a representative of a child may waive the right to any attorney in a termination proceeding.
(i) A party other than a child shall be informed of his or her right to an attorney prior to the adjudication hearing and prior to any other hearing at which a party could be subjected to the loss of residual parental rights. A party other than a child shall be given an opportunity to:
   (1) Obtain and employ an attorney of the party's own choice;
   (2) To obtain a court appointed attorney if the court determines that the party is an indigent person; or
   (3) Waive the right to an attorney.
§ 15-11-264. Discovery
(a) In all cases under this article, any party shall, upon written request to the party having actual custody, control, or possession of the material to be produced, have full access to the following for inspection, copying, or photographing:
(1) The names and telephone numbers of each witness likely to be called to testify at the hearing by another party;

(2) A copy of any formal written statement made by the child adjudicated as a dependent child or any witness that relates to the subject matter concerning the testimony of the witness that a party intends to call as a witness at the hearing;

(3) Except as otherwise provided in subsection (b) of this Code section, any scientific or other report which is intended to be introduced at any hearing or that pertains to physical evidence which is intended to be introduced;

(4) Any drug screen concerning the child adjudicated as a dependent child or his or her parent, guardian, or legal custodian;

(5) Any case plan concerning the child adjudicated as a dependent child or his or her parent, guardian, or legal custodian;

(6) Any visitation schedule related to the child who is adjudicated as a dependent child;

(7) Photographs and any physical evidence which are intended to be introduced at any hearing;

(8) Copies of the police incident report regarding an occurrence which forms part or all of the basis of the petition; and

(9) Any other relevant evidence not requiring consent or a court order under subsection (b) of this Code section.
(b) Upon presentation of a court order or written consent from the appropriate person or persons permitting access to the party having actual custody, control, or possession of the material to be produced, any party shall have access to the following for inspection, copying, or photographing:
(1) Any psychological, developmental, physical, mental or emotional health, or other assessments of the child adjudicated as a dependent child or the family, parent, guardian, or legal custodian of such child;

(2) Any school record concerning the child adjudicated as a dependent child;

(3) Any medical record concerning the child adjudicated as a dependent child;

(4) Transcriptions, recordings, and summaries of any oral statement of the child adjudicated as a dependent child or of any witness, except child abuse reports that are confidential pursuant to Code Section 19-7-5 and work product of counsel;

(5) Any family team meeting report or multidisciplinary team meeting report concerning the child adjudicated as a dependent child or his or her parent, guardian, or legal custodian;

(6) Supplemental police reports, if any, regarding an occurrence which forms part of all of the basis of the petition; and

(7) Immigration records concerning the child adjudicated as a dependent child.
(c) If a party requests disclosure of information pursuant to subsection (a) or (b) of this Code section, it shall be the duty of such party to promptly make the following available for inspection, copying, or photographing to every other party:
(1) The names and last known addresses and telephone numbers of each witness to the occurrence which forms the basis of the party’s defense or claim;

(2) Any scientific or other report which is intended to be introduced at the hearing or that
pertains to physical evidence which is intended to be introduced;

(3) Photographs and any physical evidence which are intended to be introduced at the hearing; and

(4) A copy of any written statement made by any witness that relates to the subject matter concerning the testimony of the witness that the party intends to call as a witness.

d) A request for discovery or reciprocal discovery shall be complied with promptly and not later than five days after the request is received or 72 hours prior to any hearing except when later compliance is made necessary by the timing of the request. If the request for discovery is made fewer than 48 hours prior to an adjudicatory hearing, the discovery response shall be produced in a timely manner. If, subsequent to providing a discovery response in compliance with this Code section, the existence of additional evidence is found, it shall be promptly provided to the party making the discovery request.

e) If a request for discovery or consent for release is refused, application may be made to the court for a written order granting discovery. Motions for discovery shall certify that a request for discovery or consent was made and was unsuccessful despite good faith efforts made by the requesting party. An order granting discovery shall require reciprocal discovery.

Notwithstanding the provisions of subsection (a) or (b) of this Code section, the court may deny, in whole or in part, or otherwise limit or set conditions concerning the discovery response upon a sufficient showing by a person or entity to whom a request for discovery is made that disclosure of the information would:

(1) Jeopardize the safety of a party, witness, or confidential informant;
(2) Create a substantial threat of physical or economic harm to a witness or other person;
(3) Endanger the existence of physical evidence;
(4) Disclose privileged information; or
(5) Impede the criminal prosecution of a minor who is being prosecuted as an adult or the prosecution of an adult charged with an offense arising from the same transaction or occurrence.

f) No deposition shall be taken of a child adjudicated as a dependent child unless the court orders the deposition, under such conditions as the court may order, on the ground that the deposition would further the purposes of this part.

g) If at any time during the course of the proceedings it is brought to the attention of the court that a person or entity has failed to comply with an order issued pursuant to this Code section, the court may grant a continuance, prohibit the party from introducing in evidence the information not disclosed, or enter such other order as the court deems just under the circumstances.

(h) Nothing contained in this Code section shall prohibit the court from ordering the disclosure of any information that the court deems necessary for proper adjudication.

(i) Any material or information furnished to a party pursuant to this Code section shall remain in the exclusive custody of the party and shall only be used during the pendency of the case and shall be subject to such other terms and conditions as the court may provide.

§ 15-11-302. Confidentiality of testimony of parties

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 dependency or termination proceedings involving the same child or dependency or termination proceedings involving the same respondent.
§ 15-11-323. Reinstatement of parental rights; standard of proof

(a) A child who has not been adopted after the passage of at least three years from the date the court terminated parental rights or the parent voluntarily surrendered parental rights to DFCS and for whom the court has determined that adoption is no longer the permanent plan may petition the court to reinstate parental rights pursuant to the modification of orders procedure prescribed by Code Section 15-11-32. Such child may file the petition to reinstate parental rights prior to the expiration of such three-year period if the department or licensed child-placing agency that is responsible for the custody and supervision of such child and such child stipulate that such child is no longer likely to be adopted. A child 14 years of age or older shall sign the petition in the absence of a showing of good cause as to why such child could not do so.

(b) If it appears that the best interests of a child may be promoted by reinstatement of parental rights, the court shall order that a hearing be held and shall cause notice to be served by United States mail to DFCS, the attorney of record, guardian ad litem, if any, and foster parents, if any, of the child whose parental rights were terminated or surrendered and the child's former parent whose parental rights were terminated or surrendered. The former parent and foster parents, if any, shall have a right to be heard at the hearing to reinstate parental rights but shall not be parties at such hearing, and such hearing may be conducted in their absence. A child's motion shall be dismissed if his or her former parent cannot be located or if such parent objects to the reinstatement.

(c) The court shall grant the petition if it finds by clear and convincing evidence that a child is no longer likely to be adopted and that reinstatement of parental rights is in the child's best interests. In determining whether reinstatement is in the child's best interests the court shall consider, but not be limited to, the following:

1. Whether a parent whose rights are to be reinstated is a fit parent and has remedied his or her deficits as provided in the record of the prior termination proceedings and prior termination order;
2. The age and maturity of a child and the ability of such child to express his or her preference;
3. Whether the reinstatement of parental rights will present a risk to a child's health, welfare, or safety; and
4. Other material changes in circumstances, if any, that may have occurred which warrant the granting of the petition.

(d) If the court grants the petition to reinstate parental rights, a review hearing shall be scheduled within six months. During such period, the court may order that a child be immediately placed in the custody of his or her parent or, if the court determines that a transition period is necessary and such child is in DFCS custody at the time of the order, order DFCS to provide transition services to the family as appropriate.

(e) An order granted under this Code section reinstates a parent's rights to his or her child. Such reinstatement shall be a recognition that the situation of the parent and his or her child has changed since the time of the termination of parental rights and reunification is now appropriate.

(f) This Code section is intended to be retroactive and applied to any child who is under the jurisdiction of the court at the time of the hearing regardless of the date parental rights were terminated.
§ 15-11-700. Admission to hearings of general public and media

(a) As used in this Code section, the term "dependency proceeding" means a court proceeding stemming from a petition alleging that a child is a dependent child.

(b) The general public shall be admitted to:

(1) An adjudicatory hearing involving an allegation of a class A designated felony act or class B designated felony act;

(2) An adjudicatory hearing involving an allegation of delinquency brought in the interest of any child who has previously been adjudicated for committing a delinquent act; 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 dependency;

(3) Any child support hearing;

(4) Any hearing in a legitimation action filed pursuant to Code Section 19-7-22;

(5) At the court's discretion, any dispositional hearing involving any proceeding under this article; or

(6) Any hearing in a dependency proceeding, except as otherwise provided in subsection (c) of this Code section.

(c) The court may close the hearing in a dependency proceeding only upon making a finding upon the record and issuing a signed order stating the reason or reasons for closing all or part of a hearing in such proceeding and stating that:

(1) The proceeding involves an allegation of an act which, if done by an adult, would constitute a sexual offense under Chapter 6 of Title 16; or

(2) It is in the best interests of the child. In making such a determination, the court shall consider such factors as:

(A) The age of the child alleged or adjudicated as a dependent child;

(B) The nature of the allegations;

(C) The effect that an open court proceeding will have on the court's ability to reunite and rehabilitate the family unit; and

(D) Whether the closure is necessary to protect the privacy of a child, of a foster parent or other caretaker of a child, or of a victim of domestic violence.

(d) The court may close a hearing or exclude a person from a hearing in any proceeding on its own motion, by motion of a party to the proceeding, or by motion of the child who is the subject of the proceeding or the child's attorney or guardian ad litem.

(e) Only the parties, their counsel, witnesses, persons accompanying a party for his or her assistance, the victim, 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 to hearings from which the public is excluded; provided, however, that when the conduct alleged in the dependency proceeding could give rise to a criminal or delinquent act prosecution, attorneys for the prosecution and the defense shall be admitted.

(f) The court may refuse to admit a person to a hearing in any proceeding upon making a finding upon the record and issuing a signed order that the person's presence at the hearing would:

(1) Be detrimental to the best interests of the child who is a party to the proceeding;

(2) Impair the fact-finding process; or

(3) Be otherwise contrary to the interest of justice.

(g) The court may temporarily exclude any child from a termination of parental rights hearing
except while allegations of his or her delinquency or child in need of services conduct are being heard.

(h) Any request for installation and use of electronic recording, transmission, videotaping, or motion picture or still photography of any judicial proceeding shall be made to the court at least two days in advance of the hearing. The request shall be evaluated by the court pursuant to the standards set forth in Code Section 15-1-10.1.

(i) The judge may order the media not to release identifying information concerning any child or family members or foster parent or other caretaker of a child involved in hearings open to the public.

(j) The general public shall be excluded from proceedings in juvenile court unless such hearing has been specified as one in which the general public shall be admitted to pursuant to this Code section.

§ 15-11-704. Public inspection of court files and records; use in subsequent juvenile or criminal prosecution

(a) Except as provided in subsection (b) of this Code section and Code Sections 15-11-705 and 15-11-706, all files and records of the court in a proceeding under this chapter shall be open to inspection only upon order of the court.

(b) The general public shall be allowed to inspect court files and records for any proceeding that was open to the public pursuant to paragraphs (1) through (5) of subsection (b) of Code Section 15-11-700.

(c) A judge may permit authorized representatives of recognized organizations compiling statistics for proper purposes to inspect and make abstracts from official records under whatever conditions upon their use and distribution such judge may deem proper and may punish by contempt any violation of those conditions.

(d) A judge shall permit authorized representatives of DJJ, the Governor's Office for Children and Families, and the Council of Juvenile Court Judges to inspect and extract data from any court files and records for the purpose of obtaining statistics on children and to make copies pursuant to the order of the court.

(e) Except as otherwise provided in Code Sections 15-11-701 and 15-11-703, the complaint, petition, order of adjudication, and order of disposition in any delinquency case shall be disclosed upon request of the prosecuting attorney or the accused for use preliminarily to or in conjunction with a subsequent juvenile or criminal proceeding in a court of record.

§ 19-8-2. Jurisdiction and venue of adoption proceedings

(a) The superior courts of the several counties shall have exclusive jurisdiction in all matters of adoption, except such jurisdiction as may be granted to the juvenile courts.

(b) All petitions under this chapter shall be filed in the county in which any petitioner resides, except that:

1. Upon good cause being shown, the court of the county of the child's domicile or of the county in which is located any child-placing agency having legal custody of the child sought to be adopted may, in its discretion, allow the petition to be filed in that court; and

2. Any person who has been a resident of any United States Army post or military reservation within this state for six months next preceding the filing of the petition for adoption may file the petition in any county adjacent to the United States Army post or military reservation.
§ 19-8-27. Postadoption contact agreements; definitions; procedure; jurisdiction; warnings; enforcement or termination; modification; costs and expenses of mediation, alternative dispute resolution, and litigation

(a) As used in this Code section, the term "birth relative" means:

(1) A parent, biological father who is not the legal father, grandparent, brother, sister, half-brother, or half-sister who is related by blood or marriage to a child who is being adopted or who has been adopted; or

(2) A grandparent, brother, sister, half-brother, or half-sister who is related by adoption to a child who is being adopted or who has been adopted.

(b) (1) An adopting parent or parents and birth relatives or an adopting parent or parents, birth relatives, and a child who is 14 years of age or older who is being adopted or who has been adopted may voluntarily enter into a written postadoption contact agreement to permit continuing contact between such birth relatives and such child. A child who is 14 years of age or older shall be considered a party to a postadoption contact agreement.

(2) A postadoption contact agreement may provide for privileges regarding a child who is being adopted or who has been adopted, including, but not limited to, visitation with such child, contact with such child, sharing of information about such child, or sharing of information about birth relatives.

(3) In order to be an enforceable postadoption contact agreement, such agreement shall be in writing and signed by all of the parties to such agreement acknowledging their consent to its terms and conditions.

(4) Enforcement, modification, or termination of a postadoption contact agreement shall be under the continuing jurisdiction of the court that granted the petition of adoption; provided, however, that the parties to a postadoption contact agreement may expressly waive the right to enforce, modify, or terminate such agreement under this Code section.

(5) Any party to the postadoption contact agreement may, at any time, file the original postadoption contact agreement with the court that has or had jurisdiction over the adoption if such agreement provides for the court to enforce such agreement or such agreement is silent as to the issue of enforcement.

(c) A postadoption contact agreement shall contain the following warnings in at least 14 point boldface type:

(1) After the entry of a decree for adoption, an adoption cannot be set aside due to the failure of an adopting parent, a birth parent, a birth relative, or the child to follow the terms of this agreement or a later change to this agreement; and

(2) A disagreement between the parties or litigation brought to enforce, terminate, or modify this agreement shall not affect the validity of the adoption and shall not serve as a basis for orders affecting the custody of the child.

(d) (1) As used in this subsection, the term "parties" means the individuals who signed the postadoption contact agreement currently in effect, including the child if he or she is 14 years of age or older at the time of the action regarding such agreement, but such term shall exclude any third-party beneficiary to such agreement.

(2) A postadoption contact agreement may always be modified or terminated if the parties have voluntarily signed a written modified postadoption contact agreement or termination of a postadoption contact agreement. A modified postadoption contact agreement may be filed with the court if such agreement provides for the court to enforce such agreement or such agreement
is silent as to the issue of enforcement.
(e) With respect to postadoption contact agreements that provide for court enforcement or termination or are silent as to such matters, any party, as defined in paragraph (1) of subsection (d) of this Code section, may file a petition to enforce or terminate such agreement with the court that granted the petition of adoption, and the court shall enforce the terms of such agreement or terminate such agreement if such court finds by a preponderance of the evidence that the enforcement or termination is necessary to serve the best interests of the child.
(f) With respect to postadoption contact agreements that provide for court modification or are silent as to modification, only the adopting parent or parents may file a petition seeking modification. Such petition shall be filed with the court that granted the petition of adoption, and the court shall modify such agreement if such court finds by a preponderance of the evidence that the modification is necessary to serve the best interests of the child and there has been a material change of circumstances since the current postadoption contact agreement was executed.
(g) A court may require the party seeking modification, termination, or enforcement of a postadoption contact agreement to participate in mediation or other appropriate alternative dispute resolution.
(h) All reasonable costs and expenses of mediation, alternative dispute resolution, and litigation shall be borne by the party, other than the child, filing the action to enforce, modify, or terminate a postadoption contact agreement when no party has been found by the court as failing to comply with an existing postadoption contact agreement. Otherwise, a party, other than the child, found by the court as failing to comply without good cause with an existing postadoption contact agreement shall bear all the costs and expenses of mediation, alternative dispute resolution, and litigation of the other party.
(i) A court shall not set aside a decree of adoption, rescind a surrender, or modify an order to terminate parental rights or any other prior court order because of the failure of an adoptive parent, a birth relative, or the child to comply with any or all of the original terms of, or subsequent modifications to, a postadoption contract.
Chapter 10  Children in Need of Services (CHINS)

Contribution by Kirsten Widner, JD and Jen Carreras, JD, CWLS

Title 15, Chapter 11, Article 5
§ 15-11-380  Purpose of CHINS
§ 15-11-381  Definitions
§ 15-11-390  CHINS Complaint
§ 15-11-400  Continued Custody Hearing for CHINS
§ 15-11-401  Venue in CHINS
§ 15-11-402  Right to Attorney in CHINS
§ 15-11-403  Continuance in CHINS
§ 15-11-404  Case plan for foster child with CHINS case
§ 15-11-405  First runaway
§ 15-11-410 to 415  CHINS Preliminary Hearing procedures
§ 15-11-420 to 425  CHINS Petition requirements
§ 15-11-440 to 445  CHINS Adjudication and Disposition

Purpose

§ 5-11-380
- Acknowledge that often a child’s behavior is a sign that the child needs assistance to avoid progressing to more damaging choices.
- Make family members aware of their roles in creating and solving problems involving the child.
- Provide the child with the services and supports he or she needs to get back on track.
- Ensure the cooperation and coordination of different agencies involved with the family.

Complaint

§ 15-11-390
- Any person may make a complaint alleging that a child is in need of services.¹
- The complaint must include:
  - Child’s name, date of birth, and address
  - Names and addresses of the child’s parent, guardian, legal custodian, other family members, and other people living in the child’s home
  - Description of the acts alleged to have been committed by the child that, if true, would make the child a CHINS
  - Reason(s) why the filing of the complaint is in the best interests of the child and the public
  - Name of any public institution or agency that has the responsibility or ability to supply services alleged to be needed by the child.

¹ This provision was amended via SB 364 in 2014 legislative session and becomes effective upon the Governor signing the bill.
If a school official is bringing the complaint, the complaint must include additional information that demonstrates the steps the school has already taken to address the issue with the child, including that:
- the school district has tried to resolve the issue through educational approaches.
- the school district has attempted to engage the parent, guardian, or legal custodian in resolving the issue.
- the parent, guardian, or legal custodian was unwilling or unable to resolve it.
- the issue remains a problem.
- court intervention is needed.
- for a child eligible or suspected to be eligible for disability or special education services, the school district has
  - determined the child’s eligibility under the Individuals with Disabilities Education Act or Section 504 of the Rehabilitation Act of 1973.
  - reviewed the child’s Individualized Education Program (IEP), if applicable, and made any appropriate modifications.

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<th>Initial Detention Decisions</th>
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| § 15-11-412 | In limited circumstances, the child may be placed in a DJJ facility. In order for the court to place the child in a DJJ placement, which can be a secure placement such as a Regional Youth Detention Center (RYDC) or a nonsecure residential facility such as a group home operated by or for DJJ,
one of the following three circumstances must apply:

- The child must be alleged to be a runaway.
- The child must be alleged to be “habitually disobedient of the reasonable and lawful commands of his or her parent, guardian, or legal custodian and ungovernable.”
- The child must have previously failed to appear for a scheduled hearing.

Additionally, the court must administer and consider a detention assessment before sending the child to a DJJ placement. The child cannot remain in the DJJ placement more than 24 hours, excluding weekends and holidays, without a continued custody hearing.

**§ 15-11-404, with cross reference to § 15-11-201**

- If the child is placed in foster care, the child is required to have a case plan which meets the requirements for a case plan in a dependency case, including:
  - Involvement of the parent, guardian, or legal custodian, the child, and DFCS in developing the case plan.
  - A plan to keep the child in the most appropriate, least restrictive, and most family-like setting available, and in close proximity to his or her family.
  - Detailed content requirements such as
    - a description of the circumstances that brought the child before the court.
    - a description of the child’s and his or her family’s strengths and needs.
    - specific time-limited goals and related activities designed to enable the child to return home, with clear assignment of individual’s responsibilities for accomplishing those activities.
    - the plan for visitation between the child and the family.
    - the plan for educational stability for the child, including plans for keeping the child in his or her home school district or, if that is not in the child’s best interest, prompt enrollment in a new school.
    - an account of the health and education information about the child.

- In addition to the requirements from dependency cases, § 15-11-404 adds some specific requirements for case plans in a CHINS case, including:
  - A description of personal, family, or environmental problems that may contribute to the child’s behaviors
  - A description of the child’s mental and physical health needs and safety needs
  - Identification of the least restrictive placement that will safeguard such child's best interests and protect the community

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**Case Plans for Children Placed in Foster Care**

If the child is placed in foster care, the child is required to have a case plan which meets the requirements for a case plan in a dependency case, including:
- Involvement of the parent, guardian, or legal custodian, the child, and DFCS in developing the case plan.
- A plan to keep the child in the most appropriate, least restrictive, and most family-like setting available, and in close proximity to his or her family.
- Detailed content requirements such as
  - a description of the circumstances that brought the child before the court.
  - a description of the child’s and his or her family’s strengths and needs.
  - specific time-limited goals and related activities designed to enable the child to return home, with clear assignment of individual’s responsibilities for accomplishing those activities.
  - the plan for visitation between the child and the family.
  - the plan for educational stability for the child, including plans for keeping the child in his or her home school district or, if that is not in the child’s best interest, prompt enrollment in a new school.
  - an account of the health and education information about the child.

In addition to the requirements from dependency cases, § 15-11-404 adds some specific requirements for case plans in a CHINS case, including:
- A description of personal, family, or environmental problems that may contribute to the child’s behaviors
- A description of the child’s mental and physical health needs and safety needs
- Identification of the least restrictive placement that will safeguard such child's best interests and protect the community
- An assessment of available community resources to address the child's and family's needs
- Assessments of the availability of court diversion programs and preventative measures
- The CHINS article does not specify a time by which the case plan must be in place, but the requirement applies to children alleged to be in need of services, as well as those who have already been adjudicated children in need of services.
- In dependency cases, the case plan needs to be submitted to the court no later than 30 days after the child is removed from his or her home.
- Much of the information required would be extremely helpful to the court from the earliest stages of decision making, so the case plan should be completed as soon as possible after the child comes into care.

### Right to Attorney

#### §§ 15-11-402 and 15-11-423
- Any party to the proceeding has a right to be represented by an attorney.
- If the party is an indigent person, he or she is entitled to a court appointed attorney.

## GAL

### § 15-11-402
- The court may also appoint a GAL for a child alleged to be in need of services, either on its own motion or at the request of the child’s attorney.
- The primary role of the GAL is to assist the court in determining the best interests of the child. The specific duties follow those for GALs in dependency cases, and include
  - maintaining regular contact with the child and ascertaining his or her views on the issues before the court.
  - conducting an independent investigation into the facts and circumstances of the case.
  - attending all hearings and providing written reports to the court and the parties with recommendations on placement, services and other matters in the child’s best interests.
  - monitoring progress of the child and his or her services.
- The court may appoint the same person to serve as both the child’s attorney and GAL, unless or until there is a conflict between the attorney’s duties to the child as a client and the attorney’s opinion of the child’s best interests.
- If the child has been appointed a GAL before, whether on a delinquency or dependency matter, the court is to appoint the same GAL for the child in the CHINS proceeding, if possible.
### § 15-11-413
- If the child is not returned to his or her parent, guardian, or legal custodian, the court must hold a continued custody hearing.
- The timelines for the hearing vary depending on where the child is placed:
  - If the child is placed in a DJJ facility, the hearing must be held within 24 hours, excluding weekends and holidays.
  - If the child is in a foster care placement, the hearing must be held within 72 hours, excluding weekends and holidays.\(^2\)

### § 15-11-414
- The court must determine whether there is probable cause to believe that the child has committed a status offense or is otherwise in need of services.
- If there is probable cause, the court must make determinations about
  - Whether continued custody is necessary
  - What placement is appropriate if continued custody is needed
  - Whether a CHINS petition should be filed.
- If there is not probable cause, the child should be released and the case does not proceed further.
- If there is probable cause to believe the child has committed a status offense or is otherwise in need of services, the court can
  - Release the child to his or her parent, guardian, or legal custodian, with referrals to services or with order that CHINS petition be filed.
  - Order that the child stay in state custody in the least restrictive placement consistent with the child’s need for protection and control, which in most cases will be in DFCS custody for purposes of foster care placement.
  - Detain the child in a DJJ facility for up to 72 hours after the continued custody hearing (excluding weekends and holidays), but only for the purpose of allowing time to arrange for another appropriate placement for the child pending adjudication.
- The court’s order for continued custody must include specific written findings of fact:
  - Whether the child’s continuation in his or her home would be contrary to his or her welfare
  - Whether reasonable efforts were made to safely maintain the child at home and prevent or eliminate the need for removal.
    - If these findings are not made at the continued custody hearing, they must be made no later than 60 days after removal.

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\(^2\) These provisions were amended via SB 364 in 2014 legislative session and become effective upon the Governor signing the bill.
This provision was amended via SB 364 in 2014 legislative session and becomes effective upon the Governor signing the bill.

### § 15-11-415
- In making a determination to detain the child, the court must decide whether there is clear and convincing evidence that
  - no less restrictive alternative is appropriate; and
  - either
    - the child’s detention or care is necessary to protect others from the child; or
    - detention is necessary to ensure that the child returns to court for further proceedings.
- A child cannot be detained:
  - For punishment, treatment or rehabilitation
  - To allow the parent, guardian or legal custodian to avoid responsibility for the child
  - To satisfy a victim, law enforcement, or the community;
  - For administrative convenience
  - To facilitate the investigation of the case or questioning of the child
  - Because of the lack of a more appropriate placement for the child
- Continued custody must be used in a way that reflects the values of:
  - Respect for the child’s privacy, dignity, and individuality, and that of his or her family
  - Protection of the child’s physical and psychological health
  - Tolerance for diverse values and preferences
  - Equality of treatment, regardless of race, class, ethnicity or sex
  - Avoidance of stigmatization, regimentation, or depersonalization of the child
  - Protection of the child’s right to counsel.
- If the child can remain in the custody of the parent, guardian, or legal custodian if reasonable services are provided, the court should order those services, rather than authorizing continued custody by the state.

### § 15-11-420
- The petition may be prepared and presented to the court for filing by any of the following persons who believe the facts alleged in it to be true:
  - a parent, guardian, or legal custodian
  - a law enforcement officer,
  - a GAL
  - an attorney
- The petition cannot be accepted for filing unless the court or its authorized representative determines that bringing the case is in the

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3 This provision was amended via SB 364 in 2014 legislative session and becomes effective upon the Governor signing the bill.
best interests of the child and the public.

§ 15-11-421
- The timeline for filing the petition depends on whether the child is in the temporary custody of the state:
  o If the child is kept in state custody, the petition must be filed within 5 days of the continued custody hearing.
  o If the child is released at the continued custody hearing, the petition must be filed within 30 days of the child’s release.
  o If the child was never taken into custody, the petition must be filed within 30 days of the filing of the complaint.
  o These timeframes can be extended if:
    ▪ There is good cause for the delay;
    ▪ Notice is given to all the parties;
    ▪ It is in the best interests of the child to extend the time; and
    ▪ The court issues a written order for the extension that includes the facts that justify the extension.
  o If no petition is filed within the required timeframe including any extension, the court should dismiss the complaint without prejudice. This means that the complaint could be refilled if necessary.

§ 15-11-422
The CHINS Petition must be entitled “In the interest of [child’s name], a child” and include:
- The facts believed to make the child in need of services.
- A statement that it is in the best interests of the child and the public that the proceeding be brought.
- The name, birth date, and address of the child.
- The name(s) and address(s) of the child’s parent(s), guardian(s), or legal custodian.
- If the parent, guardian or legal custodian does not live in Georgia, cannot be found, or his or her address is unknown, the petition should include either:
  o the name of any known adult relative residing in the county, or
  o the known adult relative residing closest to the court.
- The names and ages of any other family members living in the child’s home.
- Whether the family has been encouraged to voluntarily use community services.
- Whether any of this information is unknown.
- If the petition stems from a complaint by a school official, information showing that the school district has
  o Tried to resolve the issue through educational approaches.
  o Attempted to engage the parent, guardian, or legal custodian in resolving the issue and
<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>The court has jurisdiction if the child is:</th>
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<tbody>
<tr>
<td></td>
<td>• under the age of 18; and</td>
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<td>• needs care, guidance, counseling, structure, supervision, treatment, or rehabilitation; and</td>
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<td>• is found by the court to have been one or more of the following:</td>
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<td>◦ Required by mandatory school attendance laws to attend school but habitually truant</td>
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<td>▪ In Georgia, mandatory school attendance applies to children over 6 and under 16 years of age. § 20-2-690.1.</td>
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<td>▪ Truant means having 10 or more unexcused absences in the current school year. § 15-11-381(6).</td>
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<td>◦ Habitually disobedient to his or her parent, ungovernable, or placing his- or herself in unsafe circumstances</td>
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<td></td>
<td>◦ A runaway, meaning that the child has been away from his or her parent, guardian or legal custodian for more than 24 hours without permission and without “just cause”</td>
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<td></td>
<td>◦ Out in public between midnight and 5am</td>
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<td></td>
<td>◦ Present in a bar without his or her parent, guardian or legal custodian, or in possession of alcoholic beverages</td>
</tr>
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<td>◦ In violation of a court order from a previous CHINS case</td>
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<td>◦ Someone who has committed an offense that is only applicable to a child;</td>
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<tr>
<td></td>
<td>◦ Someone who has committed a delinquent act who is in need of supervision but not treatment or rehabilitation.</td>
</tr>
<tr>
<td>Venue</td>
<td>§ 15-11-401</td>
</tr>
<tr>
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<td>• A CHINS case can be initiated in either:</td>
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<td></td>
<td>◦ the county in which the child is alleged to have done whatever act forms the basis for the CHINS petition, or</td>
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<td>◦ the county where the child legally resides.</td>
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<td></td>
<td>• If the case is initiated in a county where the act occurred but the child does not reside, the case must be transferred to the county</td>
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where the child legally resides.
- If a case is transferred, the transferring court must send certified copies of all documents relating to the case to the receiving court.

<table>
<thead>
<tr>
<th>Parties</th>
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<tbody>
<tr>
<td><strong>Party</strong> defined at § 15-11-2(52) as state, a child, parent, guardian, legal custodian, or other person subject to any judicial proceeding, except in delinquency proceedings; then only a child and the state are parties.</td>
</tr>
<tr>
<td><strong>Parent</strong> defined at § 15-11-2(51) as legal father or legal mother of a child.</td>
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</tbody>
</table>

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<thead>
<tr>
<th>Summons and Service</th>
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<tbody>
<tr>
<td>§ 15-11-423</td>
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<tr>
<td>- Copy of dependency petition (except publication)</td>
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<tr>
<td>- The court shall direct the issuance of a summons to</td>
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<td>- the child</td>
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<tr>
<td>- child's parent, guardian, or legal custodian</td>
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<tr>
<td>- DFCS and any other public agency or institution providing services</td>
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<tr>
<td>- any other persons who appear to the court to be proper or necessary parties to the proceeding.</td>
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<tr>
<td>- Summons must provide notice of a party’s right to counsel.</td>
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<tr>
<td>- Party other than child may waive summons by written stipulation or voluntary appearance at hearing.</td>
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</table>

**Practice Note:** Anyone receiving the summons gets a copy of the petition and is required to appear before the court at the hearing. This gives the court broad discretion to look at the individual circumstances of the child and involve in the proceeding those people or agencies whose participation will be essential to the success of the child.

§ 15-11-424 |
- If party is in Georgia and can be found, then personal service ASAP and at least 72 hours before the adjudication hearing. |
- If party is in Georgia and cannot be found but address is known or can be known with due diligence, must be served at least 5 days before the adjudication hearing by registered or certified mail or statutory overnight delivery, return receipt requested. |
- If party is outside Georgia with known address or known with due diligence, then must be served at least 5 days before the adjudication hearing by personal service or by registered or certified mail or statutory overnight delivery, return receipt requested. |
- Service of summons may be made by any suitable person under the direction of the court. |

<table>
<thead>
<tr>
<th>Timing for Adjudication Hearing</th>
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<tbody>
<tr>
<td>§ 15-11-400</td>
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<tr>
<td>The timing for an adjudication hearing is determined by whether the child has been held in state custody:</td>
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<tr>
<td>- If the child was not released at the continued custody hearing, the</td>
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<tr>
<td>Evidence and Standard of Proof</td>
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**Practice Note:** If the court finds the child does not meet the definition, the court’s jurisdiction over the matter ends and the case is complete. If the court determines the child does meet the definition, then the child is adjudicated as a child in need of services, and the next step is a disposition hearing.

<table>
<thead>
<tr>
<th>Timing for Disposition Hearing</th>
<th>§ 15-11-442</th>
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<tbody>
<tr>
<td></td>
<td>• The disposition hearing can be held immediately after the adjudication hearing, or it can be scheduled for a later date.</td>
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<td>• The disposition hearing must be completed within 30 days of the adjudication hearing</td>
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<tr>
<th>Disposition Hearing and Options</th>
<th>§ 15-11-442</th>
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<tr>
<td></td>
<td>• At the disposition hearing, the court can hear additional evidence regarding the services, supervision or placement that would be in the child and the community’s best interests.</td>
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<td>• The court must structure the least restrictive and most appropriate disposition possible. The disposition may include:</td>
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<td>o Allowing the child to remain at home without limitations or conditions</td>
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<td></td>
<td>o Allowing the child to remain at home under limitations or conditions established by the court</td>
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<td>o Placing the child on probation or unsupervised probation, under terms and conditions determined by the court</td>
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<td>   • Unsupervised probation has terms and conditions, but the child has reduced reporting requirements and the probation officer does not actively supervise the child</td>
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<td>o Requiring the child to engage in community service activities</td>
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<td>o Requiring the child to pay restitution</td>
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<td>o Requiring the child to attend an after-school or evening program, or other court-approved programs</td>
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<td></td>
<td>o Requiring supervision of the child during the times of the day when the acts that form the basis of the petition generally occurred</td>
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</table>
| | o Subject to any terms of conditions the court may prescribe,
granting or transferring temporary legal custody of the child to
- any person, including a biological parent, who is found, after investigation by a or agency designated by the court, to be qualified to care for the child
- a private agency or organization authorized by law to care for children
- a public agency other than DJJ authorized by law to care for children
- a person in another state, provided the placement is done in accordance with the Interstate Compact on the Placement of Children (ICPC)
  - Transferring jurisdiction to another state in accordance with ICPC
  - Ordering the child and his or her parent, guardian, or legal custodian to participate in counseling or counsel and advice
  - Ordering the child’s parent, guardian, or legal custodian to participate in educational or counseling programs
  - Ordering DFCS to implement and the child’s parent, guardian, or legal custodian to participate in any case plan adopted by the court;
  - If the child is out of the legally responsible parent, guardian, or legal custodian’s care, temporarily ordering that parent guardian, or legal custodian to pay child support
  - Suspending the child’s driver’s license or prohibiting the issuance of a license to the child
  - If the child is adjudicated a child in need of services because he or she has committed a delinquent act and is in need of supervision but not in need of treatment or rehabilitation, requiring the child to pay the fine that could be imposed on an adult that committed the same offense.

- Under no circumstances may a disposition order for a child in need of services place the child in a DJJ facility.
- All disposition orders must include written findings explaining the basis for the services, supervision or placements ordered, a specific plan for how the services are to be provided, and the length of time the order is to be in effect.

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<tr>
<th>Duration of Court Order</th>
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<tr>
<td><strong>§ 15-11-443</strong></td>
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<tr>
<td>- The order shall be in effect for the shortest time necessary to accomplish its goals, and the initial term may not be longer than 2 years.</td>
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<tr>
<td>- The order may be extended after notice and hearing and court finding that extension is necessary; extension cannot exceed 2 years from expiration of prior order.</td>
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<tr>
<td>- Order may be terminated prior to expiration if it appears to the court that the purposes of the order have been accomplished.</td>
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</table>
• All disposition orders in CHINS cases automatically end on the child’s 18th birthday.

§ 15-11-445
• As long as the disposition order is in effect, the court shall review the case
  o at least once within three months after the disposition hearing, and
  o at least every six months thereafter.

Practice Note: The juvenile code does not provide guidance for how these reviews should be conducted. Courts may wish to look to § 15-11-216, related to dependency case reviews, for the types of findings that should be made at a review hearing.

Code Sections

ARTICLE 5
Part 1

15-11-380. Purpose of CHINS
The purpose of this article is: (1) To acknowledge that certain behaviors or conditions occurring within a family or school environment indicate that a child is experiencing serious difficulties and is in need of services and corrective action in order to protect such child from the irreversibility of certain choices and to protect the integrity of such child’s family; (2) To make family members aware of their contributions to their family’s problems and to encourage family members to accept the responsibility to participate in any program of care ordered by the court; (3) To provide a child with a program of treatment, care, guidance, counseling, structure, supervision, and rehabilitation that he or she needs to assist him or her in becoming a responsible and productive member of society; and (4) To ensure the cooperation and coordination of all agencies having responsibility to supply services to any member of a family referred to the court.

15-11-381. Definitions
As used in this article, the term: (1) ‘Comprehensive services plan’ means an interagency treatment, habilitation, support, or supervision plan developed collaboratively by state or local agency representatives, parties, and other interested persons following a court’s finding that a child is incompetent to proceed. (2) ‘Habilitation’ means the process by which a child is helped to acquire and maintain those life skills which will enable him or her to cope more effectively with the demands of his or her own person and of his or her environment and to raise the level of his or her physical, mental, social, and vocational abilities. (3) ‘Plan manager’ means a person who is under the supervision of the court and is appointed by the court to convene a meeting of all relevant parties for the purpose of developing a comprehensive services plan. (4) ‘Runaway’ means a child who without just cause and without the consent of his or her parent, guardian, or legal custodian is absent from his or her home or place of abode for at least 24 hours. (5) ‘Status
offense' means an act prohibited by law which would not be an offense if committed by an adult.
(6) 'Truant' means having ten or more days of unexcused absences from school in the current academic year.

Part 2

15-11-390.        CHINS Complaint
(a) A complaint alleging a child is a child in need of services may be filed by a parent, guardian, or legal custodian, DFCS, a school official, a law enforcement officer, a guardian ad litem, or an attorney who has knowledge of the facts alleged or is informed and believes that such facts are true. (b) The complaint shall set forth plainly and with particularity: (1) The name, date of birth, and residence address of the child alleged to be a child in need of services; (2) The names and residence addresses of the parent, guardian, or legal custodian, any other family members, or any other individuals living within such child's home; (3) The name of any public institution or agency having the responsibility or ability to supply services alleged to be needed by such child; and (4) Whether any of the matters required by this subsection are unknown. (c) When a school official is filing a complaint alleging a child is a child in need of services, information shall be included which shows that: (1) The legally liable school district has sought to resolve the expressed problem through available educational approaches; and (2) The school district has sought to engage the parent, guardian, or legal custodian of such child in solving the problem but such person has been unwilling or unable to do so, that the problem remains, and that court intervention is needed. (d) When a school official is filing a complaint alleging a child is a child in need of services involving a child who is eligible or suspected to be eligible under the federal Individuals with Disabilities Education Act or Section 504 of the federal Rehabilitation Act of 1973, information shall be included which demonstrates that the legally liable school district: (1) Has determined that such child is eligible or suspected to be eligible under the federal Individuals with Disabilities Education Act or Section 504 of the federal Rehabilitation Act of 1973; and (2) Has reviewed for appropriateness such child's current Individualized Education Program (IEP) and placement and has made modifications where appropriate. (e) The juvenile court intake officer shall be responsible for receiving complaints alleging that a child is a child in need of services.

Part 3

15-11-400.        Continued Custody Hearing
(a) The continued custody hearing for a child alleged to be a child in need of services shall be held promptly and no later than: (1) Seventy-two hours after such child is taken into temporary custody if he or she is being held in a secure residential facility or nonsecure residential facility; or (2) Five days after such child is placed in foster care, provided that, if the five-day time frame expires on a weekend or legal holiday, the hearing shall be held on the next day which is not a weekend or legal holiday. (b) If a child alleged to be a child in need of services was never taken into temporary custody or is released from temporary custody at the continued custody hearing, the following time frames apply: (1) The petition for a child in need of services shall be filed: (A) Within 30 days of the filing of the complaint with the juvenile court; or (B) Within 30 days of such child's release from temporary custody; (2) Summons shall be served at least 72 hours before the adjudication hearing; (3) An adjudication hearing shall be scheduled to be held no
later than 60 days after the filing of the petition for a child in need of services; and (4) If not held in conjunction with an adjudication hearing, a disposition hearing shall be held and completed within 30 days after the conclusion of an adjudication hearing. (c) If a child alleged to be a child in need of services is not released from temporary custody at the continued custody hearing, the following time frames apply: (1) The petition for a child in need of services shall be filed within five days of the continued custody hearing; (2) Summons shall be served at least 72 hours before an adjudication hearing; (3) An adjudication hearing shall be scheduled to be held no later than ten days after the filing of the petition for a child in need of services; and (4) If not held in conjunction with an adjudication hearing, a disposition hearing shall be held and completed within 30 days after the conclusion of an adjudication hearing.

15-11-401.
(a) A proceeding under this article may be commenced in the county in which the act complained of took place or in the county in which the child alleged to be a child in need of services legally resides. (b) If a proceeding is commenced in the county in which the act complained of took place, the court shall transfer the case to the county in which the child alleged to be a child in need of services legally resides for further proceedings. (c) When a proceeding is transferred, certified copies of all legal and social documents and records on file with the clerk of court pertaining to the proceeding shall accompany such transfer.

15-11-402.
(a) The court shall appoint an attorney for a child alleged to be a child in need of services. (b) The court shall appoint a CASA to act as a guardian ad litem whenever possible, and a CASA may be appointed in addition to an attorney who is serving as a guardian ad litem. (c) The court may appoint a guardian ad litem for a child alleged to be a child in need of services at the request of such child's attorney or upon the court's own motion if it determines that a guardian ad litem is necessary to assist the court in determining the best interests of such child; provided, however, that such guardian ad litem may be the same person as the child's attorney unless or until there is a conflict of interest between the attorney's duty to such child as such child's attorney and the attorney's considered opinion of such child's best interests as guardian ad litem. (d) The role of a guardian ad litem in a proceeding for a child in need of services shall be the same role as provided for in all dependency proceedings under Article 3 of this chapter. (e) If an attorney or a guardian ad litem has previously been appointed for a child in a dependency or delinquency proceeding, the court, when possible, shall appoint the same attorney or guardian ad litem for a child alleged to be a child in need of services. (f) An attorney appointed to represent a child in a proceeding for a child in need of services shall continue representation in any subsequent appeals unless excused by the court. (g) A child alleged to be a child in need of services shall be informed of his or her right to an attorney at or prior to the first court proceeding for a child in need of services. A child alleged to be a child in need of services shall be given an opportunity to: (1) Obtain and employ an attorney of his or her own choice; or (2) To obtain a court appointed attorney if the court determines that such child is an indigent person.

15-11-403.
A continuance shall be granted only upon a showing of good cause and only for that period of time shown to be necessary by the moving party at the hearing on such motion. Whenever any
continuance is granted, the facts which require the continuance shall be entered into the court record.

15-11-404.
If a child is alleged or adjudicated to be a child in need of services and is placed in foster care, the child shall be required to have a case plan. In addition to the case plan requirements of Code Section 15-11-201, a case plan shall include: (1) A description of such child's strengths and needs; (2) A description of such child's specific parental strengths and needs; (3) A description of other personal, family, or environmental problems that may contribute to such child's behaviors; (4) A description of the safety, physical, and mental health needs of such child; (5) Identification of the least restrictive placement to safeguard such child's best interests and protect the community; (6) An assessment of the availability of community resources to address such child's and his or her family's needs; (7) An assessment of the availability of court diversion services; and (8) An assessment of the availability of other preventive measures.

15-11-405.
Any proceeding or other processes or actions alleging for the first time that a child is a runaway shall be terminated or dismissed upon the request of such child's parent, guardian, or legal custodian.

Part 4

15-11-410.
(a) A child may be taken into temporary custody under this article: (1) Pursuant to a court order; or (2) By a law enforcement officer when there are reasonable grounds to believe that a child has run away from his or her parent, guardian, or legal custodian or the circumstances are such as to endanger a child's health or welfare unless immediate action is taken. (b) Before entering an order authorizing temporary custody, the court shall consider the results of a detention assessment and determine whether continuation in the home is contrary to a child's welfare and whether there are available services that would prevent the need for custody. The court shall make such determination on a case-by-case basis and shall make written findings of fact referencing any and all evidence relied upon in reaching its decision. (c) A person taking a child into temporary custody shall deliver such child, with all reasonable speed and without first taking such child elsewhere, to a medical facility if he or she 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 such child into custody, the juvenile court intake officer shall administer a detention assessment and determine if such child should be released, remain in temporary custody, or be brought before the court.

15-11-411.
(a) A person taking a child into temporary custody pursuant to Code Section 15-11-410 shall not exercise custody over such child except for a period of 12 hours. (b) Immediately after a child taken into custody, every effort shall be made to contact such child's parents, guardian, or legal custodian. (c) If a parent, guardian, or legal custodian has not assumed custody of his or her child at the end of the 12 hour period described in subsection (a) of this Code section, the court shall
be notified and shall place such child in the least restrictive placement consistent with such child's needs for protection or control in the custody of such child's parents, guardian, or legal custodian upon such person's promise to bring such child before the court when requested by the court; provided, however, that if such placement is not available, such child shall be placed in the custody of DFCS which shall promptly arrange for foster care of such child.

15-11-412.
(a) A child alleged to be a child in need of services may be held in a secure residential facility or nonsecure residential facility until a continued custody hearing is held, provided that a detention assessment has been administered and such child is not held in a secure residential facility or nonsecure residential facility for more than 24 hours and any of the following apply: (1) It is alleged that such child is a runaway; (2) It is alleged that such child is habitually disobedient of the reasonable and lawful commands of his or her parent, guardian, or legal custodian and is ungovernable; or (3) Such child has previously failed to appear at a scheduled hearing. (b) A child alleged to be a child in need of services placed in a secure residential facility or nonsecure residential facility pursuant to subsection (a) of this Code section may be appointed an attorney prior to the continued custody hearing. (c) In no case shall a child alleged to be or adjudicated as a child in need of services in custody be detained in a jail, adult lock-up, or other adult detention facility.

15-11-413.
(a) If a child alleged to be a child in need of services is being held in a secure residential facility or nonsecure residential facility, a continued custody hearing shall be held within 72 hours. If such hearing is not held within the time specified, such child shall be released from temporary detention in accordance with subsection (c) of Code Section 15-11-411 and with authorization of the detaining authority. (b) If a child alleged to be a child in need of services is not being held in a secure residential facility or nonsecure residential facility and has not been released to the custody of such child's parent, guardian, or legal custodian, a hearing shall be held promptly and not later than five days after such child is placed in foster care, provided that, if the five-day time frame expires on a weekend or legal holiday, the hearing shall be held on the next day which is not a weekend or legal holiday. (c) At the commencement of a continued custody hearing, the court shall inform the parties of: (1) The nature of the allegations; (2) The nature of the proceedings; (3) The possible consequences or dispositions that may apply to such child's case following adjudication; and (4) Their due process rights, including the right to an attorney and to an appointed attorney; the privilege against self-incrimination; that he or she may remain silent and that anything said may be used against him or her; the right to confront anyone who testifies against him or her and to cross-examine any persons who appear to testify against him or her; the right to testify and to compel other witnesses to attend and testify in his or her own behalf; the right to a speedy adjudication hearing; and the right to appeal and be provided with a transcript for such purpose.

15-11-414.
(a) At a continued custody hearing, the court shall determine whether there is probable cause to believe that a child has committed a status offense or is otherwise a child in need of services and that continued custody is necessary. (b) If the court determines there is probable cause to believe that a child has committed a status offense or is otherwise in need of services, the court may
order that such child: (1) Be released to the custody of his or her parent, guardian, or legal
custodian; or (2) Be placed in the least restrictive placement consistent with such child's need for
protection and control as authorized by Code Section 15-11-411 and in accordance with Code
Section 15-11-415. (c) If the court determines there is probable cause to believe that such child
has committed a status offense or is otherwise in need of services, the court shall: (1) Refer such
child and his or her family for a community based risk reduction program; or (2) Order that a
petition for a child in need of services be filed and set a date for an adjudication hearing. (d)
Following a continued custody hearing, the court may detain a child alleged to be a child in need
of services in a secure residential facility or nonsecure residential facility for up to 72 hours,
excluding weekends and legal holidays, only for the purpose of providing adequate time to
arrange for an appropriate alternative placement pending the adjudication hearing. (e) All orders
shall contain written findings as to the form or conditions of a child's release. If a child alleged to
be a child in need of services cannot be returned to the custody of his or her parent, guardian, or
legal custodian at the continued custody hearing, the court shall state the facts upon which the
continued custody is based. The court shall make the following findings of fact referencing any
and all evidence relied upon to make its determinations: (1) Whether continuation in the home of
such child's parent, guardian, or legal custodian is contrary to such child's welfare; and (2)
Whether reasonable efforts have been made to safely maintain such child in the home of his or
her parent, guardian, or legal custodian and to prevent or eliminate the need for removal from
such home. Such finding shall be made at the continued custody hearing if possible but in no
case later than 60 days following such child's removal from his or her home.

15-11-415.
(a) Restraints on the freedom of a child prior to adjudication shall be imposed only when there is
probable cause to believe that a child committed the act of which he or she is accused, there is
clear and convincing evidence that such child's freedom should be restrained, that no less
restrictive alternatives will suffice, and: (1) Such child's detention or care is required to reduce
the likelihood that he or she may inflict serious bodily harm on others during the interim period;
(2) Such child's detention is necessary to secure his or her presence in court to protect the
jurisdiction and processes of the court; or (3) An order for such child's detention has been made
by the court. (b) A child alleged to be a child in need of services shall not be detained: (1) To
punish, treat, or rehabilitate such child; (2) To allow his or her parent, guardian, or legal
custodian to avoid his or her legal responsibilities; (3) To satisfy demands by a victim, law
enforcement, or the community; (4) To permit more convenient administrative access to him or
her; (5) To facilitate further interrogation or investigation; or (6) Due to a lack of a more
appropriate facility. (c) Whenever a child alleged to be a child in need of services cannot be
unconditionally released, conditional or supervised release that results in the least necessary
interference with the liberty of such child shall be favored over more intrusive alternatives. (d)
Whenever the curtailment of the freedom of a child alleged to be a child in need of services is
permitted, the exercise of authority shall reflect the following values: (1) Respect for the privacy,
dignity, and individuality of such child and his or her family; (2) Protection of the psychological
and physical health of such 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 such child; (6) Avoidance of
stigmatization of such child; and (7) Assurance that such child has been informed of his or her
right to consult with an attorney and that, if the child is an indigent person, an attorney will be
provided. (e) Before entering an order authorizing detention, the court shall determine whether a child's continuation in his or her home is contrary to his or her welfare and whether there are available services that would prevent or eliminate the need for detention. The court shall make such determination on a case-by-case basis and shall make written findings of fact referencing any and all evidence relied upon in reaching its decision. (f) If a child alleged to be a child in need of services can remain in the custody of his or her parent, guardian, or legal custodian through the provision of services to prevent the need for removal, the court shall order that such services shall be provided.

Part 5

15-11-420.
A petition alleging that a child is a child in need of services may be made by any person, including a law enforcement officer, who has knowledge of the facts alleged or is informed and believes that such facts are true. Such petition shall not be filed unless the court or a person authorized by the court has determined and endorsed on the petition that the filing of the petition is in the best interests of the public and such child.

15-11-421.
(a) If a child alleged to be a child in need of services is not released from temporary custody at a continued custody hearing, a petition seeking an adjudication that such child is a child in need of services shall be filed within five days of such continued custody hearing. (b) If a child alleged to be a child in need of services was never taken into temporary custody or is released from temporary custody at a continued custody hearing, a petition seeking an adjudication that such child is a child in need of services shall be filed: (1) Within 30 days of the filing of the complaint with the juvenile court intake officer; or (2) Within 30 days of such child's release from temporary custody. (c) Upon a showing of good cause and notice to all parties, the court may grant a requested extension of time for filing a petition seeking an adjudication that a child is a child in need of services in accordance with the best interests of the child. The court shall issue a written order reciting the facts justifying the extension. (d) If no petition seeking an adjudication that a child is a child in need of services is filed within the required time frame, the complaint may be dismissed without prejudice.

15-11-422.
(a) A petition seeking an adjudication that a child is a child in need of services shall be verified and may be on information and belief. It shall set forth plainly and with particularity: (1) The facts which bring a child within the jurisdiction of the court, with a statement that it is in the best interests of the child and the public that the proceeding be brought; (2) The name, date of birth, and residence address of the child alleged to be a child in need of services; (3) The name and residence address of the parent, guardian, or legal custodian of the child named in the petition; or, if such child's parent, guardian, or legal custodian does not reside or cannot be found within the state or if such place of residence address is unknown, the name of any known adult relative of such child residing within the county or, if there is none, the known adult relative of such child residing nearest to the location of the court; (4) The name and age of any other family member of such child living within such child's home; (5) Whether all available and appropriate attempts to encourage voluntary use of community services by such child's family have been
exhausted; and (6) Whether any of the information required by this subsection is unknown. (b) If a petition seeking an adjudication that a child is a child in need of services is based on a complaint filed by a school official, such petition shall be dismissed unless it includes information which shows that: (1) The legally liable school district has sought to resolve the expressed problem through available educational approaches; and (2) The school district has sought to engage such child's parent, guardian, or legal custodian in solving the problem but any such individual has been unwilling or unable to do so; that the problem remains; and that court intervention is needed. (c) If a petition seeking an adjudication that a child is a child in need of services is based on a complaint filed by a school official involving a child who is eligible or suspected to be eligible for services under the federal Individuals with Disabilities Education Act or Section 504 of the federal Rehabilitation Act of 1973, such petition shall be dismissed unless it includes information which demonstrates that the legally liable school district: (1) Has determined that such child is eligible or suspected to be eligible under the federal Individuals with Disabilities Education Act or Section 504 of the federal Rehabilitation Act of 1973; and (2) Has reviewed for appropriateness such child's current Individualized Education Program (IEP) and placement and has made modifications where appropriate.

15-11-423.
(a) The court shall direct the issuance of a summons to the child alleged to be a child in need of services, his or her parent, guardian, or legal custodian, DFCS and any other public agencies or institutions providing services, and any other persons who appear to the court to be proper or necessary parties to such child in need of services proceeding requiring them to appear before the court at the time fixed to answer the allegations of the petition seeking an adjudication that a child is in need of services. A copy of such petition shall accompany the summons. (b) The summons shall state that a party is entitled to an attorney in the proceedings and that the court will appoint an attorney if the party is an indigent person. (c) A party other than a child may waive service of summons by written stipulation or by voluntary appearance at the hearing.

15-11-424.
(a) If a party to be served with a summons pursuant to Code Section 15-11-423 is within this state and can be found, the summons shall be served upon him or her personally as soon as possible and at least 72 hours before the adjudication hearing. (b) If a party to be served is within this state and cannot be found but his or her address is known or can be ascertained with due diligence, the summons shall be served upon such party at least five days before an adjudication hearing by mailing him or her a copy by registered or certified mail or statutory overnight delivery, return receipt requested. (c) If a party to be served is outside this state but his or her address is known or can be ascertained with due diligence, service of the summons shall be made at least five days before an adjudication hearing either by delivering a copy to such party personally or by mailing a copy to him or her by registered or certified mail or statutory overnight delivery, return receipt requested. (d) Service of the summons may be made by any suitable person under the direction of the court. (e) The court may authorize 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 on the petition seeking an adjudication that a child is in need of services.

15-11-425.
(a) In the event a parent, guardian, or legal custodian of a child alleged to be a child in need of services willfully fails to appear personally at a hearing on the petition seeking an adjudication that a child is a child in need of services after being ordered to so appear or such parent, guardian, or legal custodian willfully fails to bring such child to such hearing after being so directed, the court may issue a rule nisi against the person directing the person to appear before the court to show cause why he or she should not be held in contempt of court. (b) If a parent, guardian, or legal custodian of the child alleged to be a child in need of services fails to appear in response to an order to show cause, the court may issue a bench warrant directing that such parent, guardian, or legal custodian be brought before the court without delay to show cause why he or she should not be held in contempt and the court may enter any order authorized by the provisions of Code Section 15-11-31. (c) In the event an agency representative willfully fails to appear at a hearing on the petition seeking an adjudication that a child is a child in need of services after being ordered to so appear, the court may direct the appropriate agency representative to appear before the court to show cause why a contempt order should not be issued. (d) If a child 16 years of age or older fails to appear at a hearing on a petition seeking an adjudication that such child is a child in need of services after being ordered to so appear, the court may issue a bench warrant requiring that such child be brought before the court without delay and the court may enter any order authorized by the provisions of Code Section 15-11-31. (e) If there is sworn testimony that a child 14 years of age but not yet 16 years of age willfully refuses to appear at a hearing on a petition seeking an adjudication that such child is a child in need of services after being ordered to so appear, the court may issue a bench warrant requiring that such child be brought before the court and the court may enter any order authorized by the provisions of Code Section 15-11-31.

Part 6

15-11-440.
The petitioner has the burden of proving the allegations of a child in need of services petition by clear and convincing evidence.

15-11-441.
(a) If a child alleged to be a child in need of services is in continued custody but not in a secure residential facility or nonsecure residential facility, the adjudication hearing shall be scheduled to be held no later than ten days after the filing of the petition seeking an adjudication that such child is a child in need of services. If such child is not in continued custody, the adjudication hearing shall be scheduled to be held no later than 60 days after the filing of such petition. (b) At the conclusion of the adjudication hearing, the court shall determine whether such child is a child in need of services.

15-11-442.
(a) If the court finds that a child is a child in need of services, a final disposition hearing shall be held and completed within 60 days of the conclusion of the adjudication hearing. (b) The court shall order the least restrictive and most appropriate disposition. Such disposition may include: (1) Permitting such child to remain with his or her caregiver without limitations or conditions; (2) Permitting such child to remain with his or her caregiver subject to such limitations and conditions as the court may prescribe; (3) Placing such child on probation or unsupervised probation on such terms and conditions as deemed in the best interests of such child and the
public. An order granting probation to a child in need of services may be revoked on the ground that the terms and conditions of the probation have not been observed; (4) Requiring that such child perform community service in a manner prescribed by the court and under the supervision of an individual designated by the court; (5) Requiring that such child make restitution. A restitution order may remain in force and effect simultaneously with another order of the court. Payment of funds shall be made by such child or his or her family or employer directly to the clerk of the juvenile court entering the order or another employee of that court designated by the judge, and such court shall disburse such funds in the manner authorized in the order. While an order requiring restitution is in effect, the court may transfer enforcement of its order to: (A) The juvenile court of the county of such child's residence and its probation staff, if he or she changes his or her place of residence; or (B) A superior court once such child reaches 18 years of age if he or she thereafter comes under the jurisdiction of the superior court; (6) Imposing a fine on such child who has committed an offense which, if committed by an adult, would be a violation under the criminal laws of this state or has violated an ordinance or bylaw of a county, city, town, or consolidated government. Such fine shall not exceed the fine which may be imposed against an adult for the same offense; (7) Requiring such child to attend structured after-school or evening programs or other court approved programs as well as requiring supervision of such child during the time of the day in which he or she most often used to perform the acts complained of in the petition alleging that such child is a child in need of services; (8) Any order authorized for the disposition of a delinquent child except that a child in need of services shall not be placed in a secure residential facility or nonsecure residential facility nor shall such facility accept such child; or (10) Any combination of the dispositions set forth in paragraphs (1) through (9) of this subsection as the court deems to be in the best interests of a child and the public. (c) All disposition orders shall include written findings of the basis for the disposition and such conditions as the court imposes and a specific plan of the services to be provided.

15-11-443.
(a) An order of disposition shall be in effect for the shortest time necessary to accomplish the purposes of the order and for not more than two years. A written disposition order shall state the length of time the order is to be in effect. An order of extension may be made if: (1) A hearing is held prior to the expiration of the order upon motion of DFCS, DJJ, the prosecuting attorney, 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 or an extension of such a disposition order prior to its expiration, on its own motion or an application of a party, if it appears to the court that the purposes of the order have been accomplished. (c) When a child adjudicated as a child in need of services reaches 18 years of age, all orders affecting him or her then in force shall terminate and he or she shall be discharged from further obligation or control.

15-11-444.
(a) An order granting probation to a child adjudicated to be a child in need of services may be revoked on the ground that the conditions of probation have been violated. (b) Any violation of a condition of probation may be reported to any person authorized to make a petition alleging that
a child is in need of services as set forth in Code Section 15-11-420. A motion for revocation of probation shall contain specific factual allegations constituting each violation of a condition of probation. (c) A motion for revocation of probation shall be served upon the child, his or her attorney, and parent, guardian, or legal custodian in accordance with the provisions of Code Section 15-11-424. (d) If a child in need of services is taken into custody because of the alleged violation of probation, the provisions governing the detention of a child under this article shall apply. (e) A revocation hearing shall be scheduled to be held no later than 30 days after the filing of a motion to revoke probation. (f) If the court finds, beyond a reasonable doubt, that a child in need of services violated the terms and conditions of probation, the court may: (1) Extend his or her probation; (2) Impose additional conditions of probation; or (3) Make any disposition that could have been made at the time probation was imposed.

The court shall review the disposition of a child in need of services at least once within three months after such disposition and at least every six months thereafter so long as the order of disposition is in effect.

Part 7

15-11-450.
(a) After determining, in accordance with the provisions of Article 7 of this chapter, that a child alleged to be a child in need of services in a petition under this article or who has been alleged to have committed a delinquent act is restorably incompetent to proceed and the court orders that procedures for a comprehensive services plan be initiated, the court shall appoint a plan manager, if one has not already been appointed, to direct the development of a comprehensive services plan for such child. (b) The plan manager shall convene all relevant parties to develop a comprehensive services plan. A plan manager shall request that the following persons attend such meeting: (1) The parent, guardian, or legal custodian of such child; (2) Such child's attorney; (3) The person who filed the petition alleging that a child is in need of services or committed a delinquent act; (4) Such child's guardian ad litem, if any; (5) Mental health or developmental disabilities representatives; (6) Such child's caseworker; (7) A representative from such child's school; and (8) Any family member of such child who has shown an interest and involvement in such child's well-being. (c) A plan manager may request that other relevant persons attend a comprehensive services plan meeting, including but not limited to the following: (1) A representative from the Department of Public Health; (2) A DFCS caseworker; (3) Representatives of the public and private resources to be utilized in the plan; and (4) Other persons who have demonstrated an ongoing commitment to the child. (d) A plan manager shall be responsible for collecting all previous histories of such child, including, but not limited to, previous evaluations, assessments, and school records, and for making such histories available for consideration by the persons at the comprehensive services plan meeting. (e) Unless a time extension is granted by the court, a plan manager shall submit the comprehensive services plan to the court within 30 days of the entry of the court's disposition order for a child adjudicated to be restorably incompetent to proceed under Article 7 of this chapter. The plan shall include the following: (1) An outline of the specific provisions for supervision of such child for protection of the community and such child; (2) An outline of a plan designed to provide treatment, habilitation, support, or supervision services for a child in the least restrictive environment; (3) If
such child's evaluation recommends inpatient treatment, certification by such plan manager that all other appropriate community based treatment options have been exhausted; and (4) Identification of all parties responsible for each element of the plan, including such child, agency representatives, and other persons. (f) A plan manager shall also be responsible for: (1) Convening a meeting of all parties and representatives of all agencies prior to the comprehensive services plan hearing and review hearings; (2) Identifying to the court any person who should provide testimony at the comprehensive services plan hearing; and (3) Monitoring the comprehensive services plan, presenting to the court amendments to the plan as needed, and presenting evidence to the court for the reapproval of the plan at subsequent review hearings.


(a) The court shall hold a comprehensive services plan hearing within 30 days after the comprehensive services plan has been submitted to the court for the purpose of approving the plan. Thereafter, the court shall hold a comprehensive services plan hearing every six months for the purpose of reviewing such child's condition and approving the comprehensive services plan. (b) The persons required to be notified of a comprehensive services plan hearing and witnesses identified by a plan manager shall be given at least ten days' prior notice of the hearing and any subsequent hearing to review such child's condition and shall be afforded an opportunity to be heard at any such hearing. The victim, if any, of a child's alleged delinquent act shall also be provided with the same ten days' prior notice and shall be afforded an opportunity to be heard and to present a victim impact form as provided in Code Section 17-10-1.1 to the court at the comprehensive services plan hearing. The judge shall make a determination regarding sequestration of witnesses in order to protect the privileges and confidentiality rights of a child adjudicated to be unresponsibly incompetent to proceed under Article 7 of this chapter. (c) At the comprehensive services plan hearing, the court shall enter an order incorporating a comprehensive services plan as part of the disposition of the comprehensive services plan hearing. At the time of the disposition, a child shall be placed in an appropriate treatment setting, as recommended by the examiner, unless such child has already been placed in an appropriate treatment setting pursuant to subsection (d) of Code Section 15-11-656. (d) If, during the comprehensive services plan hearing or any subsequent review hearing, the court determines that a child meets criteria for civil commitment, such child may be committed to an appropriate treatment setting. (e) At any time, in the event of a change in circumstances regarding such child, the court on its own motion or on the motion of the attorney representing such child, any guardian ad litem for such child, the person who filed the petition alleging that a child is in need of services or committed a delinquent act, or the plan manager may set a hearing for review of the comprehensive services plan and any proposed amendments to such plan. The court may issue an appropriate order incorporating an amended plan. (f) If a child is under a comprehensive services plan when he or she reaches the age of 18, the plan manager shall make a referral for appropriate adult services.
In the Juvenile Court of _____________ County
State of Georgia

**COMPLAINT**
(Child in Need of Services)

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<th>Child’s Full Name:</th>
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<td>Age:</td>
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<td>Address:</td>
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<td>Mother’s Name:</td>
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Names of all persons living in the home with the child:

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<th>(Name)</th>
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Taken into Custody: Yes ( ) No ( )

By Whom:

Placement of Child: Date:

Court Personnel Notified: Date:

By:
Name of any public institution or agency that has the responsibility or ability to supply services alleged to be needed by the child:

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<tr>
<th>Agency/Institution Name</th>
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<td>(Agency/Institution Name)</td>
<td>(Phone Number)</td>
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Description of the specific acts alleged to have been committed by the child that, if true, would make the child a child in need of services: See Attachment A
Is this Complaint being brought by an official from the child’s school?  
______  _______  YES  
NO  
IF YES:  
1) Has the school district sought to resolve the expressed problem through available educational approaches:  
______  _______  
YES  NO  
List all available educational approaches attempted:  

2) Has the school district sought to engage the parent, guardian or legal custodian of the child in solving the problem?  
______  _______  
YES  NO  
Has such parent, guardian or legal custodian been unwilling or unable to solve the problem?  
______  _______  
YES  NO  
Does the problem still exist and is court intervention necessary?  
______  _______  YES  NO  

3) Is the child eligible or suspected to be eligible for services under the federal Individuals with Disabilities in Education Act (IDEA) or Section 504 of the federal Rehabilitation Act of 1973?  
______  _______  YES  NO  
IF YES:  
A) Has the liable school district made a determination that such child is eligible for services under IDEA or Section 504?  
______  _______  YES  NO  
B) Has the liable school district reviewed for appropriateness such child’s current Individualized Education Program (IEP) and made appropriate modifications, taking into account the allegations contained herein?  
______  _______  YES  NO  
Date of last IEP meeting:  

Complainant’s Name:  
Complainant’s Address:  
Signature:  
Date:  
Phone #:  

ATTACHMENT A  
(child name)  

A.  (List specific facts that create the basis to allege the child is a Child in Need of Services)  

IN THE JUVENILE COURT OF ____________ COUNTY  
STATE OF GEORGIA
In the interest of: ________________________________
SEP: _______________ DOB: ______________ AGE: ______________
A child.

PETITION
(CHILD IN NEED OF SERVICES)

The Petitioner alleges as follows:

1. The child named above to be of the sex and age and to have the name there set forth; that
   the mother of the child is ___________________________ who resides at
   ________________________________; that the father of the child is
   ___________________________ who resides at ________________________________;
   that said child resides at _____________________________________________
in the County of ______________________, state of Georgia, and is presently in the
   custody and control of ________________________________.

2. It is in the best interests of the child and the public that this Petition be filed.

3. Said child is a Child In Need of Services as defined in O.C.G.A. § 15-11-2 in that:
   A. ________ The child is in need of care, guidance, counseling, structure,
      supervision, treatment, or rehabilitation, and is (check all that apply):
      i. ________ Subject to compulsory school attendance and is habitually and
         without good and sufficient cause truant, as such term is defined in
         O.C.G.A. § 15-11-38, from school; and/or
      ii. ________ Habitually disobedient of the reasonable and lawful commands
          of his or her parent, guardian, or legal custodian and is ungovernable or
          places himself/herself or others in unsafe circumstances; and/or
      iii. ________ A runaway, as such term is defined in O.C.G.A. § 15-11-381;
           and/or
      iv. ________ A child who has committed an offense applicable only to a
          child; and/or
      v. ________ A child who 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.; and/or
      vi. ________ A child who disobeys the terms of supervision contained in a
          court order which has been directed to such child who has been
          adjudicated a child in need of services; and/or
      vii. ________ A child who patronizes any bar where alcoholic beverages are
           being sold, unaccompanied by his or her parent, guardian, or legal
           custodian; OR
   B. ________ The child has committed a delinquent act and is adjudicated to be in
      need of supervision but not in need of treatment or rehabilitation.
4. The facts supporting the allegations set forth in Paragraph 3 are as follows:
   A. (Facts supporting petition)

5. Said child is in need of supervision, treatment or rehabilitation. Said child is/is not presently in secure/nonsecure detention at ________________________________, having been placed there on ____ (date) ____________, 20____.

6. Petitioner is/is not a representative from the child’s school. Petitioner alleges:
   A. The school district has sought to resolve the problem through available educational approaches;
   B. The school district has sought to engage the parent/custodian but the problem remains;
   C. The child is/is not eligible or suspected to be eligible for special education services; and the school has determined whether the child is eligible under the Individuals with Disabilities in Education Act or Section 504 services, and that the school reviewed the child’s Individualized Education Plan and placement and made appropriate modifications.

Petitioner prays that process issue, directed to the parties hereto, requiring the parties to show cause as to why the child should not be found to be a Child In Need of Services according to law.

________________________________________
(Petitioner)

Sworn and subscribed before me this _____ day of ____________, 20__.

________________________________________
(Attesting Officer)

The above petition is approved to be filed in the best interest of the child and the public.
This _____ day of ____________, 20__.

________________________________________
(Court Designee)
IN THE JUVENILE COURT OF ______________ COUNTY  
STATE OF GEORGIA  

In the interest of:  
CASE NUMBER: ____________________  
SEX: ________________  
________________________________  
DOB: ____________ AGE: ____________  
A child.  

CONTINUED CUSTODY HEARING ORDER  
The above and foregoing matter is before the Court for a Continued Custody Hearing  
Order based upon a Complaint for Child in Need of Services filed by  
_______________________________________ alleging the above named child to be a child in need of  
services. Present in Court were:  
( ) Child ________________________ ( ) Attorney ________________________  
( ) Complainant ________________ ( ) Attorney ________________________  
( ) Mother ________________________ ( ) Attorney ________________________  
( ) Father ________________________ ( ) Attorney ________________________  
( ) DFCS ________________________ ( ) SAAG ________________________  
( ) Other ________________________ ( ) Attorney ________________________  
( ) Guardian ad Litem ________________________  
( ) Other ________________________  

The following parties were not present: ________________________________________  

The child is currently placed in:  
( ) A secure or nonsecure facility operated by or on behalf of the Department  
of Juvenile Justice; or  
( ) The custody of the Department of Family Services; or  
( ) Another out-of-home placement, to wit: ____________________________________  
and was placed in said facility on __________________________, 20______.
( ) The complainant is a representative of the child’s school. There is probable cause to believe that:

( ) The school district has sought to resolve the problem through available educational approaches; and
( ) The school district has sought to engage the parent/custodian but the problem remains; and
( ) The child is eligible or suspected to be eligible for special education services; and
( ) The school has determined whether the child is eligible under the Individuals with Disabilities in Education Act or Section 504 services, and that the school reviewed the child’s Individualized Education Plan and placement and made appropriate modifications.

( ) The complainant is a representative of the child’s school, and has failed to show meet the requirements set forth in O.C.G.A. § 15-11-390 (d), to wit: _____________________________
_____________________________________________________________________________.
Accordingly, the Complaint is hereby DISMISSED.

( ) Based upon the evidence presented, the Court finds that there is probable cause to believe the above named child committed a status offense or is otherwise a child in need of services pursuant to O.C.G.A. Section 15-11-414(a) as a result of the following:
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

( ) Based upon the evidence presented, the Court does not find that there is probable cause to believe the above named child to be a child in need of services. Accordingly, the Complaint is HEREBY DISMISSED.
( ) Continuation in the home of the child’s parent, guardian, or legal custodian is contrary to the welfare of the child because ____________________________________________________________

( ) Reasonable efforts have been made to safely maintain the child in the home of the parent, guardian or legal custodian and to prevent or eliminate the need for removal from such home.

( ) There is clear and convincing evidence that the child’s freedom should be restrained and the child should be placed at _____________________________________________________________ prior to adjudication. No less restrictive alternative will suffice and:
   ( ) The child’s detention or care is required to reduce the likelihood that he or she may inflict serious bodily harm on others during the interim period; or
   ( ) The child’s detention is necessary to secure his or her presence in court.

( ) There are available services that can prevent or eliminate the need for the child’s detention. The child can remain in the custody of the parent, guardian, or legal custodian so long as the following services are put into place: ______________________________________________

IT IS HEREBY ORDERED THAT the child shall return to the custody of ___________________________________________ and that said services shall be put into place by the following responsible person or agency: __________________________________________ , which services shall begin no later than _________________, 20__.

( ) IT IS HEREBY ORDERED that temporary custody of the above named child should be and is HEREBY PLACED with ___________________________________________ and an Adjudicatory Hearing shall be scheduled for the _____ day of ________________, 2013.

( ) IT IS FURTHER ORDERED that the named custodian is hereby authorized to obtain for this child physical examinations, ordinary medical care, and such additional medical treatment
and care which, in the opinion of a licensed physician, is necessary for the care and well-being of the child.

IT IS SO ORDERED this ______ day of ______________________, 20____.

________________________________________
JUDGE, JUVENILE COURT
# Chapter 12  Petition to Modify, Set Aside or Vacate

*Contribution by Mary Hermann, JD, CWLS*

| Authority | § 15-11-32 Modify, Set Aside or Vacate statutory grounds  
*Fostering Connection to Success and Increasing Adoptions Act* |
|-----------|--------------------------------------------------------------------------------------------------|
| Purpose   | - Modify, set aside or vacate a prior court order  
- Pre-2014 custody transfers to relatives may be subject to modification under this code section  
- Reinstatement of parental rights, § 15-11-323, refers to this code section as the procedure to be used in a petition for reinstatement of parental rights  
- **Do not confuse** with  
  - Termination of guardianship actions § 15-11-244  
  - Sua sponte court action at reviews or disposition § 15-11-212(d) |

## Pleadings

- Petition to modify setting forth in clear and concise language the grounds upon which the relief is requested  
- 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 nonreunification hearing  
  - vacate a dependency order  
- Court can consider modification of  
  - Custody  
  - visits or parameters of parental contact  
  - sibling contact  
  - services  
  - case plan elements  
  - permanency plan  
  - protective order restrictions  
  - ILP services after 18 years old  

## Petition Requirements

§15-11-32(e)  
- Petition shall set forth in clear and concise language the grounds upon which the relief is requested.

## Jurisdiction

**Same as Dependency Adjudication**  
§ 15-11-10(1)(C)  
- Child under 18 years alleged to be a dependent in the state.  
- Petition must state factual basis of jurisdiction.  

§ 15-11-10(1)(G)  
- Child remaining in foster care after 18 years old **OR**  
- Child is 18 years or older and receiving independent living services.  
- Limited jurisdiction to review the status of the child and the services
provided to the child for independent living or foster care.

§ 15-11-12 Dual Jurisdiction Child
- Child may be delinquent and dependent or dependent and CHINS if a “factual basis” established
- If the delinquent and dependency case or CHINS and dependency cases are consolidated the dependency time lines apply to the consolidated court action

<table>
<thead>
<tr>
<th>Venue</th>
<th>§ 15-11-125</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>A proceeding may be commenced</td>
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<tr>
<td></td>
<td>o in the county where child legally resides or</td>
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<tr>
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<td>o in the county of child’s presence at commencement of action</td>
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<tr>
<td></td>
<td>if the child is present without a custodian or the acts underlying the dependency occurred in that county.</td>
</tr>
</tbody>
</table>

Transfer of Venue
- Venue may be transferred to child’s county of legal residence for the convenience of parties.
- 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.

§ 15-11-105(h)
- If change of venue, GAL shall forward pertinent information to next GAL appointed.

| Timing | Anytime following adjudication |

<table>
<thead>
<tr>
<th>Grounds to Modify, Set Aside or Vacate</th>
<th>§ 15-11-32(a)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>An order of the court shall be set aside if</td>
</tr>
<tr>
<td></td>
<td>o it appears that it was obtained by fraud or mistake sufficient therefor in a civil action.</td>
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<tr>
<td></td>
<td>o the court lacked jurisdiction over a necessary party or the subject matter.</td>
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<tr>
<td></td>
<td>o newly discovered evidence so requires.</td>
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</table>

§ 15-11-32(b)
- An order may also be changed, modified, or vacated on the ground that changed circumstances so require in the best interests of a child except an order of dismissal following a contested adjudicatory hearing

<table>
<thead>
<tr>
<th>Who May File Petition</th>
<th>§ 15-11-32(e)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Any party to the proceeding, the probation officer, or any other person having supervision or legal custody of or an interest in a child may petition the court for the relief provided in this code section</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Court to Set Hearing, Notice Parties and Issue Order</th>
<th>§ 15-11-32(f)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>After petition to modify, set aside, or vacate is filed, the court shall</td>
</tr>
<tr>
<td></td>
<td>o fix a time for hearing.</td>
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<tr>
<td></td>
<td>o cause notice to be served on the parties to the proceeding or those affected by the relief sought.</td>
</tr>
</tbody>
</table>
After hearing, the court shall deny or grant relief as the evidence warrants.

### 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).

**Clear and Convincing**
- Standard for modification of other orders such as reinstatement of parental rights
- Order should be vacated if
  - it was obtained by fraud or mistake sufficient.
  - the court lacked jurisdiction over a necessary party or of the subject matter.
  - newly discovered evidence so requires.
- order should be changed, modified or vacated based on changed circumstances and the best interest of the child.

### Parties

**Same as Adjudication**
- Party defined at § 15-11-2(52) as state, a child, parent, guardian, legal custodian, or other person subject to any judicial proceeding, except in delinquency proceedings; then only a child and the state are parties.
- Parent defined at § 15-11-2(51) as legal father or legal mother of a child.
- Any party to the proceeding, the probation officer, or any other person having supervision or legal custody of or an interest in a child may petition the court for the relief provided in this code section.

### Summons

**§ 15-11-160**
- Copy of dependency petition (except publication)
- The court shall direct the issuance of a summons to
  - a child if 14 years of age or older
  - child's parent, guardian, or legal custodian
  - child's attorney and child's guardian ad litem
  - any other persons who appear to the court to be proper or necessary parties to the proceeding
- Summons must provide notice of a party’s right to counsel.
- Party other than child may waive summons by written stipulation or voluntary appearance at hearing.

**§ 15-11-161**
- If party is in Georgia and can be found, then personal service ASAP and at least 72 hours before the adjudication hearing. § 15-11-161(a).
- If party is in Georgia and cannot be found but address is known or can be known with due diligence, must be served at least 5 days before the adjudication hearing by registered or certified mail or statutory overnight delivery, return receipt requested. § 15-11-
### 161(b).
- If party is outside Georgia with known address or known with due diligence, then must be served at least 5 days before the adjudication hearing by personal service or by registered or certified mail or statutory overnight delivery, return receipt requested. § 15-11-161(c).
- If, after due diligence, whereabouts of a party are unknown, then service by publication; hearing shall be no earlier than 5 days after final publication. § 15-11-161(d).
- Publication shall be 1 time per week for 4 weeks in legal organ of county where dependency pending § 15-11-161(e).
- Party is defined at § 15-11-2(52) as state, a child, parent, guardian, legal custodian, or other person subject to any judicial proceeding except in delinquency proceedings; then only a child and the state are parties.
- Parent is defined at § 15-11-2(51) as legal father or legal mother of a child.

### § 15-11-161(f)
- Service of summons may be made by any suitable person under the direction of the court.

#### Notice to Non-Parties: Foster Parent, Relative Caregiver

**§ 15-11-109**
- Notice of hearing or review must be given to foster parents of the child, pre-adoptive parents or relatives caring for the child.
- Notice is for opportunity to be heard but does not compel attendance.
- Written notice (mail, hand delivery or email) and 72 hours in advance, date, time, place, purpose of hearing and notice of their right to be heard – exception: preliminary protective hearing.
- Not a party to the dependency action; only right to attendance and opportunity to be heard.

#### Provisional Hearing Requirements

**§ 15-11-163 Provisional Hearing**
- The court may conduct a provisional hearing and issue an interlocutory order if one party is before the court and service by publication is required for the other party and
  - child is present at the provisional hearing.
  - summons to published party states final hearing date, time, location.
  - served party is required to appear at provisional hearing.
- Provisional hearing findings will become final if published party does not appear at calendared final hearing.

#### Child and Party Right to Attorney

**§ 15-11-103 Child & Party**
- All parties, including the child, have a right to counsel at all stages of the proceedings.
- Party defined at § 15-11-2(52) as state, a child, parent, guardian, legal custodian, or other person subject to any judicial proceeding,
Timing of Appointment

- except in delinquency proceedings; then only a child and the state are parties.
- Parent defined at § 15-11-2(51) as legal father or legal mother of a child.
- Child Attorney should be appointed “as soon as practicable to ensure adequate representation” and before the first hearing that may substantially affect the interests of the child.
  - Child attorney has “attorney-client” duty.
  - Child attorney representation continues through appeals or until excused by court.
  - Child’s right to attorney cannot be waived.
- Party should be advised of right to counsel prior to any hearing:
  - Party has right to obtain or employ attorney
  - If indigent, right to appointed counsel
  - Can waive right to attorney
- 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 (2009)).
- Putative Father issue – is he a “party”?
- Inquiry about incarcerated parents; transport to hearings?

Right to GAL and GAL Best Interest Advocacy Considerations

§ 15-11-104
- GAL shall be appointed
- May be child’s attorney unless or until a conflict of interest between the attorney’s duty to the child and the attorney’s “considered opinion” of the child’s best interest as a GAL
- CASA may serve as GAL
- Procedure for removal of GAL for cause § 15-11-104(h)
- CASA appointment § 15-11-106

§ 15-11-105
- To advocate for the child’s best interest, GAL shall consider factors such as the following, in the context of child’s age and developmental needs:
  - Physical safety and welfare, food, shelter, health, clothing
  - Mental and physical health of all individuals involved
  - Evidence of domestic violence
  - Child's background and ties, including familial, cultural, religious
  - Child’s sense of attachments
  - Least disruptive placement alternative
  - Child's wishes and long-term goals
  - Community ties, church, school, friends
  - Child’s need for permanence, stability, and continuity of relationships
| Table | Uniqueness of every family and child  
|       | o Risks associated with being in substitute care  
|       | o Preferences of the persons available to care for the child  
|       | o Any other factors considered by the GAL to be relevant and proper  

| § 15-11-105(c) | Minimum duties of GAL, unless child’s circumstances make these unreasonable (must be performed in a developmentally appropriate manner):  
|               | • Maintain regular and sufficient in-person contact with the child, in a manner appropriate to his or her developmental level  
|               | • Meet with and interview child prior to all hearings and reviews  
|               | • Determine child’s needs, circumstances and views  
|               | • Make independent factual determination of the case  
|               | • Consult with child’s attorney  
|               | • Communicate with health, mental health, and other professionals  
|               | • Review case study and educational, medical, psychological, and other relevant reports  
|               | • Review all court-related documents  
|               | • Attend all court hearings and other proceedings to advocate for the child's best interests  
|               | • Advocate for timely court hearings to obtain permanency for the child  
|               | • Protect the cultural needs of the child  
|               | • Contact the child prior to any proposed placement changes  
|               | • Contact the child after placement changes  
|               | • Request a judicial citizen review panel or judicial review of the case  
|               | • Attend citizen panel review hearings, and if unable to attend, send panel a letter stating the child’s status since the last citizen panel review and an assessment of the DFCS permanency and treatment plans  
|               | • Provide written reports to the court and the parties on the child's best interests, including recommendations regarding placement, updates on child's adjustment to placement, DFCS's and respondent's compliance with prior court orders and treatment plans, child's participation during visits, and any other recommendations based on the best interests of the child  
|               | • When appropriate, encourage settlement and the use of alternative forms of dispute resolution and participate in such processes to the extent permitted  
|               | • Monitor compliance with the case plan and all court orders.  

| § 15-11-105(d), (e) | GAL shall receive all notices of hearings, reviews, panels, case plan formulation meetings, and shall be served pleadings in the same manner as a party.  

<table>
<thead>
<tr>
<th>Minimum Duties of GAL</th>
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<tbody>
<tr>
<td>§ 15-11-105(d), (e)</td>
</tr>
<tr>
<td>GAL Participation and Access to</td>
</tr>
</tbody>
</table>

Trial Notebook for Child Welfare Attorneys – March 31, 2014
| Records | GAL shall have access to all records and information relevant to the child’s case except
  | § 19-7-5, Child Abuse Reporting Statute
  | § 49-4A, Juvenile Justice authorizing statute
  | Article 11, Office of the Child Advocate for the Protection of Children authorizing statute

| Confidentiality Required | § 15-11-105(f), (g) | All information acquired by GAL is confidential except as directed by court:
  | Misdemeanor if violated
  | Maintain confidential records require by § 37-3-166, Hospitalization and Treatment of Alcoholics and Drug Dependent Individual, clinical records; when release permitted; scope of privileged communications; liability for disclosure; notice to sheriff of discharge
  | § 37-4-125 – Services for Developmentally Disabled, clinical records, release, privilege

| RE Required at Each Stage | § 15-11-202(a) | Except where § 15-11-203 applies, RE shall be made to preserve or reunify families:
  | to prevent removal, prior to placement, or
  | to eliminate the need for removal and reunify.

| RE Considerations by Court | § 15-11-202(b) | Type of RE based on child's health and safety, which is of “paramount concern.”

| § 15-11-202(c) | Appropriate services may be provided by DFCS or in the community.

| § 15-11-202(d) | The court shall review the appropriateness of DFCS’s RE at each stage of the dependency proceedings.

| Concurrent RE | § 15-11-202(f), (g), (h) | Court considerations in RE determination: whether services to the child and family were:
  | relevant to the safety and protection child.
  | adequate to meet the needs child and family.
  | culturally and linguistically appropriate.
  | available and accessible.
  | consistent and timely.
  | realistic under the circumstances.

| Concurrent RE authorized — reunification and other permanent

| § 15-11-202(i) | If no RE found by court, child may still be adjudicated dependent and removed.

| Court may determine no RE justified because of an immediate threat of harm to child.
<table>
<thead>
<tr>
<th><strong>authorized RE in Every Order</strong></th>
<th>§ 15-11-202(j)</th>
</tr>
</thead>
</table>
| • Order placing or continuing DFCS custody of child shall contain written findings of facts stating  
  o child's continuation in or return home would be contrary to the child’s welfare.  
  o whether RE determination have been made to prevent or eliminate the need for out-of-home placement, unless court determines RE are not required or that RE may cease.  
  o whether RE should continue to be made to prevent or eliminate the need for placement. | |

<table>
<thead>
<tr>
<th><strong>Visitation Shall Be Ordered By the Court</strong></th>
<th>§ 15-11-112(a)</th>
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</thead>
<tbody>
<tr>
<td>• Court shall order reasonable visitation, shall specify frequency, duration, and whether supervised or unsupervised, consistent with age and developmental needs of child.</td>
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</tbody>
</table>

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<thead>
<tr>
<th><strong>Visitation Presumed Unsupervised unless court determines unsupervised visitation is not in the child’s best interest.</strong></th>
<th>§ 15-11-112(b)</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Visitation terms may be modified by the court for lack of substantial progress on case plan.</td>
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<thead>
<tr>
<th><strong>Sibling Joint Placement or Frequent Visitation</strong></th>
<th>§ 15-11-135(e)</th>
</tr>
</thead>
</table>
| • Siblings shall be placed together unless DFCS provides written explanation of why co-placement is not appropriate.  
  • If siblings are not placed together, DFCS must provide frequent sibling visits or ongoing interactions, or must document why contact would be contrary to the safety or well-being of the siblings. | |

<table>
<thead>
<tr>
<th>§15-11-201(b)(11)</th>
<th></th>
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</table>
| • If siblings are removed, case plan must include statement that RE have been made and are required to be made while siblings are in care  
  o to place siblings in the same placement unless DFCS documents that joint placement would be contrary to the safety or well-being of any of the siblings, and  
  o to maintain frequent visitation or other ongoing interaction between siblings not placed together, unless DFCS documents that such frequent visitation or other ongoing interaction would be contrary to the safety or well-being of any of the siblings. | |

<table>
<thead>
<tr>
<th><strong>One Judge—One Family</strong></th>
<th>§ 15-11-3</th>
</tr>
</thead>
</table>
| • A single judge shall hear all successive cases or proceedings involving the same child or family.  
  • Direct calendaring | |

<table>
<thead>
<tr>
<th><strong>At Any Hearing Juvenile</strong></th>
<th>§ 15-11-111</th>
</tr>
</thead>
<tbody>
<tr>
<td>At any hearing, in the court’s discretion and based on evidence presented, the court may enter an order:</td>
<td></td>
</tr>
</tbody>
</table>
| Court May Order | • accepting or rejecting any DFCS report.  
• requiring an additional evaluation.  
• requiring other reviews to determine the disposition that is in the child's best interests.  
The court’s order  
• may incorporate all or part of the DFCS report.  
• shall include findings of fact reflecting the court's consideration of the oral and written testimony offered by parties and nonparties with a right to receive notice and be heard. |
| Right to Be Present, Heard and Present Evidence | § 15-11-19  
• Party has right to be present, heard, present evidence, cross examine witnesses, examine pertinent court files and records, and appeal orders of the court.  
• “Party” includes child, except court may exclude child if not in the child’s best interest to be present.  
• Party shall be advised of these rights at that person’s first appearance. |
| Continuance Issues | § 15-11-110  
• No continuance if contrary to child’s interest.  
• Court to consider and give substantial weight to the child’s need for prompt resolution of custody status, stable environment, and damage to child of prolonged temporary placements.  
• Showing of good cause and only for time necessary based on evidence presented on the record.  
• Stipulation of parties or need for discovery is not good cause.  
• If no objection to continuance then consent.  
**Practice Note:** Need to state specific reasons for continuance on the record and in continuance order.  
• Case should be active even during the continuance period:  
  o Further investigation  
  o Necessary witness  
  o Begin services to allow child to return home  
  o Home evaluation of relative |
| Willful Failure to Appear | § 15-11-162  
If parent, guardian, or legal custodian willfully fails to appear after being ordered to appear, then Rule Nisi and contempt and bench warrant may occur. |
| Discovery Available to Any Party Upon Written Request | §15-11-170(a)  
• Upon written request to the party having actual custody, control, or possession of the material to be produced, any party shall have full access to the following for inspection, copying, or photographing:  
  o Names and telephone numbers of each witness likely to be called to testify |
### Discovery

<table>
<thead>
<tr>
<th>Discovery Requires Court Order or Written Consent of Person Permitting Access to Protected Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>- By court order or written consent from the appropriate person, any party shall have access to the following for inspection, copying, or photographing:</td>
</tr>
<tr>
<td>- Psychological, developmental, physical, mental or emotional health, or other assessments of the child or family, parent, guardian, or legal custodian</td>
</tr>
<tr>
<td>- School records of child</td>
</tr>
<tr>
<td>- Medical records of child</td>
</tr>
<tr>
<td>- Transcriptions, recordings and summaries of oral statement of child or witness, except child abuse reports that are confidential § 19-7-5 (Child Abuse Reporting Statute) and attorney work product</td>
</tr>
<tr>
<td>- Family team meeting or multidisciplinary team meetings report</td>
</tr>
<tr>
<td>- Supplemental police reports</td>
</tr>
<tr>
<td>- Child’s immigration records</td>
</tr>
</tbody>
</table>

### Discovery Reciprocal Discovery Contents

<table>
<thead>
<tr>
<th>§ 15-11-170(c)</th>
</tr>
</thead>
<tbody>
<tr>
<td>- If a party makes a discovery request, then that party shall provide to all parties for inspection, copying and photographing:</td>
</tr>
<tr>
<td>- Names and last known addresses and telephone numbers of each witness to the party’s defense or claim</td>
</tr>
<tr>
<td>- Any scientific or other report which is intended to be introduced at the hearing or that pertains to physical evidence which is intended to be introduced</td>
</tr>
<tr>
<td>- Photographs and any physical evidence which are intended to be introduced at the hearing</td>
</tr>
<tr>
<td>- Copy of any written statement by any witness that relates to the testimony of the witness to be called during hearing</td>
</tr>
</tbody>
</table>

### Discovery Timing Continuing Discovery Response required

<table>
<thead>
<tr>
<th>§ 15-11-170(d)</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Prompt compliance required:</td>
</tr>
<tr>
<td>- not later than 5 days after request received or</td>
</tr>
<tr>
<td>- at least 72 hours prior to hearing (depending on when request received)</td>
</tr>
<tr>
<td>- If request is made less than 48 hours prior to hearing then response shall be timely.</td>
</tr>
<tr>
<td>- If new evidence is found after discovery provided, party shall</td>
</tr>
<tr>
<td><strong>Discovery</strong></td>
</tr>
<tr>
<td>--------------</td>
</tr>
<tr>
<td><strong>§ 15-11-170(e)</strong></td>
</tr>
<tr>
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</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Deposition of Child</strong></th>
<th><strong>§ 15-11-170(f)</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No deposition of child except by court order.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Sanction for Failure to Comply with Discovery</strong></th>
<th><strong>§ 15-11-170(g)</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>If a party fails to comply with a discovery order, court may grant a continuance, prohibit the use of the evidence during hearings, or enter other order the court deems just.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Court May Order Disclosure</strong></th>
<th><strong>§ 15-11-170(h)</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Court has authority to order disclosure of any information deemed necessary for proper adjudication.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Restriction on use of Discovery</strong></th>
<th><strong>§ 15-11-170 (i)</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Information obtained through discovery shall only be used during pending case and use may be further limited by court.</td>
</tr>
</tbody>
</table>

| **Important Considerations** | |
|-------------------------------||
| | Should the court order be modified, changed, or vacated to accomplish the goals of the case plan? |
| | Should the case plan be modified? |
| | Are there other elements of the court’s order that should be modified? |

| **Stipulation / Consent** | |
|--------------------------||
| | Parties may consent or stipulate to the modification and any additional terms may be proposed to the court for consideration and inclusion in the court’s order. |

<table>
<thead>
<tr>
<th><strong>Delinquency Case Requirements / Exceptions to Modification</strong></th>
<th><strong>§15-11-32 (c)</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>An order committing a child to DJJ may only be modified after the child has been transferred to DJJ custody upon motion of DJJ, except as otherwise provided in § 15-11-602.</td>
</tr>
</tbody>
</table>

<p>| | <strong>§15-11-32 (d)</strong> |
| | An order of adjudication of delinquency may be modified or vacated |</p>
<table>
<thead>
<tr>
<th>Documents / Information Needed</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Home evaluation of proposed custodian; best practice to admit it into evidence</td>
</tr>
<tr>
<td>- Prior court orders</td>
</tr>
<tr>
<td>- Is there a <strong>Kinship Guardianship - Kinship Navigator Program</strong> available for the family or <strong>Permanent Guardianship option</strong>?</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Court Considerations for Best Interest of Child</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>§15-11-26. Court Considerations for Best Interest of Child</strong></td>
</tr>
<tr>
<td>Court to consider all factors affecting the child’s best interest in the context of child's age and developmental needs, including following 20 factors:</td>
</tr>
<tr>
<td>1. Physical safety and welfare, food, shelter, health and clothing</td>
</tr>
<tr>
<td>2. Love, affection, bonding, and emotional ties existing between child and parent or person available to care for the child</td>
</tr>
<tr>
<td>3. Sibling bond, including half siblings and step siblings</td>
</tr>
<tr>
<td>4. Child's need for permanence, need for stability and continuity of relationships</td>
</tr>
<tr>
<td>5. Child's attachments, child’s sense of security and familiarity, and continuity of affection for the child</td>
</tr>
<tr>
<td>6. Parental capacity</td>
</tr>
<tr>
<td>7. Home environment of each parent or person available to care for such child considering the promotion of the child’s nurturance and safety rather than superficial or material factors</td>
</tr>
<tr>
<td>8. Stability of the family unit and community support systems</td>
</tr>
<tr>
<td>9. Mental and physical health of all individuals involved</td>
</tr>
<tr>
<td>10. Home, school and community record; history of child, child’s special needs</td>
</tr>
<tr>
<td>11. Community ties, church, school and friends</td>
</tr>
<tr>
<td>12. Child's background and ties, including familial, cultural and religious</td>
</tr>
<tr>
<td>13. The least disruptive placement alternative</td>
</tr>
<tr>
<td>14. Uniqueness of every family and child</td>
</tr>
<tr>
<td>15. Risks associated with being in substitute care</td>
</tr>
<tr>
<td>16. Child's wishes and long-term goals</td>
</tr>
<tr>
<td>17. Preferences of the persons available to care for the child</td>
</tr>
<tr>
<td>18. Evidence of family violence, substance abuse, criminal history, or sexual, mental, or physical child abuse</td>
</tr>
<tr>
<td>19. Recommendation by a court appointed custody evaluator or GAL</td>
</tr>
<tr>
<td>20. Any other factors considered by the court to be relevant and proper to its determination</td>
</tr>
</tbody>
</table>
Standard of Proof

Preponderance of the evidence is the standard of proof to be used in a parent’s petition to modify custody, pursuant to § 15-11-40(b), after there has been a finding of dependency with temporary custody residing with the state. The standard is not clear and convincing.

In Re J.N., 691 S.E.2d 396, 401 (Ga. App., 2010), Docket number: A09A1966: “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 Notes

• 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, the same applies to permanent guardianship
• 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 and fraud.
Kinship Navigator Program
Assists kinship caregivers with 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 all of the following exist:
  - the child has been in relative foster care with the relative for at least 6 consecutive months
  - the child has a strong attachment to the relative
  - the relative has committed to permanently caring for the child
  - 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
  - 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 describing
  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.
  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.

**Code Sections**

**15-11-32. Petition to Modify, Set Aside or Vacate**
(a) An order of the court shall be set aside if: (1) It appears that it was obtained by fraud or mistake sufficient therefor in a civil action; (2) The court lacked jurisdiction over a necessary party or 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 interests of a child.
except an order of dismissal following a contested adjudicatory hearing. (c) Except as otherwise provided in Code Section 15-11-602, an order committing a child to DJJ may only be modified after such child has been transferred to DJJ custody upon motion of DJJ. (d) An order of adjudication of delinquency by a court may be modified or vacated if the child was adjudicated for a delinquent act for a sexual crime as defined in Code Section 16-3-6 and such crime resulted from the child being: (1) Trafficked for sexual servitude in violation of Code Section 16-5-46; or (2) A victim of sexual exploitation as defined in Code Section 49-5-40. (e) Any party to the proceeding, the probation officer, or any other person having supervision or legal custody of or an interest in a child may petition the court for the relief provided in this Code section. Such petition shall set forth in clear and concise language the grounds upon which the relief is requested. (f) After a petition seeking relief under this Code section is filed, the court shall fix a time for hearing and shall cause notice to be served on the parties to the proceeding or those affected by the relief sought. After the hearing, the court shall deny or grant relief as the evidence warrants.
# Chapter 13  Appeals and Preserving Issues

*Contribution by Jamie L. Smith, JD, CWLS*

<table>
<thead>
<tr>
<th>General Rules of Supreme Court</th>
<th>§§ 15-2-1 to 15-2-47 and Uniform Rules of the Supreme Court of the State of Georgia</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Rules of Court of Appeals</td>
<td>§§ 15-3-1 to 15-3-13 and Uniform Rules of the Court of Appeals of the State of Georgia</td>
</tr>
</tbody>
</table>
| Appeals of Final Judgments from Juvenile Court and Legal Impact of Appeal | § 15-11-35  
  - All final judgments of the juvenile court may be appealed to the Georgia Court of Appeals or the Georgia Supreme Court pursuant to the same rules that apply to appeals from superior court.  
  - No juvenile court order shall be superseded by the appeal except in the discretion of the juvenile court. The order of the juvenile court remains in full legal effect until reversed or modified by the appellate court. |
| Purpose of the Superior Court Appellate Rules | § 5-6-30  
  - Georgia’s statutory provisions regarding taking a case for appeal to the Georgia Supreme Court or the Court of Appeals shall be construed liberally to bring about a decision on the merits of every case appealed and to avoid dismissal of any case or refusal to consider any points raised in the appeal. |
| Definition of Final Judgment | § 5-6-31  
  - The entry of a final judgment requires that the order be signed by the judge and filed with the clerk’s office. |
| Parties to the Appeal | § 5-6-34  
  - All parties to the underlying juvenile court case shall be parties on appeal.  
  - Party defined at § 15-11-2(52) as state, a child, parent, guardian, legal custodian, or other person subject to any judicial proceeding, except in delinquency proceedings; then only a child and the state are parties.  
  - Parent defined at § 15-11-2(51) as legal father or legal mother of a child. |
| Appeal of Final Judgments Other than TPR | § 5-6-34(a)(1)  
  - All final judgments may be appealed to the Georgia Supreme Court or Court of Appeals except as provided under § 5-6-35.  
  - The appellant must file with the clerk of the appellate court an enumeration of the errors upon which the appellant is seeking the appeal. Each error shall be described separately but concisely. The enumeration of errors does not have to |
include a reference to the portions of the juvenile court record included in the appellate record. § 5-6-40.

- Uniform Rules of the Supreme Court of the State of Georgia, Rule 10: Appellant’s brief must be filed within 20 days after the case is docketed by the Supreme Court Clerk’s Office. Appellee’s brief must be filed within 40 days after the case is docketed by the Supreme Court Clerk’s Office or 20 days after the filing of the appellant’s brief, whichever occurs later.

- Uniform Rules of the Court of Appeals of the State of Georgia, Rule 23: Appellant’s brief must be filed within 20 days after the case is docketed by the Court of Appeals Clerk’s Office. Appellee’s brief must be filed within 40 days after the case is docketed by the Court of Appeals Clerk’s Office or 20 days after the filing of the appellant’s brief, whichever occurs later. Appellant may file a reply brief within 20 days of the filing of the appellee’s brief.

Service of the brief pursuant to § 5-6-32 and 40

- Unless ordered otherwise by the court, service must be made upon the counsel of record for the party.
- Service of the petition may be waived or acknowledged by counsel of record for the opposing party or the opposing party if unrepresented.
- The attorney or party filing the brief may serve the brief on the opposing party or the opposing party’s counsel of record in person or by mail. Service by mail is considered perfected on the date the brief is placed in the mail.
- If an opposing party does not have an attorney of record and the opposing party’s current address is unknown, service of the brief may be mailed to the last known address of the opposing party.
- Proof of service may be shown by the serving attorney’s certificate of service or acknowledgment of service by the opposing party’s attorney or party served.

Transcript, Court Record and Docketing pursuant to § 5-6-41 and Uniform Rules

- The appellant should request that the juvenile court clerk prepare a copy of the court’s record and mail it directly to the clerk of the appellate court.
- The appellant must request that the court reporter transcribe the hearing from which the final judgment arose, unless the appellant identifies in the notice of appeal that the transcript will be omitted from the record on appeal. (See Notice of Appeal and Designation of Record below.)
| The transcript shall be prepared at the appellant’s expense unless the appellant is indigent. |
| If the appellant is indigent, apply to the juvenile court with a pauper’s affidavit. |
| The court reporter shall file the original plus one copy of the transcript with the juvenile court clerk’s office, along with the court reporter’s certificate attesting to the correctness of the transcript. |
| § 5-6-42: The appellant is responsible for ensuring the transcript is filed with the clerk’s office within 30 days after filing the notice of appeal, unless time is extended pursuant to § 5-6-39. |
| The juvenile court clerk’s office will transmit the original transcript, along with the juvenile court court’s record, to the clerk of the appellate court. The copy of the transcript shall be retained by the juvenile court clerk’s office. |
| Upon receipt, the appellate court clerk’s office will docket the appeal and notify all attorneys of record and pro se parties by mail of the docketing date. |

### § 5-6-35 and Uniform Rules of the Supreme Court of the State of Georgia, Section IV and Uniform Rules of the Court of Appeals of the State of Georgia, Section X

- All appeals of TPR orders are discretionary.
- To seek an appeal of a TPR order, you must:
  - File an application (in the form of a petition) with the Georgia Supreme Court or the Court of Appeals enumerating the errors upon which you are seeking to appeal the order and stating why the appellate court has jurisdiction to hear the appeal.
  - The application must identify the order being appealed.
  - A stamped “filed” copy (not a conformed copy) of the final judgment from the juvenile court, the petition from which the final judgment arose, and any filed responses to the petition must be attached to the application.
  - You may also attach to the application any other parts of the record or hearing transcript that you think are appropriate. These attachments do not need to be certified by the juvenile court clerk.
  - The application must be filed with the Clerk of the Georgia Supreme Court or the Court of Appeals within 30 days of the entry of the final judgment.
  - A copy of the application and a list of the parts of the record included in the application must be served.
upon the opposing parties. Note that service must be completed upon or before the filing of the application with the appellate court.

- Opposing parties have 10 days from the filing date of the application to file a response with the appellate court’s clerk’s office.
  - The response may include attachments of any other parts of the record or hearing transcript that the opposing party thinks are appropriate. These attachments do not need to be certified by the juvenile court clerk.
  - The response can explain why the final judgment in question was not error.
  - The response can argue that the enumerated errors referenced in the application cannot be considered on appeal for lack of a transcript of evidence or for other reasons.

- The Georgia Supreme Court or the Court of Appeals shall issue an order granting or denying the application within 30 days of the filing date of the application.

- **Uniform Rules of the Supreme Court of the State of Georgia, Rule 34**: Standard for Granting – An application will only be granted when
  - reversible error appears to exist.
  - establishment of a precedent is desirable.
  - further development of the common law, particularly in divorce cases, is desirable.

- **Uniform Rules of the Court of Appeals of the State of Georgia, Rule 31**: Standard for Granting – An application will only be granted when
  - reversible error appears to exist.
  - establishment of a precedent is desirable.

- If the application is granted, the applicant must file a notice of appeal within 10 days of the appellate court’s order granting the application. (See Notice of Appeal below.)

- If the application is granted, appellant must follow the procedure described above in Appeal of Final Judgments Other than TPR.

<table>
<thead>
<tr>
<th>Notice of Appeal</th>
<th>§§ 5-6-32, 37 and 38</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>The notice of appeal must include the following:</td>
</tr>
<tr>
<td></td>
<td>- Style and docket number of the case</td>
</tr>
<tr>
<td></td>
<td>- Name of the appellant and name and address of the appellant’s attorney</td>
</tr>
<tr>
<td></td>
<td>- Concise statement of the final judgment entitling the appellant to take an appeal</td>
</tr>
<tr>
<td></td>
<td>- The court appealed to</td>
</tr>
<tr>
<td>Identification of the parts of the juvenile court record that will be omitted from the record on appeal</td>
<td></td>
</tr>
<tr>
<td>Identification of the parts of the juvenile court record that will be included in the record on appeal;</td>
<td></td>
</tr>
<tr>
<td>Concise statement for the appellate court’s basis for jurisdiction (i.e., why Supreme Court instead of Court of Appeals, or vice versa)</td>
<td></td>
</tr>
</tbody>
</table>

- Always refer to the Georgia Supreme Court and Court of Appeals rules and applicable code sections for details and updates.

- Service of the notice of appeal:
  - Unless ordered otherwise by the juvenile court, service must be made upon the counsel of record for the party.
  - Service of the notice of appeal may be waived or acknowledged either before or after the filing of the notice with the juvenile court clerk’s office.
  - The attorney or party filing the notice of appeal may serve the notice in person or by mail. Service by mail is considered perfected on the date the notice is placed in the mail.
  - If an opposing party does not have an attorney of record and the opposing party’s current address is unknown, service of the notice of appeal may be mailed to the last known address of the opposing party.
  - Service may be perfected before or after the filing of the notice of appeal with the clerk’s office.
  - Proof of service may be shown by the serving attorney’s certificate of service or acknowledgment of service by the opposing party’s attorney or party served.

- Timing of the Notice of Appeal:
  - Notice of appeal for all juvenile court final judgments except TPR orders – Must be filed with the juvenile court clerk’s office within 30 days after the entry of the final judgment.
  - Notice of appeal for TPR orders – Must be filed with the juvenile court clerk’s office within 10 days of the appellate court’s order granting the application. (See Appeal of TPR Judgments above.)

**Designation of Record**

§ 5-6-42

- If the appellant identifies any parts of the juvenile court record that will be omitted from the record on appeal, the appellee may file a designation of record stating that all or additional parts of the record will be included in the record.
on appeal.

- The appellee must file the designation of record within 15 days of service of the notice of appeal.
- The designation of record must be served upon all other parties in the same manner as that prescribed for the notice of appeal above. § 5-6-32
- If the appellant designated in the notice of appeal that the transcript would be omitted from the record on the appeal and if the appellee designates that the transcript will be included, then the appellee must request that the court reporter transcribe the hearing.
- The transcript shall be prepared at the appellee’s expense unless the appellee is indigent.
- If the appellee is indigent, apply to the juvenile court with a pauper’s affidavit.
- The court reporter shall file the original plus one copy of the transcript with the juvenile court clerk’s office, along with the court reporter’s certificate attesting to the correctness of the transcript.
- The appellee is responsible for ensuring the transcript is filed with the clerk’s office within 30 days after filing the designation of record, unless time is extended pursuant to § 5-6-39.
- The juvenile court clerk’s office will transmit the original transcript, along with the juvenile court’s record, to the clerk of the appellate court. The copy of the transcript shall be retained by the juvenile court clerk’s office.

<table>
<thead>
<tr>
<th>Transmittal of Record to Appellate Court</th>
<th>§ 5-6-43</th>
</tr>
</thead>
<tbody>
<tr>
<td>Duties of the juvenile court clerk’s office:</td>
<td></td>
</tr>
<tr>
<td>- Within 5 days of the filing of the transcript by the court reporter, the clerk’s office must prepare a complete copy of the court’s record for transmission to the appellate court.</td>
<td></td>
</tr>
<tr>
<td>- The clerk’s office may only omit from the record to be transmitted those items identified as omitted in the notice of appeal and not included in the designation of record.</td>
<td></td>
</tr>
<tr>
<td>- The record to be transmitted must include a copy of the notice of appeal.</td>
<td></td>
</tr>
<tr>
<td>- The clerk must attach to the record to be transmitted a copy of the clerk’s certificate as to the correctness of the record.</td>
<td></td>
</tr>
<tr>
<td>- If the clerk’s office is unable to accomplish this task within the designated time period or if an extension of time was obtained under § 5-6-39, then the clerk’s certificate must include a statement regarding the cause of the delay. Provided this procedure is followed, the appeal will not be dismissed.</td>
<td></td>
</tr>
</tbody>
</table>
**Practice Notes**

**PRESERVING ISSUES:**

**PRETRIAL FUNDAMENTALS:**

- Subpoena all witnesses (*even friendly ones*) and necessary documents.
- File for discovery! (*CYA*)
- Review all documents thoroughly.
- Interview/prepare witnesses and client.
- Make sure to subpoena all witnesses who may help your case; do not assume that DFCS will call them as witnesses.
- Ensure that there is not detrimental information in the order for dependency or termination that is not directly relevant to the removal from the parent. (Example: Dirty house, mom went to jail, etc.)
- If other stuff related to this parent that is negative is included in the order or plan, it will create a worse record on appeal.
- Keep the order and the facts supporting it in the order very narrow.
- File written motions (e.g. MTS, Motions for discovery, etc.).
- Have a list of possible objections and responses.
- Consider the best way to frame the issue.
- Know the standards of review:
  - Discretionary or managerial decisions – *abuse of discretion*
  - Purely factual questions – *clearly erroneous*
  - Legal issues – *de novo*
Specific Standards of Review:

TPR and Dependency

Whether, after viewing the evidence in a light most favorable to the appellee, any rational trier of fact could have found by clear and convincing evidence as did the juvenile court.

Delinquency

Whether, after construing the evidence and every inference from the evidence in favor of the juvenile court’s adjudication, a reasonable finder of fact could have found, beyond a reasonable doubt, that the juvenile committed the acts charged.

- Consider every conceivable way to exclude each piece of damaging evidence:
  - suppression/discovery violations
  - witness problems
  - evidence problems
  - presentation problems

Helpful Tips for Preserving Issues:

- File timely preliminary motions.
- Request continuances (even if you know the judge will not grant it).
- Bifurcate disposition phase (Dependency).
- Anticipate the State’s case.
- Object with specificity at the right time.
- Put objections and argument on the record.
- Make sure the basis of the challenge is clear; subtlety here is not a virtue.
- If you did not argue it below, you generally cannot argue it on appeal (waiver).
- Obtain a clear and final ruling from the judge on the record.
- Request appropriate relief or refrain from offering a cure, if appropriate.
- Use offers of proof to complete the record.
- Use motions to strike.
- If you are surprised by a State motion, request additional time to review and respond
- Take the time to carefully review all documents that opposing counsel seeks to enter into evidence. If you need time to review, ask the court for a few minutes to review it.
- *In dependency hearings, don’t let the court make findings about parent that are unrelated to basis for removal from home.
- In delinquency hearing, don’t let the court reference documents or allegations not properly before the court (e.g. from the client’s “file”).

*An example of an unrelated finding would be the court finding that a mother did drugs when the basis of removal from the home was the hoarding tendencies and unsanitary conditions of the
home. Focus the court on why the child was taken, not everything bad the state wants to show about the parent.

COMMON OBJECTIONS:

- Hearsay
- Non- res gestae
- Argumentative
- Assuming facts not in evidence
- Speculation
- Improper character evidence
- Inadmissible CASA or GAL reports
- Lack of foundation
- Best evidence
- Improper introduction of drug screens in termination or dependency proceedings
- Evidence not previously disclosed
- Prior court order or criminal record not admissible

ISSUES SPECIFIC TO DEPENDENCY CASES:

- Expert testimony
- Hearsay testimony
- Drug screens
- Admission of CASA or GAL reports (Hearsay)
- Criminal records
- Prior court orders

ISSUES SPECIFIC TO DELINQUENCY CASES:

- Illegal detention
- Illegal interrogation
- Failure to appoint an expert
- Competency issues
- Denial of motion to suppress
- Admission or exclusion of evidence
- Ineffective assistance of counsel
- Invalid or illegal transfer of child to adult court
- Failure to prove guilt beyond a reasonable doubt
- Unconstitutional statute
- Illegal disposition

EASY TO DO BUT ALSO EASY TO MISS:

- Read the law (for and against your case).
- Read the petition.
- Read the statutory definition.
- Request time to review any case law submitted or cited by opposing counsel. (Many times it is not applicable to your case/facts but it is not objected to or argued because you didn’t read it.)
- Motions practice. (If you don’t file it, you may be waiving it.)
- Request to review any order before it is submitted to the Court.
- Be prepared to analogize your situation to the good cases and distinguish yours from the bad ones.
- You must know exactly what the petition does and does not allege in order to rebut the State’s case.
- Know the statutory definition of the behavior or offense better than the State.
- Venue
  - §15-11-29
- Proof of elements-Delinquency

**THE APPEAL!**

**FUNDAMENTALS:**

- If it is not in the record, it never happened!
- Make sure you are appealing something appealable.
- Know the law and have a theory.
- Raise only the real issues and the right number of them.
- Know the standards of review and use them to your advantage.
- Follow the rules (time limits, format, etc.).
- Present the facts in an accurate, fair and persuasive manner.
- “The best arguments are those that tell us how you believe we can do justice and maintain the integrity of the law at the same time.” - Former North Dakota Justice Robert Vogel
- Be concise, clear, and meaningful in your use of words.
- Revise, rewrite, revise briefs with help and then rewrite again.
Code Sections

15-11-35. In all cases of final judgments of the juvenile court, appeals shall be taken to the Court of Appeals or the Supreme Court in the same manner as appeals from the superior court. However, no such judgment or order shall be superseded except in the discretion of the trial court; rather, the judgment or order of the court shall stand until reversed or modified by the reviewing court.

5-6-30 Intention of article; liberal construction
It is the intention of this article to provide a procedure for taking cases to the Supreme Court and the Court of Appeals, as authorized in Article VI, Sections V and VI of the Constitution of this state; to that end, this article shall be liberally construed so as to bring about a decision on the merits of every case appealed and to avoid dismissal of any case or refusal to consider any points raised therein, except as may be specifically referred to in this article.

5-6-31 Entry of judgment construed
The filing with the clerk of a judgment, signed by the judge, constitutes the entry of a judgment within the meaning of this article.

5-6-32 Service of notices, motions, or other paper
(a) Whenever under this article service or the giving of any notice is required or permitted to be made upon a party and the party is represented by an attorney, the service shall be made upon the attorney unless service upon the party himself is ordered by the court. Service of all notices and other papers hereunder and service of motions for new trial, motions in arrest, motions for judgment notwithstanding the verdict, and all other similar motions, orders, and proceedings may be made by the attorney or party filing the notice or paper, in person or by mail, and proof thereof shown by acknowledgment of the attorney or party served, or by certificate of the attorney, party, or other person perfecting service. Service of any paper, motion, or notice may be perfected either before or after filing with the clerk thereof; and when service is made by mail it shall be deemed to be perfected as of the day deposited in the mail. Where the address of any party is unknown and the party is not represented by an attorney of record, service of all notices and other papers referred to above may be perfected on the party by mail directed to the last known address of the party.
(b) Service of any notice, motion, or other paper provided for in this article may be waived or acknowledged either before or after filing.

5-6-34 Appealable judgments, orders, or rulings; petition for appeal of important matters necessitating immediate review; hearing to determine review of pretrial proceedings in capital cases; appellate review
(a) Appeals may be taken to the Supreme Court and the Court of Appeals from the following judgments and rulings of the superior courts, the constitutional city courts, and such other courts or tribunals from which appeals are authorized by the Constitution and laws of this state:
(1) All final judgments, that is to say, where the case is no longer pending in the court below, except as provided in Code Section 5-6-35;
(2) All judgments involving applications for discharge in bail trover and contempt cases;
(3) All judgments or orders directing that an accounting be had;
(4) All judgments or orders granting or refusing applications for receivers or for interlocutory or final injunctions;
(5) All judgments or orders granting or refusing applications for attachment against fraudulent debtors;
(6) Any ruling on a motion which would be dispositive if granted with respect to a defense that the action is barred by Code Section 16-11-173;
(7) All judgments or orders granting or refusing to grant mandamus or any other extraordinary remedy, except with respect to temporary restraining orders;
(8) All judgments or orders refusing applications for dissolution of corporations created by the superior courts;
(9) All judgments or orders sustaining motions to dismiss a caveat to the probate of a will;
(10) All judgments or orders entered pursuant to subsection (c) of Code Section 17-10-6.2;
(11) All judgments or orders in child custody cases awarding, refusing to change, or modifying child custody or holding or declining to hold persons in contempt of such child custody judgment or orders; and
(12) All judgments or orders entered pursuant to Code Section 35-3-37.

(b) Where the trial judge in rendering an order, decision, or judgment, not otherwise subject to direct appeal, including but not limited to the denial of a defendant's motion to recuse in a criminal case, certifies within ten days of entry thereof that the order, decision, or judgment is of such importance to the case that immediate review should be had, the Supreme Court or the Court of Appeals may thereupon, in their respective discretions, permit an appeal to be taken from the order, decision, or judgment if application is made thereto within ten days after such certificate is granted. The application shall be in the nature of a petition and shall set forth the need for such an appeal and the issue or issues involved therein. The applicant may, at his or her election, include copies of such parts of the record as he or she deems appropriate, but no certification of such copies by the clerk of the trial court shall be necessary. The application shall be filed with the clerk of the Supreme Court or the Court of Appeals and a copy of the application, together with a list of those parts of the record included with the application, shall be served upon the opposing party or parties in the case in the manner prescribed by Code Section 5-6-32, except that such service shall be perfected at or before the filing of the application. The opposing party or parties shall have ten days from the date on which the application is filed in which to file a response. The response may be accompanied by copies of the record in the same manner as is allowed with the application. The Supreme Court or the Court of Appeals shall issue an order granting or denying such an appeal within 45 days of the date on which the application was filed. Within ten days after an order is issued granting the appeal, the applicant, to secure a review of the issues, may file a notice of appeal as provided in Code Section 5-6-37. The notice of appeal shall act as a supersedeas as provided in Code Section 5-6-46 and the procedure thereafter shall be the same as in an appeal from a final judgment.

(c) In criminal cases involving a capital offense for which the death penalty is sought, a hearing shall be held as provided in Code Section 17-10-35.2 to determine if there shall be a review of pretrial proceedings by the Supreme Court prior to a trial before a jury. Review of pretrial proceedings, if ordered by the trial court, shall be exclusively as provided by Code Section 17-10-35.1 and no certificate of immediate review shall be necessary.

(d) Where an appeal is taken under any provision of subsection (a), (b), or (c) of this Code section, all judgments, rulings, or orders rendered in the case which are raised on appeal and
which may affect the proceedings below shall be reviewed and determined by the appellate
court, without regard to the appealability of the judgment, ruling, or order standing alone and
without regard to whether the judgment, ruling, or order appealed from was final or was
appealable by some other express provision of law contained in this Code section, or elsewhere.
For purposes of review by the appellate court, one or more judgments, rulings, or orders by the
trial court held to be erroneous on appeal shall not be deemed to have rendered all subsequent
proceedings nugatory; but the appellate court shall in all cases review all judgments, rulings, or
orders raised on appeal which may affect the proceedings below and which were rendered
subsequent to the first judgment, ruling, or order held erroneous. Nothing in this subsection shall
require the appellate court to pass upon questions which are rendered moot.
(e) Where an appeal is taken pursuant to this Code section for a judgment or order granting
nonmonetary relief in a child custody case, such judgment or order shall stand until reversed or
modified by the reviewing court unless the trial court states otherwise in its judgment or order.

5-6-36 Filing of motion for new trial or motion for judgment notwithstanding verdict
(a) A motion for new trial need not be filed as a condition precedent to appeal or consideration
of any judgment, ruling, or order in any case; but, in all cases where a motion for new trial is an
available remedy, the party entitled thereto may elect to file the motion first or to appeal directly.
However, where matters complained of arise or are discovered subsequent to verdict or judgment
which otherwise would not appear in the record, such as newly discovered evidence, and in other
like instances, a motion for new trial or other available procedure shall be filed and together with
all proceedings thereon shall become a part of the record on appeal. Otherwise, the motion for
new trial need not be transmitted as a part of the record on appeal; nor shall it be necessary that
the overruling thereof be enumerated as error (subject to the exception last stated), as the
appellate court may consider all questions included in the enumeration of errors provided for in
Code Section 5-6-40. The entry of judgment on a verdict by the trial court constitutes an
adjudication by the trial court as to the sufficiency of the evidence to sustain the verdict,
affording a basis for review on appeal without further ruling by the trial court.
(b) A motion for judgment notwithstanding the verdict need not be filed as a condition precedent
to review upon appeal of an order or ruling of the trial court overruling a motion for directed
verdict; but, in all cases where the motion is an available remedy, the party may file the motion
or appeal directly from the final judgment and enumerate as error the overruling of the motion
for directed verdict.

5-6-37 Filing notice of appeal with clerk of court; contents; service
Unless otherwise provided by law, an appeal may be taken to the Supreme Court or the Court of
Appeals by filing with the clerk of the court wherein the case was determined a notice of appeal.
The notice shall set forth the title and docket number of the case; the name of the appellant and
the name and address of his attorney; a concise statement of the judgment, ruling, or order
entitling the appellant to take an appeal; the court appealed to; a designation of those portions of
the record to be omitted from the record on appeal; a concise statement as to why the appellate
court appealed to has jurisdiction rather than the other appellate court; and, if the appeal is from a
judgment of conviction in a criminal case, a brief statement of the offense and the punishment
prescribed. The appeal shall not be dismissed nor denied consideration because of failure to
include the jurisdictional statement or because of a designation of the wrong appellate court. In
addition, the notice shall state whether or not any transcript of evidence and proceedings is to be
transmitted as a part of the record on appeal. Approval by the court is not required as a condition to filing the notice. 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 Code Section 5-6-32.

5-6-38 Timeframe of notice of appeal; timeframe, contents and service of notice of cross-appeal; appeal of judgment, ruling, or order in pretrial proceedings of capital cases
(a) A notice of appeal shall be filed within 30 days after entry of the appealable decision or judgment complained of; but when a motion for new trial, a motion in arrest of judgment, or a motion for judgment notwithstanding the verdict has been filed, the notice shall be filed within 30 days after the entry of the order granting, overruling, or otherwise finally disposing of the motion. In civil cases, the appellee may institute cross appeal by filing notice thereof within 15 days from service of the notice of appeal by the appellant; and the appellee may present for adjudication on the cross appeal all errors or rulings adversely affecting him; and in no case shall the appellee be required to institute an independent appeal on his own right, although the appellee may at his option file an independent appeal. The notice of cross appeal shall set forth the title and docket number of the case, the name of the appellee, the name and address of his attorney, and a designation of any portions of the record or transcript designated for omission by the appellant and which the appellee desires included and shall state that the appellee takes a cross appeal. In all cases where the notice of appeal did not specify that a transcript of evidence and proceedings was to be transmitted as a part of the record on appeal, the notice of cross appeal shall state whether such transcript is to be filed for inclusion in the record on appeal. A copy of the notice of cross appeal shall be served on other parties of record in the manner prescribed by Code Section 5-6-32.
(b) Where a cross appeal is filed, only one record and, where specified, only one transcript of evidence and proceedings need be prepared and transmitted to the appellate court; but the cross appellant may, at his election, require that such a separate record (and transcript, if required) be transmitted. Where a cross appeal is filed and only one record (and transcript, where required) is sent up, the court shall by order provide for the division of costs therefor between the parties if they are unable to do so by agreement.
(c) Notwithstanding subsection (a) of this Code section, where either the state or the defendant wishes to appeal any judgment, ruling, or order in the pretrial proceedings of a criminal case involving a capital offense for which the death penalty is sought, such appeal shall be brought as provided in Code Section 17-10-35.1.

5-6-39 Grant of extension of time to file notices, transcripts, and other papers; service
(a) Any judge of the trial court or any justice or judge of the appellate court to which the appeal is to be taken may, in his discretion, and without motion or notice to the other party, grant extensions of time for the filing of:
(1) Notice of appeal;
(2) Notice of cross appeal;
(3) Transcript of the evidence and proceedings on appeal or in any other instance where filing of the transcript is required or permitted by law;
(4) Designation of record referred to under Code Section 5-6-42; and
(5) Any other similar motion, proceeding, or paper for which a filing time is prescribed.
(b) No extension of time shall be granted for the filing of motions for new trial or for judgment notwithstanding the verdict.
(c) Only one extension of time shall be granted for filing of a notice of appeal and a notice of cross appeal, and the extension shall not exceed the time otherwise allowed for the filing of the notices initially.
(d) Any application to any court, justice, or judge for an extension must be made before expiration of the period for filing as originally prescribed or as extended by a permissible previous order. The order granting an extension of time shall be promptly filed with the clerk of the trial court, and the party securing it shall serve copies thereof on all other parties in the manner prescribed by Code Section 5-6-32.

5-6-40 Filing of enumeration of errors with clerk of appellate court; service
The appellant and cross appellant shall file with the clerk of the appellate court, at such time as may be prescribed by its rules, an enumeration of the errors which shall set out separately each error relied upon. The enumeration shall be concise and need not set out or refer to portions of the record on appeal. It shall be served upon the appellee or cross appellee in the manner prescribed in Code Section 5-6-32, need not have approval of the trial court, and when filed shall become a part of the record on appeal. The appellate court, by rule, may permit the enumeration to be made a part of the brief.

5-6-41 Reporting and transcribing of felony, misdemeanor and civil cases; conformance of record to truth; stipulation in lieu of transcript of record
(a) In all felony cases, the transcript of evidence and proceedings shall be reported and prepared by a court reporter as provided in Code Section 17-8-5 or as otherwise provided by law.
(b) In all misdemeanor cases, the trial judge may, in the judge's discretion, require the reporting and transcribing of the evidence and proceedings by a court reporter on terms prescribed by the trial judge.
(c) In all civil cases tried in the superior and city courts and in any other court, the judgments of which are subject to review by the Supreme Court or the Court of Appeals, the trial judge thereof may require the parties to have the proceedings and evidence reported by a court reporter, the costs thereof to be borne equally between them; and, where an appeal is taken which draws in question the transcript of the evidence and proceedings, it shall be the duty of the appellant to have the transcript prepared at the appellant's expense. Where it is determined that the parties, or either of them, are financially unable to pay the costs of reporting or transcribing, the judge may, in the judge's discretion, authorize trial of the case unreported; and, when it becomes necessary for a transcript of the evidence and proceedings to be prepared, it shall be the duty of the moving party to prepare the transcript from recollection or otherwise.
(d) Where a trial in any civil or criminal case is reported by a court reporter, all motions, colloquies, objections, rulings, evidence, whether admitted or stricken on objection or otherwise, copies or summaries of all documentary evidence, the charge of the court, and all other proceedings which may be called in question on appeal or other posttrial procedure shall be reported; and, where the report is transcribed, all such matters shall be included in the written transcript, it being the intention of this article that all these matters appear in the record. Where matters occur which were not reported, such as objections to oral argument, misconduct of the jury, or other like instances, the court, upon motion of either party, shall require that a transcript of these matters be made and included as a part of the record. The transcript of proceedings shall
not be reduced to narrative form unless by agreement of counsel; but, where the trial is not reported or the transcript of the proceedings for any other reason is not available and the evidence is prepared from recollection, it may be prepared in narrative form.

(e) Where a civil or criminal trial is reported by a court reporter and the evidence and proceedings are transcribed, the reporter shall complete the transcript and file the original and one copy thereof with the clerk of the trial court, together with the court reporter's certificate attesting to the correctness thereof. In criminal cases where the accused was convicted of a capital felony, an additional copy shall be filed for the Attorney General, for which the court reporter shall receive compensation from the Department of Law as provided by law. The original transcript shall be transmitted to the appellate court as a part of the record on appeal; and one copy will be retained in the trial court, both as referred to in Code Section 5-6-43. Upon filing by the reporter, the transcript shall become a part of the record in the case and need not be approved by the trial judge.

(f) Where any party contends that the transcript or record does not truly or fully disclose what transpired in the trial court and the parties are unable to agree thereon, the trial court shall set the matter down for a hearing with notice to both parties and resolve the difference so as to make the record conform to the truth. If anything material to either party is omitted from the record on appeal or is misstated therein, the parties by stipulation, or the trial court, either before or after the record is transmitted to the appellate court, on a proper suggestion or of its own initiative, may direct that the omission or misstatement shall be corrected and, if necessary, that a supplemental record shall be certified and transmitted by the clerk of the trial court. The trial court or the appellate court may at any time order the clerk of the trial court to send up any original papers or exhibits in the case, to be returned after final disposition of the appeal.

(g) Where a trial is not reported as referred to in subsections (b) and (c) of this Code section or where for any other reason the transcript of the proceedings is not obtainable and a transcript of evidence and proceedings is prepared from recollection, the agreement of the parties thereto or their counsel, entered thereon, shall entitle such transcript to be filed as a part of the record in the same manner and with the same binding effect as a transcript filed by the court reporter as referred to in subsection (e) of this Code section. In case of the inability of the parties to agree as to the correctness of such transcript, the decision of the trial judge thereon shall be final and not subject to review; and, if the trial judge is unable to recall what transpired, the judge shall enter an order stating that fact.

(h) Where any amendment or other pleading or paper which requires approval or sanction of the court in any proceeding before being filed of record is disallowed or sanction thereof is refused, the amendment, pleading, or paper may nevertheless be filed, with notation of disallowance thereon, and shall become part of the record for purposes of consideration on appeal or other procedure for review.

(i) In lieu of sending up a transcript of record, the parties may by agreement file a stipulation of the case showing how the questions arose and were decided in the trial court, together with a sufficient statement of facts to enable the appellate court to pass upon the questions presented therein. Before being transmitted to the appellate court, the stipulation shall be approved by the trial judge or the presiding judge of the court where the case is pending.

(i) In all cases, civil or criminal, any party may as a matter of right have the case reported at the party's own expense.
5-6-42 Appellee's designation of record designating matters omitted in appellant's notice
If the appellant designates any matter to be omitted from the record on appeal as provided in Code Section 5-6-37, the appellee may, within 15 days of serving of the notice of appeal by appellant, file a designation of record designating that all or part of the omitted matters be included in the record on appeal. A copy of the designation shall be served on all other parties in the manner prescribed by Code Section 5-6-32. Where there is a transcript of evidence and proceedings to be included in the record on appeal, the appellant shall cause the transcript to be prepared and filed as provided by Code Section 5-6-41; but, when the appellant has designated that the transcript not be made a part of the record on appeal and its inclusion is by reason of a designation thereof by appellee, the appellee shall cause the transcript to be prepared and filed as referred to in Code Section 5-6-41 at his expense. The party having the responsibility of filing the transcript shall cause it to be filed within 30 days after filing of the notice of appeal or designation by appellee, as the case may be, unless the time is extended as provided in Code Section 5-6-39. In all cases, it shall be the duty of the trial judge to grant such extensions of time as may be necessary to enable the court reporter to complete his transcript of evidence and proceedings.

5-6-43 Duties of clerk of trial court following appeal
(a) Within five days after the date of filing of the transcript of evidence and proceedings by the appellant or appellee, as the case may be, it shall be the duty of the clerk of the trial court to prepare a complete copy of the entire record of the case, omitting only those things designated for omission by the appellant and which were not designated for inclusion by the appellee, together with a copy of the notice of appeal and copy of any notice of cross appeal, with date of filing thereon, and transmit the same, together with the transcript of evidence and proceedings, to the appellate court, together with his certificate as to the correctness of the record. Where no transcript of evidence and proceedings is to be sent up, the clerk shall prepare and transmit the record within 20 days after the date of filing of the notice of appeal. If for any reason the clerk is unable to transmit the record and transcript within the time required in this subsection or when an extension of time was obtained under Code Section 5-6-39, he shall state in his certificate the cause of the delay and the appeal shall not be dismissed. The clerk need not recopy the transcript of evidence and proceedings to be sent up on appeal but shall send up the reporter's original and retain the copy, as referred to in Code Section 5-6-41; and it shall not be necessary that the transcript be renumbered as a part of the record on appeal. The clerk shall retain an exact duplicate copy of all records and the transcript sent up, with the same pagination, in his office as a permanent record.
(b) Where the accused in a criminal case was convicted of a capital felony, the clerk shall likewise furnish, at no cost, the Attorney General with an exact copy of the record on appeal.
(c) Where a defendant in a criminal case is confined in jail pending appeal, it shall be the duty of the clerk to state that fact in his certificate; and it shall be the duty of the appellate court to expedite disposition of the case.
(d) Where a transcript of evidence and proceedings is already on file at the time the notice of appeal is filed, as where the transcript was previously filed in connection with a motion for new trial or for judgment notwithstanding the verdict, the clerk shall cause the record and transcript (where specified for inclusion) to be transmitted as provided in subsection (a) of this Code section within 20 days after the filing of the notice of appeal.
Chapter 14  Private Dependency and Termination of Parental Rights Cases

Contribution by Nathan Hayes, JD, CWLS

<table>
<thead>
<tr>
<th>Authority</th>
<th>§§ 15-11-100 to 15-11-214</th>
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<tbody>
<tr>
<td></td>
<td>- Jurisdiction, venue, contents of complaint and petition are the same for private dependency action as dependency filed by DFCS.</td>
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<td>- Private dependency most often seen filed by relatives or third parties caring for a child after a parent has left the child in their care.</td>
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**Practice Note:** Probate court guardianship might be preferred action rather than juvenile court.

<table>
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<tr>
<th>Complaints</th>
<th>Dependency CHINS</th>
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<tbody>
<tr>
<td>o There is no specific authorization for private parties to file a dependency complaint. Some juvenile courts do not allow or strongly discourage private individuals from filing dependency complaints.</td>
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<td>o Complaints are treated differently from petitions where § 15-11-150 plainly provides that “any person who has actual knowledge of the abuse, neglect, or abandonment of a child or is informed of the abuse, neglect, or abandonment of a child that he or she believes to be truthful may make a petition alleging dependency.”</td>
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<td>o Filing a complaint under dependency proceedings is different from the CHINS article where § 15-11-390 specifically provides, “(a) A complaint alleging a child is a child in need of services may be filed by a parent, guardian, or legal custodian, DFCS, a school official, a law enforcement officer, a guardian ad litem, or an attorney who has knowledge of the facts alleged or is informed and believes that such facts are true.”</td>
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<td>o Opponents of private complaints may argue expressum facit cessare tacitum, which provides that if some things are expressly mentioned, the inference is stronger that those not mentioned were intended to be excluded. MCG Health, Inc. v. Owners Ins. Co., 288 Ga. 782, 784 (2011).</td>
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<th>Placement with Parent before Adjudication</th>
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<td>o At least a footnote in one case, Long v. Long, 303 Ga. App. 215, 218 n.10 (2010), has alluded that the court has authority to give custody to the parent before the adjudication. The court in Long v. Long cites the former § 15-11-48(f), which is now §15-11-135(c): An alleged dependent child may be</td>
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placed in foster care only in, “(1) A licensed or approved foster home or a home **approved by the court which may be a public or private home or the home of the child's noncustodial parent or of a relative**; . . .”

- Allowing the court to give custody to a parent before adjudication would be consistent with the other subsections of § 15-11-135, which provide “(a) A child taken into custody shall not be placed in foster care prior to the hearing on a petition for dependency unless: . . . (2) The child has no parent, guardian, or legal custodian or other person able to provide supervision and care and return him or her to the court when required; . . .”

- *In the Interest of B. K.*, 2014 Ga. App. LEXIS 115 (2014): Under a recent case, which was commenced prior to the enactment of the juvenile code effective 1/1 2014, when a parent consented that custody be placed with a relative before the adjudication, the custody order stood without comment from the Georgia Court of Appeals even though under the former § 15-11-55, subsection (a) only would seem to only authorize this dispositional transfer of custody after a child is adjudicated deprived. What is remarkable is that in that hearing the pending petition by DFCS was dismissed, and there is nothing indicated that another petition was filed. *In the Interest of B. K.*, is significant because subsection (a) of § 15-11-212 likewise seems to only authorize this type of dispositional transfer after the child is adjudicated dependent.

### Right to Court Appointed Attorney in Private Dependency

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<tr>
<th>Does the petitioner in a private dependency filing have a right to have a court appointed attorney?</th>
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<tr>
<td>- This question is problematic to answer.</td>
</tr>
<tr>
<td>- The strictest reading of the statute regarding the right to an attorney states a party other than a child shall be given an opportunity to obtain a court appointed attorney if the court determines that such party is an indigent. Without a doubt, petitioners are parties under § 15-11-103 right to attorney: (a) A child and any other party to a proceeding under this article shall have the right to an attorney at all stages of the proceedings under this article. . . (g) A party other than a child shall be informed of his or her right to an attorney prior to any hearing. A party other than a child shall be given an opportunity to: . . . (2) Obtain a court appointed attorney if the court determines that such party is an indigent person; or (3) Waives the right to an attorney.</td>
</tr>
<tr>
<td>- Nonetheless, according to <em>In the Interest of D. H.</em>, 285 Ga. 51, 54 (Ga. 2009), the literal meaning of the statute prevails unless such a construction would produce unreasonable or absurd consequences not contemplated by the legislature.</td>
</tr>
</tbody>
</table>
• DFCS is most often the petitioner and no one would assert that DFCS is entitled to court appointed counsel.

• Furthermore, § 15-11-145, which enumerates the requirements of the preliminary protective hearing, refers to the following individuals as parties, although the language is qualified by including that the court has discretion to allow them to be present (“may allow”) if the court finds it is in the best interests of the child: (1) Any relative or other persons who have demonstrated an ongoing commitment to a child with whom a child might be placed; (2) DFCS employees involved in the case; (3) An advocate as requested by an alleged dependent child's parent, guardian, or legal custodian; and (4) Other persons who have knowledge of or an interest in the welfare of the child who is alleged to be dependent. The result would be absurd as well as not financially feasible if all those individuals referred to as parties had a right to an appointed attorney if indigent.

• A reason that a petitioner parent would not be entitled to appointed counsel is that the petitioner parent’s fundamental liberty interest in the care, custody, and management of his or her children is not being infringed by the proceedings. The freedom of personal choice in matters of family life is a fundamental liberty interest, protected by the United States Constitution, and the right to the custody and control of one’s child is a fiercely guarded right in our society and in our law. It is a right that should be infringed upon only under the most compelling circumstances. Watkins v. Watkins, 266 Ga. 269, 270 (1996). But when the parent is the petitioner, it is this parent who has initiated the proceedings. He or she is seeking custody when he or she does not have it. The state has not initiated proceedings against the parents to affect the parent’s right to custody in any way.

• Another subsection of § 15-11-145, which is the statute that lists the requirements of the preliminary protective hearing, addresses the right to counsel and explicitly mentions due process: “(f) At the commencement of a preliminary protective hearing, the court shall inform the parties of: . . . (3) The parties’ due process rights, including the parties’ right to an attorney and to an appointed attorney if they are indigent persons, the right to call witnesses and to cross-examine all witnesses, the right to present evidence, and the right to a trial by the court on the allegations in the complaint or petition” (emphasis added).

• At any rate, if a parent, who is a petitioner, has the right to appointed counsel, it is purely a statutory right to an attorney and not a constitutional right. The same may be said for the
respondent parent in such a case and for the child who is subject to the dependency proceedings commenced by private individuals.

<table>
<thead>
<tr>
<th>Non-custodial parents filing dependency action against custodial parent</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Allowed as long as it is not a “disguised custody action”</td>
</tr>
<tr>
<td>• If there is an underlying custody order from superior court can the juvenile court enter a temporary custody order between parents?</td>
</tr>
<tr>
<td>• The case law essentially determines whether it is a pretense of a custody dispute or whether there are valid allegations of dependency.</td>
</tr>
<tr>
<td>o If there are valid allegations of dependency then the court has jurisdiction to hear the case. If the dependency allegations are not valid or if the dependency is not even alleged, then it is very likely that the parent is only filing the petition because he or she wants custody and not because the children are dependent. The court can then dismiss it.</td>
</tr>
<tr>
<td>o The issue of a custody dispute versus a deprivation action became more confusing after the appellate courts made clear that deprivation actions were not supposed to be used for best interest custody disputes between parents or between parents and third parties; those should be handled in the superior courts.</td>
</tr>
<tr>
<td>o Parents might file complaints or petitions because they think that the child is better off with them and it is cheaper or more convenient for them to file in juvenile court. But what even these courts were doing was evaluating each deprivation petition or action on its own merits or deciding that the children were not deprived which is what the court should do in any case.</td>
</tr>
<tr>
<td>• <em>Long v. Long</em>, 303 Ga. App. 215, 218 (2010): Although a deprivation proceeding is brought to determine whether the child is deprived and is not an action brought to decide custody matters concerning the child, the juvenile court is authorized to assign temporary custody of a deprived child.</td>
</tr>
</tbody>
</table>
| • *In the Interest of K.L.H.*, 281 Ga. App. 394, 395-397 (2006) is only one of many saying that the juvenile court should properly exercise its jurisdiction over the dependency proceeding. The court must evaluate each dependency petition on its own merits, considering the specific facts of the case when determining whether it is in fact a custody matter for the superior court. Where there are unchallenged valid allegations of dependency and no evidence that the parents were engaged in any custody dispute prior to the instances of dependency, the dependency proceeding is not a
disguised custody matter. If a dependency proceeding is actually a disguised custody matter without dependency issues, only then is it outside the subject matter jurisdiction of the juvenile courts

- **In the Interest of M. M.,** 315 Ga. App. 673, 675 (2012):
  - The juvenile court did not err in finding that the nature of the case was a deprivation action, and that it had jurisdiction. “First, the petition makes valid allegations of deprivation as defined by [the code]... . Second, although the father did not have legal custody of the twins, he has had physical custody since their mother voluntarily left them at his home in July 2010, and it is undisputed that the mother did not pay support and did not visit the children in the ensuing five months prior to the father's filing of the deprivation petition.”
  - This case is distinguishable from other cases involving deprivation petitions filed while a custody action was pending where we have found the juvenile court lacked jurisdiction.

  - The children were in the father's custody when the mother filed a deprivation action. The mother was using the deprivation as a way to gain custody because her initial deprivation petition expressly requested that the children be placed in her sole legal and physical custody and her amended petition asked the court to consider her as a possible custodian, and sought to terminate the father's parental rights. By contrast, the petition in **M.M.** does not seek either permanent custody or a termination of parental rights, and the trial court’s disposition contemplates the mother's post-incarceration involvement with the children.

---

### Can Juvenile Court Temporarily Change the Custody From the Superior Court Designated Custodial Parent to The Non-Custodial Parent Based Upon “Dependency” Findings?

- There is no reason why a juvenile court should not be able to temporarily change custody to another parent after the superior court has awarded permanent custody to a different parent.

  - The superior court and the juvenile court have concurrent jurisdiction over the temporary custody of the children. “Where law and equity have concurrent jurisdiction, whichever first takes jurisdiction shall retain it... .”
  - “The superior court has broad powers to determine matters of custody during the pendency of a divorce action. The court may hear and determine who shall be entitled to the care and custody of the children.”
until the final judgment in the case. The authority of the presiding judge, frequently referred to as plenary, to control the custody of minor children … pending a divorce suit between their parents is very broad, so that in the exercise of sound discretion the judge may from time to time, until the final decree is entered, modify his orders in this respect and transfer the possession of the children from the persons to whom custody was originally granted and commit them into the care of other and different parties” (citing § 19-6-14).

- Therefore an important exception exists that would bar the juvenile court from temporarily changing the custody when the superior court has already exercised temporary custody over the children.
- For the juvenile court to be able to exercise its authority to award temporary custody after a superior court had decided temporary custody there must be a “good reason . . . given for the interference of equity.” Long v. Long, 303 Ga. App. 215, 218-219 (2010).
- In Long v. Long, when the superior court expressed its concern about DFCS recommending that the children be reunited with their mother pending the criminal charges, and the superior court judge said that he was not sure the interests of the children are being adequately protected. The trial court accordingly found reason to exercise its jurisdiction notwithstanding that the matter of the children had originated in the juvenile court. At the hearing the Superior court was told that at 1:30 p.m. on the same day the juvenile court was scheduled to hear a motion for the physical placement of the four children with the parent. Thus, the children had not been placed with the parent. The placement would not occur without the knowledge of the juvenile court, whose primary responsibility was to consider the welfare of the children. The court held, in Long v. Long, that was an inadequate reason for the interference of equity after the superior court choice to exercise jurisdiction over temporary custody.
- The reverse would be true as well. It is safe to assume that the superior court had already decided custody between parents pending a divorce based on the same or similar facts, which are also alleged in the dependency petition, and then the juvenile court would be barred from exercising jurisdiction. An appellate court would hold that was not a good reason for the interference of equity.

<table>
<thead>
<tr>
<th>Private Individuals Participation and § 15-11-145</th>
</tr>
</thead>
<tbody>
<tr>
<td>- A parent <strong>shall</strong> have a right to attend the preliminary</td>
</tr>
</tbody>
</table>
### Presence at Preliminary Protective Hearings

- The court has discretion to allow others to participate. § 15-11-145 (e)(4) provides the trial court may allow, “Other persons who have knowledge of or an interest in the welfare of the child who is alleged to be dependent,” to be present at the preliminary protective hearing.

### Can the Court give Custody to a Noncustodial Parent or a Private Party at Preliminary Protective Hearing?

- If return means to come back to a former position then § 15-11-146 (b)(1) provides that “the court, on finding that the complainant has not met the burden of proving that protective custody is necessary, shall return the child before the court to his or her parent, guardian, or legal custodian pending the hearing on the dependency petition.”
- § 15-11-146 (b)(3) provides that “the court, on finding that the complainant has met the burden . . . may place the child before the court in the temporary custody of DFCS pending the hearing on the dependency petition.”
- This section of the statute is ripe for constitutional challenges regarding noncustodial parents. The noncustodial parent might be able to make a due process or equal protection argument that the noncustodial parent should receive custody over a state agency.
- “As between parents, neither has prima facie right to the custody of the child superior to the other.” *Heath v. Martin*, 225 Ga. 181 (1969).
- Why should the state only have to prove whether there is probable cause to believe a child is a dependent child and whether protective custody of a child is necessary to prevent abuse or neglect pending the hearing on the dependency petition against the custodial parent and not the noncustodial parent?
- It is problematic that the noncustodial parent can appeal a preliminary protective order that gave custody to DFCS and not the noncustodial parent. The appellate courts would likely hold that the preliminary protective order is not a final order.
- Even though there was nothing in the prior juvenile code (the code that was in place prior to the enactment of the juvenile code effective 1/1 2014) that authorized the court to give custody to a parent, relative, or other third person, courts would do it anyway. The argument is that if the court had authority to give custody to a government agency at probable cause and private individuals were authorized to file complaints, it was implied in the code that the court had authority to give custody to a private person at the preliminary protective or probable cause hearing.
<table>
<thead>
<tr>
<th>Authorization to File a Petition</th>
<th>§ 15-11-150</th>
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<tbody>
<tr>
<td>• “Any person who has actual knowledge of the abuse, neglect, or abandonment of a child or is informed of the abuse, neglect, or abandonment of a child that he or she believes to be truthful may make a petition alleging dependency.”</td>
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</tbody>
</table>

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<thead>
<tr>
<th>Time Limits to File Petitions — Same Time Limits Apply as if DFCS was the Petitioner</th>
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</table>
| • The key factor for time limits is whether the child is in his or her home or not. Consequently, additional time to file a petition outside the five day limit is not allowed simply because the court has given custody to a private person instead of DFCS.  
• § 15-11-151(b) provides, “if a child was not removed from his or her home or if a child was removed from his or her home but was released from protective custody at the preliminary protective hearing, a petition alleging dependency shall be filed within 30 days of the preliminary protective hearing.” Otherwise, private parties must file the petition within five days. |

<table>
<thead>
<tr>
<th>Question: Was child “removed”?</th>
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</table>
| • For privately filed petitions, the adjudication must be set 60 days from the filing of the petition  
• § 15-11-181(a) provides, “if the alleged dependent child is not in foster care, the adjudication hearing shall be held no later than 60 days after the filing of the petition alleging dependency.  
• If adjudication is not completed within 60 days from the date such child was taken into protective custody, the petition alleging dependency may be dismissed without prejudice.” |

<table>
<thead>
<tr>
<th>The Court May Grant Additional Time after Filing of the Petition to have the Adjudication</th>
<th>§ 15-11-153 (c)</th>
</tr>
</thead>
</table>
| • “The court shall grant the parties additional time to prepare only as may be required to ensure a full and fair hearing; provided, however, that when a child is in protective custody or in detention, an adjudication hearing shall not be delayed more than ten days beyond the time originally fixed for the hearing.”  
• If custody is with the custodial parent or private individual filing the petition, the child is not in custody and additional time may be granted. |

<table>
<thead>
<tr>
<th>Petitioner’s right to participate not specified Discretion of court Parent has right to participate</th>
<th></th>
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</table>
| • The juvenile code effective 1/1/2014 does not specifically provide that a petitioner shall have a right to participate in the adjudication hearing, although the parent has that right.  
• § 15-11-181(b), “The following persons shall have the right to participate in the adjudication hearing: (1) the parent, guardian, or legal custodian of the alleged dependent child, unless such person cannot be located or fails to appear in response to the notice;…”  
• Presumably courts would allow the petitioner to participate. |
<table>
<thead>
<tr>
<th>Court has Discretion as to Who May Participate in the Adjudication Hearing Proceeding</th>
<th>§ 15-11-181 (c)</th>
</tr>
</thead>
<tbody>
<tr>
<td>- “If the court finds it is in the best interests of the alleged dependent child, the court may allow the following to be present at the adjudication hearing: (1) Any relative or other persons who have demonstrated an ongoing commitment to a child alleged to be a dependent child with whom he or she might be placed; … (3) An advocate as requested by the parent, guardian, or legal custodian of the alleged dependent child; and (4) Other persons who have knowledge of or an interest in the welfare of such child.”</td>
<td></td>
</tr>
<tr>
<td>- Court would have discretion to allow most petitioners to participate.</td>
<td></td>
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<thead>
<tr>
<th>Dispositional Hearings</th>
<th>§ 15-11-210 (a)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shall be 30 days from the adjudication if not held on the same day after the adjudicatory hearing</td>
<td></td>
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</table>

<table>
<thead>
<tr>
<th>Orders of Disposition and Disposition Options</th>
<th>§ 15-11-212(a)</th>
</tr>
</thead>
<tbody>
<tr>
<td>The court may include any of the following options in the disposition order:</td>
<td></td>
</tr>
<tr>
<td>- Remain with parent, guardian, or legal custodian subject to court conditions</td>
<td></td>
</tr>
<tr>
<td>- Grant or transfer temporary legal custody to any of these persons or entities:</td>
<td></td>
</tr>
<tr>
<td>- Any individual, including a biological parent, 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 such child</td>
<td></td>
</tr>
<tr>
<td>- An agency or other private organization licensed or authorized by law to receive and provide care for the child</td>
<td></td>
</tr>
<tr>
<td>- Any public agency authorized by law to receive and provide care for the child</td>
<td></td>
</tr>
<tr>
<td>- Exception: “public agency” shall not include DJJ or an individual in another state with or without supervision by an appropriate officer pursuant to the requirements of § 39-4-4, ICPC.</td>
<td></td>
</tr>
<tr>
<td>- Transfer jurisdiction in accordance with § 39-4-4, ICPC</td>
<td></td>
</tr>
<tr>
<td>- Order child and parent, guardian, or legal custodian to participate in counseling to prevent future dependency</td>
<td></td>
</tr>
<tr>
<td>- Order the child’s parent, guardian, or legal custodian to participate in a court approved educational or counseling program designed to enhance parental ability</td>
<td></td>
</tr>
<tr>
<td>- Order DFCS to implement, and child’s parent, guardian, or legal custodian to cooperate with, any plan approved by the court</td>
<td></td>
</tr>
</tbody>
</table>
**Child Support**

<table>
<thead>
<tr>
<th>§ 15-11-212 (a) (7)</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Order temporary child support</td>
</tr>
<tr>
<td>o Court to apply child support guidelines, § 19-6-15</td>
</tr>
<tr>
<td>o Cannot modify an existing child support order except designate obligor to make payments to the child’s caretaker on a temporary basis; juvenile court order to be filed in clerk’s office of the court with the existing child support order</td>
</tr>
<tr>
<td>o Child support can be enforced with contempt in juvenile court as long as dependency action open in the juvenile court</td>
</tr>
<tr>
<td>o See § 19-6-15(i)(2)(I), Specific Deviation (I) permanency plan or foster care plan. In cases where the child is in the legal custody of DHS, the child protection or foster care agency of another state or territory, or any other child-caring entity, public or private, the court or the jury may consider a deviation from the presumptive amount of child support if the deviation will assist in accomplishing a permanency plan or foster care plan for the child with a goal of returning the child to the parent or parents and the parent's need to establish an adequate household or to otherwise adequately prepare herself or himself for the return of the child clearly justifies a deviation for this purpose.</td>
</tr>
</tbody>
</table>

**Duration of Disposition Orders**

<table>
<thead>
<tr>
<th>§ 15-11-214</th>
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<tbody>
<tr>
<td>• Dependency disposition order continues until purposes of the order accomplished</td>
</tr>
<tr>
<td>• Dependency disposition order expires when child turns 18 except if child remains in DFCS custody or is receiving services from DFCS after turning 18 years old. § 15-11-10(1)(G).</td>
</tr>
</tbody>
</table>

**Private individuals May Petition for the Modification**

<table>
<thead>
<tr>
<th>§ 15-11-32</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Once a child is placed in protective custody the noncustodial parent can petition to modify the order giving DFCS custody.</td>
</tr>
<tr>
<td>o “(b) An order of the court may also be changed, modified, or vacated on the ground that changed circumstances so require in the best interests of a child except an order of dismissal following a contested adjudicatory hearing...</td>
</tr>
</tbody>
</table>
| o (e) Any party to the proceeding, the probation officer, or any other person having supervision or legal custody of or an interest in a child may petition the court for the relief provided in this Code section. Such petition shall set forth in clear and concise language the grounds upon which the relief is
o (f) After a petition seeking relief under this Code section is filed, the court shall fix a time for hearing and shall cause notice to be served on the parties to the proceeding or those affected by the relief sought. After the hearing, the court shall deny or grant relief as the evidence warrants.”

- After the initial disposition, there is nothing in the juvenile code effective 1/1/2014 that allows the court to award custody to a noncustodial parent without filing a petition to modify.
- After the initial disposition, there is nothing in the juvenile code effective 1/1/2014 that allows the court to award custody to a relative, or a private individual or guardian without filing a petition to modify or petition for guardianship.

### Ways to Terminate a Dispositional Order

<table>
<thead>
<tr>
<th><strong>§ 15-11-214(b)</strong></th>
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<tbody>
<tr>
<td>“The court may terminate an order of disposition of a child adjudicated as a dependent child on or without an application of a party if it appears to the court that the purposes of the order have been accomplished.”</td>
</tr>
<tr>
<td>Does not require a petition—just an application which would mean that it can be done by a motion. But this subsection would mainly apply to the former custodial parent unless the noncustodial parent, relative, or private person wants the child back with the custodial parent.</td>
</tr>
</tbody>
</table>

### Periodic Reviews

<table>
<thead>
<tr>
<th><strong>§ 15-11-216 Periodic Reviews</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 15-11-216(a) specifies that that code section concerns children that are in DFCS custody: “(a) All cases of children in DFCS custody.”</td>
</tr>
<tr>
<td>There is nothing in the juvenile code effective 1/1/2014 stating that periodic reviews are required for dependent children not in DFCS custody.</td>
</tr>
</tbody>
</table>

### Permanency Hearings

<table>
<thead>
<tr>
<th><strong>§ 15-11-230 Permanency Hearings</strong></th>
</tr>
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<tbody>
<tr>
<td>Subsection (a) provides, “The court shall hold a permanency plan hearing to determine the future permanent legal status of each child in DFCS custody.”</td>
</tr>
</tbody>
</table>

### Private Terminations

<table>
<thead>
<tr>
<th><strong>§ 15-11-233 (a)</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>A private party may file a termination for a child in DFCS custody.</td>
</tr>
<tr>
<td>DFCS may join the action “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.”</td>
</tr>
</tbody>
</table>

### Private Terminations when

| *In re M.C.J.*, 271 Ga. 546, 549 (1999) is the watershed case that held it was erroneous to consider that all deprivation actions brought by
**DFCS is NOT the custodian**

one parent against another are prima facie custody cases and that all such actions must be filed in superior court. In *In re M.C.J.*, was actually a TPR proceeding and held that each deprivation petition must be judged on its own merits. If it appears from an analysis of the pleading that it is actually a disguised custody matter, then it is outside the subject matter jurisdiction of the juvenile courts. In *In re M.C.J.*, the termination was affirmed after it was remanded to the Court of Appeals, 242 Ga. App. 852 (2000), and has been followed in other private TPR actions such as *In the Interest of A.R.K.L.*, 314 Ga. App. 847 (2012), and *In the Interest of S.R.M.*, 283 Ga. App. 463 (Ga. Ct. App. 2007).

**Jurisdiction of Superior Court Exclusive for TPR Connected with an Adoption**

<table>
<thead>
<tr>
<th>§ 15-11-10. Exclusive original jurisdiction:</th>
</tr>
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</table>
| “Except as provided in Code Section 15-11-560, the juvenile court shall have exclusive original jurisdiction over juvenile matters and shall be the sole court for initiating action: . . . (2) Involving any proceedings: . . . (D) For the termination of the legal parent-child relationship and the rights of the biological father who is not the legal father of the child in accordance with Article 2 of this chapter; provided, however, that such jurisdiction shall not affect the superior court's exclusive jurisdiction to terminate the legal parent-child relationship as set forth in Chapters 6 through 9 of Title 19.” (Adoption is in Chapter 8. *Stanfield v. Alizota*, 2014 Ga. LEXIS 223 n.2 (2014): “§ 15-11-28 has been repealed, and the new statute addressing the juvenile court's jurisdiction, § 15-11-10 (2) (D), no longer refers to the superior court as having concurrent jurisdiction in termination proceedings related to adoption, but provides instead that the juvenile court's exclusive original jurisdiction for the termination of parental rights ‘shall not affect the superior court's exclusive jurisdiction to terminate the legal parent-child relationship as set forth in Chapters 6 through 9 of Title 19.’”

**Jurisdiction**

<table>
<thead>
<tr>
<th>§ 15-11-10(1)(C)</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Child under 18 years alleged to be a dependent in the state</td>
</tr>
<tr>
<td>• Petition must state factual basis of jurisdiction</td>
</tr>
</tbody>
</table>

**§ 15-11-12 Dual Jurisdiction Child**

| • Child may be delinquent and dependent or dependent and CHINS if a “factual basis” established. |
| • If the delinquent and dependency case or CHINS and dependency cases are consolidated, the dependency time lines apply to the consolidated court action. |

**Venue**

<table>
<thead>
<tr>
<th>§ 15-11-125</th>
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<tbody>
<tr>
<td>• A proceeding may be commenced</td>
</tr>
<tr>
<td>o in the county where child legally resides or</td>
</tr>
<tr>
<td>o in the county of child’s presence at commencement of action if the child is present without a custodian or the acts underlying the dependency occurred in that county.</td>
</tr>
<tr>
<td>Change of Venue</td>
</tr>
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<td>----------------</td>
</tr>
</tbody>
</table>
| • Transfer of Venue  
  o Venue may be transferred to child’s county of legal  
  residence for the convenience of parties.  
  o 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.  |
| § 15-11-105(h) | • if change of venue then GAL shall forward pertinent  
  information to next GAL appointed. |

<table>
<thead>
<tr>
<th>Right to Be Present, Heard and Present Evidence</th>
<th>§ 15-11-19</th>
</tr>
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</table>
| § 15-11-19 | • Party has right to be present, heard, present evidence, cross  
  examine witnesses, examine pertinent court files and records,  
  and appeal orders of the court.  
  • “Party” includes child, except court may exclude child if not  
  in the child’s best interest to be present.  
  • Party shall be advised of these rights at that person’s first  
  appearance. |

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<thead>
<tr>
<th>Summons and Service</th>
<th>§ 15-11-160</th>
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</table>
| § 15-11-160 | • Copy of dependency petition (except publication)  
  • The court shall direct the issuance of a summons to  
    o a child if 14 years of age or older  
    o child's parent, guardian, or legal custodian  
    o child's attorney and child's guardian ad litem  
    o any other persons who appear to the court to be  
      proper or necessary parties to the proceeding.  
  • Summons must provide notice of a party’s right to counsel.  
  • Party other than child may waive summons by written  
    stipulation or voluntary appearance at hearing.  |

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<thead>
<tr>
<th>Personal Certified Mail Publication</th>
<th>§ 15-11-161</th>
</tr>
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</table>
| § 15-11-161 | • If party is in Georgia and can be found, then personal service  
  ASAP and at least 72 hours before the adjudication hearing.  
  § 15-11-161(a).  
  • If party is in Georgia and cannot be found but address is  
    known or can be known with due diligence, must be served at  
    least 5 days before the adjudication hearing by registered or  
    certified mail or statutory overnight delivery, return receipt  
    requested. § 15-11-161(b).  
  • If party is outside Georgia with known address or known  
    with due diligence, then must be served at least 5 days before  
    the adjudication hearing by personal service or by registered  
    or certified mail or statutory overnight delivery, return  
    receipt requested. § 15-11-161(c).  
  • If, after due diligence, whereabouts of a party are unknown,  
    then service by publication; hearing shall be no earlier than 5  
    days after final publication. § 15-11-161(d). |
Publication shall be 1 time per week for 4 weeks in legal organ of county where dependency pending § 15-11-161(e)

- **Party** is defined at § 15-11-2 (52) as state, a child, parent, guardian, legal custodian, or other person subject to any judicial proceeding except in delinquency proceedings; then only a child and the state are parties.
- **Parent** is defined at § 15-11-2 (51) as legal father or legal mother of a child.

§ 15-11-161(f)

- Service of summons may be made by any suitable person under the direction of the court.

**§ 15-11-103 Child and Party**

- All parties, including the child have a right to counsel at all stages of the proceedings.
- Party defined at §15-11-2 (52) as state, a child, parent, guardian, legal custodian, or other person subject to any judicial proceeding, except in delinquency proceedings; then only a child and the state are parties.
- Parent defined at § 15-11-2 (51) as legal father or legal mother of a child.
- Child Attorney should be appointed “as soon as practicable to ensure adequate representation” and before the first hearing that may substantially affect the interests of the child.
  - Child attorney has “attorney-client” duty.
  - Child attorney representation continues through appeals or until excused by court.
  - Child’s right to attorney cannot be waived.
- Party should be advised of right to counsel prior to any hearing:
  - Party has right to obtain or employ attorney
  - If indigent, right to appointed counsel
  - Can waive right to attorney
- 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)).
- Putative Father issue – is he a “party”? Inquiry about incarcerated parents; transport to hearings?

**§ 15-11-104**

- GAL shall be appointed
- May be child’s attorney unless or until a conflict of interest between the attorney’s duty to the child and the attorney’s “considered opinion” of the child’s best interest as a GAL
- CASA may serve as GAL
| Best Interest Advocacy Considerations | • Procedure for removal of GAL for cause § 15-11-104 (h)  
• CASA appointment § 15-11-106  
§ 15-11-105  
• To advocate for the child’s best interest, GAL shall consider factors such as the following, in the context of child’s age and developmental needs:  
  o Physical safety and welfare, food, shelter, health, clothing  
  o Mental and physical health of all individuals involved  
  o Evidence of domestic violence  
  o Child's background and ties, including familial, cultural, religious  
  o Child’s sense of attachments  
  o Least disruptive placement alternative  
  o Child's wishes and long-term goals  
  o Community ties, church, school, friends  
  o Child's need for permanence, stability, and continuity of relationships  
  o Uniqueness of every family and child  
  o Risks associated with being in substitute care  
  o Preferences of the persons available to care for the child  
  o Any other factors considered by the GAL to be relevant and proper  |
| Minimum Duties of GAL | § 15-11-105(c)  
Minimum duties of GAL, unless child’s circumstances make these unreasonable (must be performed in a developmentally appropriate manner):  
• Maintain regular and sufficient in-person contact with the child, in a manner appropriate to his or her developmental level  
• Meet with and interview child prior to all hearings and reviews  
• Determine child’s needs, circumstances and views  
• Make independent factual determination of the case  
• Consult with child’s attorney  
• Communicate with health, mental health, and other professionals  
• Review case study and educational, medical, psychological, and other relevant reports  
• Review all court-related documents  
• Attend all court hearings and other proceedings to advocate for the child’s best interests  
• Advocate for timely court hearings to obtain permanency for the child |
### Code Sections

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<th>15-11-16.</th>
<th>A complaint may commence proceedings</th>
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<td>(a) A proceeding under this chapter may be commenced: (1) By an order of transfer of a case from another court as provided in Code Section 15-11-11 or 15-11-567, subsection (f) of Code Section 29-2-6, or subsection (b) of Code Section 29-2-8; (2) By the summons, notice to appear, or other citation in a proceeding charging a juvenile traffic offense or a violation of the laws, rules, and regulations governing the Department of Natural Resources Game and Fish Division; or (3) By the filing of a petition for legitimation under Code Section 15-11-11, or in other cases by the filing of a complaint or a petition as provided in Articles 3, 4, 6, 7, 9, and 11 of this chapter. (b) The petition and all other documents in the proceeding shall be entitled 'In the interest of, a child,' except upon appeal. (c) On appeal, the anonymity of a child, and where appropriate, a victim or witness who is under the age of 18 years, shall be preserved by appropriate use of a child's, victim's, or witness's initials as appropriate.</td>
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### 15-11-32. Modification or vacation of orders

(a) An order of the court shall be set aside if: (1) It appears that it was obtained by fraud or mistake sufficient therefor in a civil action; (2) The court lacked jurisdiction over a necessary party or 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 interests of a child except an order of dismissal following a contested adjudicatory hearing. (c) Except as otherwise provided in Code Section 15-11-602, an order committing a child to DJJ may only be modified after such child has been transferred to DJJ custody upon motion of DJJ. (d) An order of adjudication of delinquency by a court may be modified or vacated if the child was adjudicated for a delinquent act for a sexual crime as

- Protect the cultural needs of the child
- Contact the child prior to any proposed placement changes
- Contact the child after placement changes
- Request a judicial citizen review panel or judicial review of the case
- Attend citizen panel review hearings, and if unable to attend, send panel a letter stating the child’s status since the last citizen panel review and an assessment of the DFCS permanency and treatment plans
- Provide written reports to the court and the parties on the child's best interests, including recommendations regarding placement, updates on child's adjustment to placement, DFCS's and respondent's compliance with prior court orders and treatment plans, child's participation during visits, and any other recommendations based on the best interests of the child
- When appropriate, encourage settlement and the use of alternative forms of dispute resolution and participate in such processes to the extent permitted
- Monitor compliance with the case plan and all court orders
defined in Code Section 16-3-6 and such crime resulted from the child being: (1) Trafficked for sexual servitude in violation of Code Section 16-5-46; or (2) A victim of sexual exploitation as defined in Code Section 49-5-40. (e) Any party to the proceeding, the probation officer, or any other person having supervision or legal custody of or an interest in a child may petition the court for the relief provided in this Code section. Such petition shall set forth in clear and concise language the grounds upon which the relief is requested. (f) After a petition seeking relief under this Code section is filed, the court shall fix a time for hearing and shall cause notice to be served on the parties to the proceeding or those affected by the relief sought. After the hearing, the court shall deny or grant relief as the evidence warrants.

15-11-145. Preliminary protective hearing requirements
(a) If an alleged dependent child is removed from his or her home and is not returned home, the preliminary protective hearing shall be held promptly and not later than 72 hours after such child is placed in foster care; provided, however, that if the 72 hour time frame expires on a weekend or legal holiday, the hearing shall be held on the next day which is not a weekend or legal holiday. (b) Reasonable oral or written notice of the preliminary protective hearing, stating the time, place, and purpose of the hearing, shall be given to the child who is a party in such hearing and, if such person can be found, to his or her parent, guardian, or legal custodian. (c) If an alleged dependent child's parent, guardian, or legal custodian has not been notified of the preliminary protective hearing and did not appear or waive appearance at such hearing and thereafter files an affidavit showing such facts, the court shall rehear the matter without unnecessary delay and shall order such child's release unless it appears from such hearing that such child's foster care is warranted or required. (d) The following persons shall have the right to participate in the preliminary protective hearing: (1) A child's parent, guardian, or legal custodian, unless such person cannot be located or fails to appear in response to the notice; (2) A child's attorney and guardian ad litem if a guardian ad litem has been appointed; (3) A child who was removed from his or her home, unless the court finds, after considering evidence of harm to such child that will result from such child's presence at the proceeding, that being present is not in such child's best interests; (4) A parent's attorney if an attorney has been retained or appointed; (5) The assigned DFCS caseworker; and (6) The attorney for DFCS. (e) The court may allow the following parties to be present at the preliminary protective hearing, if the court finds it is in the best interests of the child: (1) Any relative or other persons who have demonstrated an ongoing commitment to a child with whom a child might be placed; (2) DFCS employees involved in the case; (3) An advocate as requested by an alleged dependent child's parent, guardian, or legal custodian; and (4) Other persons who have knowledge of or an interest in the welfare of the child who is alleged to be dependent. (f) At the commencement of a preliminary protective hearing, the court shall inform the parties of: (1) The contents of the complaint in terms understandable to the parties; (2) The nature of the proceedings in terms understandable to the parties; and (3) The parties' due process rights, including the parties' right to an attorney and to an appointed attorney if they are indigent persons, the right to call witnesses and to cross-examine all witnesses, the right to present evidence, and the right to a trial by the court on the allegations in the complaint or petition. (g) If a child is not released at the preliminary protective hearing, a petition for dependency shall be made and presented to the court within five days of such hearing.
§ 15-11-132. Verbal custody order
(a) The facts supporting the issuance of an order of removal may be relayed orally, including telephonically, to the judge or a designated juvenile court intake officer, and the order directing that a child be taken into custody may be issued orally or electronically.
(b) When a child is taken into custody under exceptional circumstances, an affidavit or sworn complaint containing the information previously relayed orally, including telephonically, shall be filed with the clerk of the court the next business day, and a written order shall be issued if not previously issued. The written order shall include the court's findings of fact supporting the necessity for such child's removal from the custody of his or her parent, guardian, or legal custodian in order to safeguard such child's welfare and shall designate a child's legal custodian.
(c) The affidavit or sworn complaint filed after a child has been placed shall indicate whether the child was released to such child's parent, guardian, or legal custodian or remains removed.
(d) DFCS shall promptly notify the parent, guardian, or legal custodian of the nature of the allegations forming the basis for taking a child into custody and, if such child is not released, of the time and place of the preliminary protective hearing.

§ 15-11-146. Preliminary protective hearing; findings
(a) At the preliminary protective hearing, the court shall determine: (1) Whether there is probable cause to believe a child is a dependent child; and (2) Whether protective custody of a child is necessary to prevent abuse or neglect pending the hearing on the dependency petition.
(b) The court: (1) On finding that the complainant has not proved either of the required elements prescribed in subsection (a) of this Code section, shall dismiss the case and shall return the child before the court to his or her parent, guardian, or legal custodian; (2) On finding that the complainant has not met the burden of proving that protective custody is necessary, shall return the child before the court to his or her parent, guardian, or legal custodian pending the hearing on the dependency petition; or (3) On finding that the complainant has met the burden prescribed in subsection (a) of this Code section, may place the child before the court in the temporary custody of DFCS pending the hearing on the dependency petition.
(c) A court's order removing a child from his or her home shall be based upon a finding that: (1) Continuation in his or her home would be contrary to such child's welfare; and (2) Removal is in such child's best interests.
(d) The court shall make written findings as to whether DFCS has made reasonable efforts to prevent or eliminate the need for removal of a child from his or her home and to make it possible for such child to safely return home. If the court finds that no services were provided but that reasonable services would not have eliminated the need for protective custody, the court shall consider DFCS to have made reasonable efforts to prevent or eliminate the need for protective custody. The court shall include in the written findings a brief description of what preventive and reunification efforts were made by DFCS.
(e) In determining whether a child shall be removed or continued out of his or her home, the court shall consider whether reasonable efforts can prevent or eliminate the need to separate the family. The court shall make a written finding in every order of removal that describes why it is in the best interests of the child that he or she be removed from his or her home or continued in foster care.
(f) To aid the court in making the required written findings, DFCS shall present evidence to the court outlining the reasonable efforts made to prevent taking a child into protective custody and to provide services to make it possible for such child to safely return to his or her home and why protective custody is in the best interests of the child.
§ 15-11-150. Authority to file petition
A DFCS employee, a law enforcement officer, or any person who has actual knowledge of the abuse, neglect, or abandonment of a child or is informed of the abuse, neglect, or abandonment of a child that he or she believes to be truthful may make a petition alleging dependency.

§ 15-11-151. Time limitations for filing petition
(a) If a child was removed from his or her home, a petition alleging dependency shall be filed within five days of the preliminary protective hearing. (b) If a child was not removed from his or her home but was released from protective custody at the preliminary protective hearing, a petition alleging dependency shall be filed within 30 days of the preliminary protective hearing. (c) Upon a showing of good cause and notice to all parties, the court may grant a requested extension of time for filing a petition alleging dependency in accordance with the best interests of the child. The court shall issue a written order reciting the facts justifying the extension. (d) If a petition alleging dependency is not filed within the required time frame, the complaint shall be dismissed without prejudice.

§ 15-11-181. Adjudication hearing
(a) The court shall fix a time for an adjudication hearing. If the alleged dependent child is in foster care, the hearing shall be scheduled for no later than ten days after the filing of the petition alleging dependency. If the alleged dependent child is not in foster care, the adjudication hearing shall be held no later than 60 days after the filing of the petition alleging dependency. If adjudication is not completed within 60 days from the date such child was taken into protective custody, the petition alleging dependency may be dismissed without prejudice. (b) The following persons shall have the right to participate in the adjudication hearing: (1) The parent, guardian, or legal custodian of the alleged dependent child, unless such person cannot be located or fails to appear in response to the notice; (2) The attorney and guardian ad litem of the alleged dependent child; (3) The alleged dependent child, unless the court finds, after considering evidence of harm to such child that will result from his or her presence at the proceeding, that being present is not in the child's best interests; (4) The attorneys for the parent, guardian, or legal custodian of the alleged dependent child if attorneys have been retained or appointed; (5) The assigned DFCS caseworker; and (6) The attorney for DFCS. (c) If the court finds it is in the best interests of the alleged dependent child, the court may allow the following to be present at the adjudication hearing: (1) Any relative or other persons who have demonstrated an ongoing commitment to a child alleged to be a dependent child with whom he or she might be placed; (2) DFCS employees involved with the case; (3) An advocate as requested by the parent, guardian, or legal custodian of the alleged dependent child; and (4) Other persons who have knowledge of or an interest in the welfare of such child. (d) Except as provided in this subsection, the adjudication hearing shall be conducted in accordance with Title 24. Testimony or other evidence relevant to the dependency of a child or the cause of such condition may not be excluded on any ground of privilege, except in the case of: (1) Communications between a party and his or her attorney; and (2) Confessions or communications between a priest, rabbi, or duly ordained minister or similar functionary and his or her confidential communicant. (e) After hearing the evidence, the court shall make and file specific written findings as to whether a child is a dependent child. (f) If the court finds that a child is not a dependent child, it shall dismiss the petition alleging dependency and order such child discharged from foster care or other restriction previously ordered. (g) If the court adjudicates a child as a dependent child, the court shall proceed immediately or at a
postponed hearing to make a proper disposition of the case. (h) If the court adjudicates a child as a dependent child, the court shall also make and file a finding whether such dependency is the result of substance abuse by such child's parent, guardian, or legal custodian. (i) If the disposition hearing is held on the same day as the adjudication hearing, the court shall schedule the dates and times for the first periodic review hearing and for the permanency plan hearing.

§ 15-11-210. Disposition hearing
(a) If not held in conjunction with an adjudication hearing, a disposition hearing shall be held and completed within 30 days after the conclusion of an adjudication hearing. (b) The court may consider any evidence, including hearsay evidence, that the court finds to be relevant, reliable, and necessary to determine the needs of a child adjudicated as a dependent child and the most appropriate disposition. (c) Before determining the appropriate disposition, the court shall receive in evidence: (1) The social study report, if applicable, made by DFCS and the child adjudicated as a dependent child's proposed written case plan. The social study report and case plan shall be filed with the court not less than 48 hours before the disposition hearing; (2) Any study or evaluation made by a guardian ad litem appointed by the court; (3) Any psychological, medical, developmental, or educational study or evaluation of the child adjudicated as a dependent child; and (4) Other relevant and material evidence as may be offered, including, but not limited to, the willingness of the caregiver to provide legal permanency for the child adjudicated as a dependent child if reunification is unsuccessful. (d) Prior to a disposition hearing, and upon request, the parties and their attorneys shall be afforded an opportunity to examine any written reports received by the court. (e)(1) Portions of written reports received by the court which are not relied on by the court in reaching its decision, which if revealed would be prejudicial to the interests of any party to the proceeding, or which reveal confidential sources, may be withheld in the court's discretion. (2) Parties and their attorneys shall be given the opportunity to controvert written reports received by the court and to cross-examine individuals making such reports. (f) At the conclusion of the disposition hearing, the court shall set the time and date for the first periodic review hearing and the permanency plan hearing.

§ 15-11-212. Disposition of dependent child
(a) The court may make any of the following orders of disposition or a combination of those best suited to the protection and physical, emotional, mental, and moral welfare of a child adjudicated as a dependent child: (1) Permit such child to remain with his or her parent, guardian, or legal custodian subject to conditions and limitations as the court prescribes, including supervision as directed by the court for the protection of such child; (2) Grant or transfer temporary legal custody to any of these persons or entities: (A) Any individual, including a biological parent, 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 such child; (B) An agency or other private organization licensed or otherwise authorized by law to receive and provide care for such child; (C) Any public agency authorized by law to receive and provide care for such child; provided, however, that for the purpose of this Code section, the term 'public agency' shall not include DJJ; or (D) An individual in another state with or without supervision by an appropriate officer pursuant to the requirements of Code Section 39-4-4, the Interstate Compact on the Placement of Children; (3) Transfer jurisdiction over such child in accordance with the requirements of Code Section 39-4-4, the Interstate Compact on the Placement of Children; (4) Order such child and his or her parent, guardian, or legal custodian 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, physician assistants, 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 dependency or other conduct or conditions which would be harmful to a child or society; (5) Order the parent, guardian, or legal custodian of such child to participate in a court approved educational or counseling program designed to contribute to the ability of such parent, guardian, or legal custodian to provide proper parental care and supervision of such child, including, but not limited to, parenting classes; (6) Order DFCS to implement and such child's parent, guardian, or legal custodian to cooperate with any plan approved by the court; or (7) Order temporary child support for such child to be paid by that person or those persons determined to be legally obligated to support such child. In determining such temporary child support, the court shall apply the child support guidelines provided in Code Section 19-6-15 and the implementation and any review of the order shall be held as provided in Code Section 19-6-15. Where there is an existing order of a superior court or other court of competent jurisdiction, the court may order the child support obligor in the existing order to make payments to such child's caretaker on a temporary basis but shall not otherwise modify the terms of the existing order. A copy of the juvenile court's order shall be filed in the clerk's office of the court that entered the existing order. Temporary child support orders entered pursuant to this paragraph shall be enforceable by the court's contempt powers so long as the court is entitled to exercise jurisdiction over the dependency case. (b) The transfer of temporary legal custody may be subject to conditions and limitations the court may prescribe. Such conditions and limitations shall include a provision that the court shall approve or direct the return of the physical custody of a child adjudicated as a dependent child to his or her parent, guardian, or legal custodian either upon the occurrence of specified circumstances or at the direction of the court. The return of physical custody of a child adjudicated as a dependent child to his or her parent, guardian, or legal custodian may be made subject to conditions and limitations the court may prescribe, including, but not limited to, supervision for the protection of such child. (c) A child adjudicated as a dependent child shall not be committed to or confined in an institution or other facility designed or operated for the benefit of delinquent children unless such child is also adjudicated to be a delinquent child and such child's detention is warranted under the requirements of Article 6 of this chapter. (d) After transferring temporary legal custody of a child adjudicated as a dependent child to DFCS, the court may at any time conduct sua sponte a judicial review of the current placement plan being provided to such child. After its review, the court may order DFCS to comply with the current placement plan, order DFCS to devise a new placement plan, or make any other order relative to placement or custody outside DFCS as the court finds to be in the best interests of such child. Placement or a change of custody by the court outside DFCS shall relieve DFCS of further responsibility for such child except for any provision of services ordered by the court to ensure the continuation of reunification services to such child's family when appropriate. (e) A court shall not be required to make an order of disposition regarding a child who is discharged from a facility in which such child was hospitalized or habilitated pursuant to Chapter 3, 4, or 7 of Title 37 unless such child is to be discharged into the physical custody of any person who had such custody when the court made its most recent adjudication that the child was a dependent child. (f) If a child is adjudicated as a dependent child and the dependency is found to have been the result of substance abuse by his or her parent, guardian, or legal custodian and the court orders transfer of temporary legal custody
of such child, the court shall be authorized to further order that legal custody of such child may not be transferred back to his or her parent, guardian, or legal custodian unless such parent, guardian, or legal custodian undergoes substance abuse treatment and random substance abuse screenings and those screenings remain negative for a period of no less than six consecutive months. (g) If the court finds that DFCS preventive or reunification efforts have not been reasonable but that further efforts could not permit a child adjudicated as a dependent child to safely remain at home, the court may nevertheless authorize or continue the removal of such child. (h) When the case plan requires a concurrent permanency plan, the court shall review the reasonable efforts of DFCS to recruit, identify, and make a placement in a home in which a relative of a child adjudicated as a dependent child, foster parent, or other persons who have demonstrated an ongoing commitment to the child has agreed to provide a legally permanent home for such child in the event reunification efforts are not successful.

15-11-213. Order of Disposition requirements
Any order of disposition shall contain written findings of fact to support the disposition and case plan ordered. Before making an order of disposition, the court shall consider the following: (1) Why the best interests and safety of a child adjudicated as a dependent child are served by the disposition and case plan ordered, including but not limited to: (A) The interaction and interrelationship of such child with his or her parent, siblings, and any other person who may significantly affect the child's best interests; (B) Such child's adjustment to his or her home, school, and community; (C) The mental and physical health of all individuals involved; (D) The wishes of such child as to his or her placement; (E) The wishes of such child's parent, guardian, or legal custodian as to such child's custody; (F) Whether there exists a relative of such child or other individual who, after study by DFCS, is found to be qualified to receive and care for such child; and (G) The ability of a parent, guardian, or legal custodian of a child adjudicated as a dependent child to care for such child in the home so that no harm will result to such child; (2) The availability of services recommended in the case plan; (3) What alternative dispositions or services under the case plan were considered by the court and why such dispositions or services were not appropriate in the instant case; (4) The appropriateness of the particular placement made or to be made by the placing agency; and (5) Whether reasonable efforts were made to prevent or eliminate the necessity of a child adjudicated as a dependent child's removal and to reunify his or her family after removal from the custody of his or her family unless reasonable efforts were not required. The court's findings should include a brief description of what preventive and reunification efforts were made and why further efforts could not have prevented or eliminated the necessity of such removal.

§ 15-11-214. Duration of disposition orders
(a) An order of disposition in a dependency proceeding shall continue in force until the purposes of the order have been accomplished.
(b) The court may terminate an order of disposition of a child adjudicated as a dependent child 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 a child remains in DFCS care or continues to receive services from DFCS, when a child adjudicated as a dependent child reaches 18 years of age, all orders affecting him or her then in force terminate and he or she shall be discharged from further obligation or control.
Chapter 15  Permanent Guardianship and Transfers from Probate Court

Contributed by Nathan Hayes, JD, CWLS

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- To establish a permanency option for a dependent child who cannot be reunified and when termination of parental rights and adoption or APPLA is not in the child’s best interest
- Guardianship gives the parent the opportunity to maintain parental contact, and provide child support and other family connections, while providing the child with permanency.
- Juvenile court has concurrent jurisdiction with probate court to grant permanent guardianship of the person of a minor of any child before the juvenile court under Title 15, Chapter 11.
- Probate court may transfer contested temporary guardianship issues to the juvenile court. §15-11-11(4), 13 and 14.
- To modify the terms of the guardianship, revoke the guardianship, appoint a new guardian, provide for child support to the guardian, establish visitation during the guardianship

<table>
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<td>Permanent guardianships—juvenile court has jurisdiction to grant a permanent guardianship only when there is</td>
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<td>o an adjudication of dependency and</td>
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<td>o additional specified findings that include a finding that reasonable efforts for reunification would be detrimental to the child; or</td>
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<td>o a finding that the living parents of such child have consented to the permanent guardianship and</td>
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<td>o TPR / adoption are not in the child’s best interest.</td>
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§ 15-11-244  
- Juvenile court granting guardianship **retains** jurisdiction to modify, vacate or revoke the guardianship and appoint a new guardian

§ 15-11-14, § 29-2-6(f), § 29-2-8(b)  
- **Permanent or temporary guardianships** may be transferred from probate court when  
  o objections to the establishment or selection of the guardian are filed.  
  o if objections are filed to the termination of the temporary guardianship.

### Venue

§ 29-2-5  
- Temporary guardianship: domicile of the guardian if in Georgia or domicile of the child if proposed guardian has out-of-state domicile  
- Permanent Guardianship: county where dependency and nonreunification adjudications pending or held

§ 29-2-14. **Power of probate court to appoint guardian**  
- 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.

### Timing

- Temporary Guardianship: only upon a transfer from probate court  
- Permanent Guardianship: following a dependency adjudication and additional specified findings that include a finding that reasonable efforts for reunification would be detrimental to the child or a finding that the living parents of such child have consented to the permanent guardianship and TPR / adoption are not in the child’s best interest

### Parties

- Child  
- Parent  
- Proposed guardian  
- Child attorney  
- GAL  
- DFCS  
- SAAGs  
- attorneys for parties

### Right to Attorney

- Parties probably would not be appointed attorneys in probate court
### Statutory Types of Guardians

<table>
<thead>
<tr>
<th>§ 29-2-1 Types of guardians for minors</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Natural guardians</td>
</tr>
<tr>
<td>• Testamentary guardians</td>
</tr>
<tr>
<td>• Temporary guardians</td>
</tr>
<tr>
<td>• Standby guardians</td>
</tr>
<tr>
<td>• Permanent guardians</td>
</tr>
</tbody>
</table>

### Petition Requirements for Permanent Guardianship

<table>
<thead>
<tr>
<th>§ 15-11-241 Contents of Permanent Guardianship Petition</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Factual basis of jurisdiction</td>
</tr>
<tr>
<td>• Name and date of birth of the child</td>
</tr>
<tr>
<td>• The name, address and petitioner’s county of domicile and relationship to the child</td>
</tr>
<tr>
<td>• Statement that:</td>
</tr>
<tr>
<td>o RE to reunify would be detrimental to the child</td>
</tr>
<tr>
<td>o TPR and adoption are not in the child’s best interests</td>
</tr>
<tr>
<td>o The proposed permanent guardian can provide a safe and permanent home for the child</td>
</tr>
<tr>
<td>o Appointment of a permanent guardian and the person chosen to be the permanent guardian are in the best interests of the child</td>
</tr>
<tr>
<td>o If the child is 14 or older, the child’s selection of permanent guardian is in the child’s best interest</td>
</tr>
<tr>
<td>• Whether the child was born out of wedlock, and if so, the name and address of the biological father, if known</td>
</tr>
<tr>
<td>• Whether there are any other notarized or witnessed documents made by the parent of the child that deal with the guardianship of the child, and the name and address of any designee named in the document</td>
</tr>
<tr>
<td>• If the parent has not consented to the permanent guardianship then certain relatives of the child must be notified:</td>
</tr>
<tr>
<td>o Adult siblings of the child, no more than 3</td>
</tr>
<tr>
<td>o If no adult sibling of the child, then the grandparents of the child, no more than 3</td>
</tr>
<tr>
<td>o If no grandparent, then any 3 of the nearest adult relatives of the child pursuant to § 53-2-1 (definitions of heirs)</td>
</tr>
<tr>
<td>• Whether there are any other petitions for permanent or temporary guardians filed or being filed</td>
</tr>
</tbody>
</table>
| • If there are any omissions in the permanent guardianship petition, the reason(s) why
### § 53-2-1
- Uncles and aunts of the decedent are in the fifth degree.
- If no uncle or aunt of the decedent survives the decedent, the first cousins who survive the decedent shall share the estate equally.
- The more remote degrees of kinship shall be determined by counting the number of steps in the chain from the relative to the closest common ancestor of the relative and decedent and the number of steps in the chain from the common ancestor to the decedent. The sum of the steps in the two chains shall be the degree of kinship, and the surviving relatives with the lowest sum shall be in the nearest degree.

### § 29-2-17(c)
- Notice shall state the individual is entitled to object to either the establishment of the permanent guardianship or the selection of the guardian, or both.
- Personal service if in Georgia at a known address, objections within 10 days from personal service.
- First 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 within 10 days of second publication notice.

### § 29-2-17(b)(6)
- Whether, to the petitioner’s knowledge, there are any other notarized or witnessed documents made by the parent of the child that deal with the guardianship of the child, and the name and address of any designee named in the document.
- In addition to the petitioner and the nominated guardian, the names and addresses of the following relatives of the minor whose whereabouts are known:
  - The adult siblings of the minor; provided, however, that not more than three adult siblings need to be listed.
  - 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.
  - If there is no grandparent of the minor, any three of the nearest adult relatives of the minor determined according to § 53-2-1.

### § 53-2-1(a)(7), (8)
- Uncles and aunts of the decedent are in the fifth degree.
- If no uncle or aunt of the decedent survives the decedent, the first cousins who survive the decedent shall share the estate equally.
- The more remote degrees of kinship shall be determined by counting the number of steps in the chain from the relative to the closest common ancestor of the relative and decedent and the
number of steps in the chain from the common ancestor to the
decedent. The sum of the steps in the two chains shall be the
degree of kinship, and the surviving relatives with the lowest
sum shall be in the nearest degree

§ 15-11-243(a)
• If the parents have consented to the guardianship, notice of the
petition shall not be required to be given to:
  o The adult siblings of the child
  o The grandparents of the child
  o The nearest adult relatives of the child, as determined
under § 53-2-1.

§ 29-2-15
• 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 under § 19-7-25.

• 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:
  o If the identity of the biological father is known to the
petitioner
  o If the biological father is a registrant on the putative
father registry who has acknowledged paternity of the
minor under § 19-11-9(d)(2)(A)
  o 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
under § 19-11-9 (d)(2)(B)
  o 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.

• 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.

• 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 under § 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.

- 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.

<table>
<thead>
<tr>
<th>Subpoena to Produce Documents to Vital Records to Obtain Birth Records</th>
</tr>
</thead>
<tbody>
<tr>
<td>Subpoena to Produce Documents to Vital Records to Obtain Paternity Acknowledgement or Administrative legitimation: FAX 404-679-4765 Attention: Deborah Aderhold, State Registrar, Director of Vital Records OR Vital Records 2600 Skyland Drive Atlanta, Ga. 30319-3640 Phone 404-679-4755 or 4702</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Nature of the Hearing And Best Interest Standard</th>
</tr>
</thead>
</table>
| If non-consenting parent does not file objections after notice, then guardianship granted § 15-11-243(b)  
  - The hearing shall be conducted in accordance with § 29-2-18 to determine the best interests of the child who was adjudicated as a dependent child. § 29-2-18  
  - The court shall hold a hearing and the standard for determination for all matters at issue shall be the best interest of the minor.  
  - In reaching its determination the court shall consider § 15-11-240. |

<table>
<thead>
<tr>
<th>Mandatory Findings Prior to Granting a Permanent Guardianship</th>
</tr>
</thead>
</table>
| § 15-11-240 Prior to the entry of such an order, the court shall find that  
  - reasonable efforts to reunify the child with his or her parents would be detrimental to the child or that the living parents of such child have consented to the permanent guardianship.  
  - TPR and adoption are not in the best interests of such child.  
  - the proposed permanent guardian can provide a safe and permanent home for the child.  
  - appointment of a permanent guardian for the child is in the best interests of the child and that the individual chosen as such child’s permanent guardian is the individual most appropriate to be the child’s permanent guardian taking into consideration the best interests of the child (the statute lists this requirement for all children and also specifically for children age 14 and older). |
### §15-11-26. Court Considerations for Best Interest of Child

Court to consider all factors affecting the child’s best interest in the context of child’s age and developmental needs, including following 20 factors:

81. Physical safety and welfare, food, shelter, health and clothing
82. Love, affection, bonding, and emotional ties existing between child and parent or person available to care for the child
83. Sibling bond, including half siblings and step siblings
84. Child's need for permanence, need for stability and continuity of relationships
85. Child's attachments, child’s sense of security and familiarity, and continuity of affection for the child
86. Parental capacity
87. Home environment of each parent or person available to care for such child considering the promotion of the child's nurturance and safety rather than superficial or material factors
88. Stability of the family unit and community support systems
89. Mental and physical health of all individuals involved
90. Home, school and community record; history of child, child’s special needs
91. Community ties, church, school and friends
92. Child's background and ties, including familial, cultural and religious
93. The least disruptive placement alternative
94. Uniqueness of every family and child
95. Risks associated with being in substitute care
96. Child's wishes and long-term goals
97. Preferences of the persons available to care for the child
98. Evidence of family violence, substance abuse, criminal history, or sexual, mental, or physical child abuse
99. Recommendation by a court appointed custody evaluator or GAL
100. Any other factors considered by the court to be relevant and proper to its determination

### Standard of Proof

- Most people assume that the standard is clear and convincing evidence of child’s best interest but there is no standard of proof stated in the statute.
- A practitioner may be able to argue that although the petitioner still has the burden, the standard of proof is only by a preponderance of the evidence because the juvenile court has already found by clear and convincing evidence that the child is dependent, that the parent was unfit to retain custody, and that since the focus has shifted to the child’s now adverse interest in a secure and stable home, the burden is lessened.
- On the other hand, § 15-11-240’s requirement that the court shall find that reasonable efforts to reunify the child with his or
her parents would be detrimental to the child is identical to the requirements for nonreunification; and therefore the burden of proof from that hearing (clear and convincing evidence) should apply. Under § 15-11-204(d), “DFCS shall have the burden of demonstrating by clear and convincing evidence that a reunification plan is not appropriate considering the health and safety of the child adjudicated as a dependent child and such child's need for permanence.”

- Then again, the burden for implementing nonreunification is explicitly listed and the burden is not stated under the permanent guardianship statute.

<table>
<thead>
<tr>
<th>Effect of permanent guardianship order</th>
<th>§ 15-11-242</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>§ 15-11-242(b)</td>
</tr>
<tr>
<td></td>
<td>§ 15-11-242(a)(3)</td>
</tr>
<tr>
<td></td>
<td>§ 15-11-244(b)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Child Support and Visitation</th>
<th>§ 15-11-240(b)</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 15-11-242(a)(3)</td>
<td>§ 15-11-244</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Modification of permanent guardianship order</th>
<th>§ 15-11-244</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>§ 15-11-240</td>
</tr>
<tr>
<td>§ 15-11-244</td>
<td>§ 15-11-240</td>
</tr>
</tbody>
</table>
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 are in the best interests of the child. Appointment of a new guardian shall be subject to the provisions of §§ 15-11-240 and 15-11-241.

<table>
<thead>
<tr>
<th>Rights and duties of a permanent guardian</th>
<th>§ 29-2-21(b)(6)</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Within 60 days after appointment and within 60 days after each anniversary date of appointment, the guardian shall file with the court and provide to the conservator, if any, a personal status report concerning the minor, which shall include:</td>
<td></td>
</tr>
<tr>
<td>• A description of the minor’s general condition, changes since the last report, and the minor’s needs.</td>
<td></td>
</tr>
<tr>
<td>• All addresses of the minor during the reporting period and the living arrangements of the minor for all addresses.</td>
<td></td>
</tr>
<tr>
<td>• Recommendations for any alteration in the guardianship order.</td>
<td></td>
</tr>
<tr>
<td>• Also see §§ 29-2-21, 29-2-22, and 29-2-23.</td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Oath required of a guardian</th>
<th>§ 29-2-24</th>
</tr>
</thead>
<tbody>
<tr>
<td>• 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.</td>
<td></td>
</tr>
<tr>
<td>• The oath or affirmation of a guardian may be subscribed before the judge or clerk of any probate court of this state.</td>
<td></td>
</tr>
<tr>
<td>• 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.</td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>List of individuals, in order of preference</th>
<th>§ 29-2-16</th>
</tr>
</thead>
<tbody>
<tr>
<td>List of individuals, in order of preference, the court shall appoint as permanent guardian, based on the best interest of minor. However, based on the best interests of the minor, the court may disregard the order of preference.</td>
<td></td>
</tr>
<tr>
<td>1. The adult who is the preference of a child age 14 or older</td>
<td></td>
</tr>
<tr>
<td>2. The nearest adult relative of the child</td>
<td></td>
</tr>
<tr>
<td>3. Other adult relatives of the child</td>
<td></td>
</tr>
<tr>
<td>4. Other adults who are related by marriage</td>
<td></td>
</tr>
<tr>
<td>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</td>
<td></td>
</tr>
<tr>
<td>6. An adult who has provided care or support for the child or with whom the child has lived</td>
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</tr>
</tbody>
</table>

| Documents / | • Petition, consent to guardianship |
Information Needed

- Proof of service or notice
- Confirmation that the proposed guardian understands he or she cannot just return the child to the parents without first coming back to the court which granted the guardianship, and that guardian has discretion to allow visits
- Confirmation that the proposed guardian understands he or she must keep court advised of changes in address
- Confirmation that the proposed guardian understands DFCS may the close case and may not provide any services or benefits except if guardianship subsidies are in place
- Confirmation that the proposed guardian understands that parent may file to revoke guardianship and the guardian is responsible for filing objections if necessary
- Oath: proposed guardian must take oath on record
- Determination of whether proposed guardian is eligible for subsidized guardianship or enhanced subsidized guardianship payments from DFCS

Practice Notes

A petition to modify case that is not directly on point held that in a petition to modify proceeding, the burden was on the father and the standard of proof was preponderance of evidence. The juvenile court had previously found by clear and convincing evidence that the father’s children were deprived, that he was unfit to retain custody, and that efforts to reunify him with the children were not appropriate. The court held the father’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.

The child is not required to be in DFCS’s custody
- *In the Interest of L. B.*, 319 Ga. App. 173, 177 (2012): “We find that the most sensible reading of the reference to the ‘reasonable efforts’ analysis in [the statute] indicates that the legislature's intent was not to restrict the juvenile court's jurisdiction to appoint a permanent guardian for only those children in DFCS custody, but rather to provide the juvenile court with the standard of proof and factors to consider when determining if reunification services would be detrimental to the child, and thus an award of permanent guardianship would serve the best interests of the child.”
- *In the Interest of L. B.*, 319 Ga. App. 173, 178 (2012): “[The statute] requires that such a private petitioner include in his or her pleading a statement indicating that reasonable efforts to reunify the child with his or her parents would be detrimental to the child. It would make no sense to require a private petitioner to allege and prove that reunification efforts would be detrimental to the child if the legislature intended DFCS to shoulder that burden. Accordingly, this confirms our conclusion that there is no requirement that a child must be placed in DFCS custody prior to the appointment of a permanent guardian under [the statute].”
## Temporary Guardianship Procedures

<table>
<thead>
<tr>
<th>Authority</th>
<th>§ 29-2-5 through 24, § 15-11-13</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Can be Transferred from Probate Court</strong></td>
<td>§ 29-2-6(f)</td>
</tr>
<tr>
<td></td>
<td>• The probate court can refer the petition for guardianship to the juvenile court for determination of whether the temporary guardianship is in the best interest of the minor (notice and hearing required).</td>
</tr>
<tr>
<td></td>
<td>§ 15-11-14 (a)</td>
</tr>
<tr>
<td></td>
<td>• The juvenile court shall hold a hearing within 30 days of receipt of a case transferred from the probate court.</td>
</tr>
<tr>
<td><strong>Possible outcomes</strong></td>
<td>O.C.G.A. § 15-11-14 (b)</td>
</tr>
<tr>
<td></td>
<td>After notice and hearing, the court may make one of the following orders:</td>
</tr>
<tr>
<td></td>
<td>• Establishment or continuation of temporary guardianship, if the court determines that the temporary guardianship is in the best interests of the child. The order shall thereafter be subject to modification only as provided in § 15-11-32.</td>
</tr>
<tr>
<td></td>
<td>• Termination of the temporary guardianship, if the court determines it is in the best interests of a child. A child shall be returned to his or her parent unless the court determines that there is probable cause to believe that he or she will be abused, neglected, or abandoned in the custody of his or her parent.</td>
</tr>
<tr>
<td></td>
<td>• The case shall proceed as a dependency matter pursuant to the provisions of Article 3 of the juvenile code, because the court has determined that it is in the best interests of the child</td>
</tr>
<tr>
<td></td>
<td>o that the temporary guardianship not be established or that the temporary guardianship be terminated, but there is probable cause to believe that he or she will be abused, neglected, or abandoned if returned to his or her parent, or</td>
</tr>
<tr>
<td></td>
<td>o that the temporary guardianship be continued over the parent's objection.</td>
</tr>
<tr>
<td></td>
<td>o The court may refer to DFCS for further investigation a case transferred from probate court.</td>
</tr>
<tr>
<td><strong>Consent and Objection</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Requires parental consent and provides for notice to any un-consenting parent who may then object or provide consent.</td>
</tr>
<tr>
<td></td>
<td>• Consent and objection may be to either the establishment of the guardianship or to the selection of the individual to be the guardian.</td>
</tr>
<tr>
<td></td>
<td>• If a parent objects to the establishment of the guardianship then court shall dismiss the petition for guardianship.</td>
</tr>
<tr>
<td></td>
<td>• 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 a hearing.</td>
</tr>
<tr>
<td><strong>Petition requirements</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Name, address and date of birth of the minor</td>
</tr>
</tbody>
</table>
| | • Name and address of the petitioner and petitioner's relationship to
## for Temporary Guardianship
- Statement that the petitioner has physical custody of the minor
- Petitioner’s domicile
- 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
- Statement whether one or both of the parents have made a notarized consent to the guardianship and 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
- Personal service if in Georgia at a known address, objections within 10 days from personal service
- First 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

## Time Limits for Objections Written and Filed with Court
- Best interest standard for all guardianship hearings
- Child’s preference as to the selection of a guardian may be heard at hearings

## Jurisdiction Venue
- Guardianships may be referred to juvenile court for notice and 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 filed in the county of residence of child

## Transfer to Juvenile Court
- § 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

## When the Temporary Guardianship Ends
- 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.

- If the temporary guardian files objections, the probate court may hear the objections or transfer the case to the juvenile court for determination of whether it is in the child’s best interest to continue the guardianship or terminate the guardianship.

**Procedure for Terminating Temporary Guardianship**

<table>
<thead>
<tr>
<th>§ 29-2-8(b)</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Parent may file at any time to terminate the temporary guardianship</td>
</tr>
<tr>
<td>- 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</td>
</tr>
<tr>
<td>- If the temporary guardian files objections, the probate court may hear the objections or transfer the case to the juvenile court for determination of whether it is in the child’s best interest to continue the guardianship or terminate the guardianship</td>
</tr>
</tbody>
</table>

**Standard of Proof**

**Boddie v. Daniels, 288 Ga. 143, 146 (2010)**

- The guardian must prove by clear and convincing evidence that the child will suffer physical or emotional harm if custody were awarded to the biological parent by terminating the temporary guardianship.
- The harm to a child required to be shown in order to continue a guardianship means either physical harm or significant, long-term emotional harm; it does not mean merely social or economic disadvantages.
- Once this showing is made, the guardian must then show that continuation of the temporary guardianship will best promote the child’s welfare and happiness.

**Factors to Consider in the Harm Standard**


- Who are the past and present caretakers of the child?
- With whom has the child formed psychological bonds and how strong are those bonds?
- Have the competing parties evidenced interest in, and contact with, the child over time?
- Does the child have unique medical or psychological needs that one party is better able to meet?

**Orders**


The trial court is required to make written findings of fact and conclusions of law.
Practice Notes:

Kinship Navigator Program
Assists kinship caregivers with 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 all of the following exist:
  - the child has been in relative foster care with the relative for at least 6 consecutive months
  - the child has a strong attachment to the relative
  - the relative has committed to permanently caring for the child
  - 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.
  - 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 describing:
  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.
  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.

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**: $10.00 per diem
2. **Enhanced Subsidized Guardianship**: household income less than 150K; 80% of current foster care per diem

To qualify for these subsidies.
The child must have been in DFCS foster care for a minimum of 12 months
Relative has received a favorable relative care assessment (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 relative care subsidy or 80% of the current foster care per diem for enhanced relative care subsidy. There is a waiver available through DFCS so that the guardian may be eligible for 100% of the foster care per diem.
Annual renewal by DFCS is required.

Other support services available through DFCS to relative caregivers include wraparound, PUP funds, initial and annual clothing allowance, Medicaid, physical or emotional therapy, training and educational support to relative.

**Termination of Juvenile Court Guardianship (Dissolution of Guardianship)**
- **For guardianship granted prior to 2000**, then guardianship is revocable at will of parent or child attorney, or court may request referral to DFCS.
- **For guardianship granted after 2000**, guardian may file objections to the dissolution of the guardianship, then notice to parties and 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, objections filed by the child attorney may alert the DFCS and the court of potential risks if the dissolution is granted.

**Transfer of guardianship that was 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.
Relative and Non-Relative Subsidies

<table>
<thead>
<tr>
<th>Type Of Subsidy</th>
<th>UAS Code</th>
<th>Applicable Population of Children</th>
<th>Availability after 1/1/14</th>
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<tbody>
<tr>
<td>Enhanced Relative Rate (ERR)</td>
<td>UAS 542</td>
<td>Children in DFCS custody placed with relatives who meet the TANF degree of relationship</td>
<td>Available</td>
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<tr>
<td>(TANF $)</td>
<td></td>
<td></td>
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<tr>
<td>Relative Care Subsidy (RCS)/</td>
<td>UAS 553</td>
<td>Children placed in the permanent custody of a relative who meets the TANF degree of relationship</td>
<td>Only available to families already receiving RCS/ERCS prior to 1/1/14</td>
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<td>Enhanced Relative Care Subsidy (ERCS)</td>
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<tr>
<td>Subsidized Guardianship (SG)/</td>
<td>UAS 552</td>
<td>Children placed in the permanent guardianship of a relative who meets the TANF degree of relationship</td>
<td>Available</td>
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<tr>
<td>Enhanced Subsidized Guardianship (ESG)</td>
<td>(TANF $)</td>
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<tr>
<td>Non-Relative Subsidized Guardianship</td>
<td>UAS 550</td>
<td>Children placed in the permanent guardianship of a non-relative or relative who does not meet the TANF degree of relationship</td>
<td>Available</td>
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<tr>
<td>(NRSG)/ Enhanced Non-Relative Subsidized Guardianship (ENRSG)</td>
<td>(State $)</td>
<td></td>
<td></td>
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</tbody>
</table>

TANF Degree of Relationship

The following relationships meet the relationship requirement:

- parent (either by birth, legal adoption, or step relationship)
- grandparent (up to great-great-great)
- sibling (half, whole, step)
- aunt/uncle (up to great-great)
- niece/nephew (including child and grandchild of niece/nephew)
- first cousin
- first cousin once removed (the child of a first cousin)
- spouse of any person named in the above group even after the marriage is terminated by death or divorce, unless the child is born after termination of the marriage.
  EXCEPTION: The spouse of a stepparent or the spouse of a stepsibling is not within the specified degree of relationship.
- To establish a child’s relationship to a paternal relative, paternity must first be established.
Juvenile Code Sections

§ 15-11-2. Definitions
(36) "Guardianship order" means the court judgment that establishes a permanent guardianship and enumerates a permanent guardian's rights and responsibilities concerning the care, custody, and control of a child.

§ 15-11-10. Exclusive Jurisdiction
Except as provided in Code Section 15-11-560, the juvenile court shall have exclusive original jurisdiction over juvenile matters and shall be the sole court for initiating action: (1) Concerning any child who: (A) Is alleged to be a delinquent child; (B) Is alleged to be a child in need of services; (C) Is alleged to be a dependent child; (D) Is alleged to be in need of treatment or commitment as a mentally ill or developmentally disabled child; (E) Is alleged to have committed a juvenile traffic offense as defined in Code Section 15-11-630; (F) Has been placed under the supervision of the court or on probation to the court; provided, however, that such jurisdiction shall be for the purpose of completing, effectuating, and enforcing such supervision or a probation begun prior to such child's seventeenth birthday; (G) Has remained in foster care after such child's eighteenth birthday or who is receiving independent living services from DFCS after such child's eighteenth birthday; provided, however, that such jurisdiction shall be for the purpose of reviewing the status of such child and the services being provided to such child as a result of such child's independent living plan or status as a child in foster care; or (H) Requires a comprehensive services plan in accordance with Code Section 15-11-658; or (2) Involving any proceedings: (A) For obtaining judicial consent to the marriage, employment, or enlistment in the armed services of any child if such consent is required by law; (B) For permanent guardianship brought pursuant to the provisions of Article 3 of this chapter; (C) Under Code Section 39-3-2, the Interstate Compact on Juveniles, or any comparable law, enacted or adopted in this state; (D) For the termination of the legal parent-child relationship and the rights of the biological father who is not the legal father of the child in accordance with Article 2 of this chapter; provided, however, that such jurisdiction shall not affect the superior court's exclusive jurisdiction to terminate the legal parent-child relationship as set forth in Chapters 6 through 9 of Title 19; (E) For emancipation brought pursuant to the provisions of Article 10 of this chapter; (F) Under Article 8 of this chapter, relating to prior notice to a parent, guardian, or legal custodian relative to an unemancipated minor's decision to seek an abortion; or (G) Brought by a local board of education pursuant to Code Section 20-2-766.1, relating to court orders requiring that a parent, guardian, or legal custodian attend a conference or participate in programs or treatment to improve a student's behavior.

15-11-11. Concurrent Jurisdiction
The juvenile court shall have concurrent jurisdiction to hear: (1) Any legitimation petition filed pursuant to Code Section 19-7-22 concerning a child alleged to be dependent; (2) Any legitimation petition transferred to the court by proper order of the superior court; (3) The issue of custody and support when the issue is transferred by proper order of the superior court; provided, however, that 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 the jury trial; and (4) Any petition for the establishment or termination of a temporary guardianship transferred to the court by proper order of the probate court.
§ 15-11-13. Appointment of guardian or conservator
The court shall have jurisdiction to appoint a guardian of the person of any child in any proceeding authorized by this chapter. 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 of any child by the probate court. In the event a conservator for a child's property needs to be appointed, the court shall refer that matter to the probate court.

§ 15-11-14. Transfers from probate court
(a) The court shall hold a hearing within 30 days of receipt of a case transferred from the probate court pursuant to subsection (f) of Code Section 29-2-6 or subsection (b) of Code Section 29-2-8.
(b) After notice and hearing, the court may make one of the following orders:
   (1) That the temporary guardianship be established or continued if the court determines that the temporary guardianship is in the best interests of a child. The order shall thereafter be subject to modification only as provided in Code Section 15-11-32; or
   (2) That the temporary guardianship be terminated if the court determines it is in the best interests of a child. A child shall be returned to his or her parent unless the court determines that there is probable cause to believe that he or she will be abused, neglected, or abandoned in the custody of his or her parent.
(c) A case shall proceed as a dependency matter pursuant to the provisions of Article 3 of this chapter if, after notice and hearing, the court determines:
   (1) That it is in the best interests of a child that the temporary guardianship not be established or that the temporary guardianship be terminated but there is probable cause to believe that he or she will be abused, neglected, or abandoned if returned to his or her parent; or
   (2) That it is in the best interests of a child that the temporary guardianship be continued over the parent's objection.
(d) The court may refer to DFCS for further investigation a case transferred from probate court.

§ 15-11-240. Permanent Guardianship requirements
(a) In addition to the jurisdiction to appoint guardians pursuant to Code Section 15-11-13, the juvenile court shall be vested with jurisdiction to appoint a permanent guardian for a child adjudicated as a dependent child in accordance with this article. Prior to the entry of such an order, the court shall: (1) Find that reasonable efforts to reunify such child with his or her parents would be detrimental to such child or find that the living parents of such child have consented to the permanent guardianship; (2) Find that termination of parental rights and adoption is not in the best interests of such child; (3) Find that the proposed permanent guardian can provide a safe and permanent home for such child; (4) Find that the appointment of a permanent guardian for such child is in the best interests of such child and that the individual chosen as such child's permanent guardian is the individual most appropriate to be such child's permanent guardian taking into consideration the best interests of the child; and (5) If such child is 14 years of age or older, find that the appointment of a permanent guardian for such child is in the best interests of such child and that the individual chosen by such child as the child's permanent guardian is the individual most appropriate to be such child's permanent guardian taking into consideration the best interests of the child. (b) The court may enter an order of support on behalf of a child against the
parents of such child in accordance with paragraph (7) of subsection (a) of Code Section 15-11-212.

§ 15-11-241. Petition requirements
The petition for the appointment of a permanent guardian pursuant to this part shall set forth: (1) The facts upon which the court's jurisdiction is based; (2) The name and date of birth of the child adjudicated as a dependent child; (3) The name, address, and county of domicile of the petitioner and the petitioner's relationship to such 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 such child, if any; (4) A statement that: (A) Reasonable efforts to reunify such child with his or her parents would be detrimental to such child; (B) Termination of parental rights and adoption is not in the best interests of such child; (C) The proposed guardian can provide a safe and permanent home for such child; (D) The appointment of a permanent guardian for such child is in the best interests of such child and that the individual chosen as such child's guardian is the individual most appropriate to be such child's permanent guardian taking into consideration the best interests of the child; and (E) If such child is 14 years of age or older, that the appointment of a permanent guardian for such child is in the best interests of the child and that the individual chosen by such child as the child's permanent guardian is the most appropriate individual to be such child's permanent guardian taking into consideration the best interests of the child; (5) Whether such 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 such child that deals with the guardianship of such child and the name and address of any designee named in the document; (7) In addition to the petitioner and the nominated guardian and, if the parent of such child has not consented to the permanent guardianship, the names and addresses of the following relatives of such child whose parents' whereabouts are known: (A) The adult siblings of such child; provided, however, that not more than three adult siblings need to be listed; (B) If there is no adult sibling of such child, the grandparents of such child; provided, however, that not more than three grandparents need to be listed; or (C) If there is no grandparent of such child, any three of the nearest adult relatives of such child determined according to Code Section 53-2-1; (8) Whether a temporary guardian has been appointed for such child 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 such child in the event full particulars are lacking.

(a) Permanent guardianship orders entered pursuant to Code Section 15-11-240 shall: (1) Remain in effect until the child adjudicated as a dependent child reaches the age of 18 or becomes emancipated; (2) Not be subject to review by the court except as provided in Code Section 15-11-244; and (3) Establish a reasonable visitation schedule which allows the child adjudicated as a dependent 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. (b) A permanent guardian shall have the rights and duties of a permanent guardian as 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.
§ 15-11-243. Notice required in juvenile court guardianship
(a) Notice of a guardianship petition pursuant to this part 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: (1) The adult siblings of the child who was adjudicated as a dependent child; (2) The grandparents of the child who was adjudicated as a dependent child; or (3) The nearest adult relatives of the child who was adjudicated as a dependent child as determined in accordance with Code Section 53-2-1. (b) The hearing shall be conducted in accordance with Code Section 29-2-18 to determine the best interests of the child who was adjudicated as a dependent child, and in reaching its determination the court shall consider Code Section 15-11-240.

§ 15-11-244. Juvenile Court Retains Jurisdiction over Guardianship
(a) The court shall retain jurisdiction over a guardianship action under this part for the sole purpose of entering an order following the filing of a petition to modify, vacate, or revoke the guardianship and appoint a new guardian. (b) The superior courts shall have concurrent jurisdiction for enforcement or modification of any child support or visitation order entered pursuant to Code Section 15-11-240. (c) 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 who was adjudicated as a dependent 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 interests of the child. Appointment of a new guardian shall be subject to the provisions of Code Sections 15-11-240 and 15-11-241.

Probate Code Sections

§ 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.
(1) Natural guardians
(2) Testamentary guardians
(3) Temporary guardians
(4) Standby guardians
(5) Permanent guardians

§ 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.
(a) The appointment of a guardian shall vest in the guardian the exclusive power, without court order, to:
(1) Take custody of the person of the minor and establish the minor's place of dwelling within this state;
(2) Subject to Chapters 9, 20, and 36 of Title 31 and any other pertinent law, give any consent or approval that may be necessary for medical or other professional care, counsel, treatment, or services for the minor;
(3) Bring, defend, or participate in legal, equitable, or administrative proceedings, including alternative dispute resolution, as are appropriate for the support, care, education, health, or welfare of the minor in the name of or on behalf of the minor;
(4) Execute a surrender of rights to enable the adoption of the minor pursuant to the provisions of Article 1 of Chapter 8 of Title 19 or the adoption laws of any other state; and
(5) Exercise those other powers reasonably necessary to provide adequately for the support, care, education, health, and welfare of the minor.
(b) At the time of the appointment of the guardian or at any time thereafter, any of the following powers may be specifically granted by the court to the guardian upon such notice, if any, as the court shall determine, provided that no disposition of the minor's property shall be made without the involvement of a conservator, if any:
(1) To establish the minor's place of dwelling outside this state;
(2) To change the jurisdiction of the guardianship to another county in this state that is the county of the minor's place of dwelling, pursuant to Code Section 29-2-60;
(3) To change the domicile of the minor to the minor's or the guardian's place of dwelling, in the determination of which the court shall consider the tax ramifications and the succession and inheritance rights of the minor and other parties;
(4) To consent to the marriage of the minor;
(5) To receive reasonable compensation from the estate of the minor for services rendered to the minor; and
(6) If there is no conservator, to disclaim or renounce any property or interest in property of the minor in accordance with the provisions of Code Section 53-1-20.

(c) Before granting any of the powers described in subsection (b) of this Code section, the court shall appoint a guardian ad litem for the minor and shall give notice to any natural guardian of the minor.

(d) In granting any of the powers described in subsection (b) of this Code section, the court shall consider the property rights of the minor and the views of the conservator, if available, or, if there is no conservator, of others who have custody of the minor's property.

(e) In performing any of the acts described in this Code section, the guardian shall act in coordination and cooperation with the conservator or, if there is no conservator, with others who have custody of the minor's property.

§ 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.

§ 53-2-1. Rules of inheritance when decedent dies without will; effect of abandonment of child

(a) As used in this Code section, the term:
   (1) "Abandon" means that a parent of a minor child, without justifiable cause, fails to communicate with the minor child, care for the minor child, and provide for the minor child's support as required by law or judicial decree for a period of at least one year immediately prior to the date of the death of the minor.
   (2) "Abandonment" means the act of abandoning.
   (3) "Minor child" means a person who is less than 18 years of age.

(b) For purposes of this Code section:
   (1) Children of the decedent who are born after the decedent's death are considered children in being at the decedent's death, provided they were conceived prior to the decedent's death, were born within ten months of the decedent's death, and survived 120 hours or more after birth; and
   (2) The half-blood, whether on the maternal or paternal side, are considered equally with the whole-blood, so that the children of any common parent are treated as brothers and sisters to each other.

(c) Except as provided in subsection (d) of this Code section, when a decedent died without a will, the following rules shall determine such decedent's heirs:
   (1) Upon the death of an individual who is survived by a spouse but not by any child or other descendant, the spouse is the sole heir. If the decedent is also survived by any child or other descendant, the spouse shall share equally with the children, with the descendants of any deceased child taking that child's share, per stirpes; provided, however, that the spouse's portion shall not be less than a one-third share;
   (2) If the decedent is not survived by a spouse, the heirs shall be those relatives, as provided in this Code section, who are in the nearest degree to the decedent in which there is any survivor;
   (3) Children of the decedent are in the first degree, and those who survive the decedent shall share the estate equally, with the descendants of any deceased child taking, per stirpes, the share that child would have taken if in life;
   (4) Parents of the decedent are in the second degree, and those who survive the decedent shall share the estate equally;
   (5) Siblings of the decedent are in the third degree, and those who survive the decedent shall share the estate equally, with the descendants of any deceased sibling taking, per stirpes, the share that sibling would have taken if in life; provided, however, that, subject to the provisions of paragraph (1) of subsection (f) of Code Section 53-1-20, if no sibling survives the decedent, the nieces and nephews who survive the decedent shall take the estate in equal shares, with the descendants of any deceased niece or nephew taking, per stirpes, the share that niece or nephew would have taken if in life;
   (6) Grandparents of the decedent are in the fourth degree, and those who survive the decedent shall share the estate equally;
   (7) Uncles and aunts of the decedent are in the fifth degree, and those who survive the decedent shall share the estate equally, with the children of any deceased uncle or aunt taking, per stirpes, the share that uncle or aunt would have taken if in life; provided, however, that, subject to the provisions of paragraph (1) of subsection (f) of Code Section 53-1-20, if no uncle or aunt of the
decedent survives the decedent, the first cousins who survive the decedent shall share the estate equally; and

(8) The more remote degrees of kinship shall be determined by counting the number of steps in the chain from the relative to the closest common ancestor of the relative and decedent and the number of steps in the chain from the common ancestor to the decedent. The sum of the steps in the two chains shall be the degree of kinship, and the surviving relatives with the lowest sum shall be in the nearest degree and shall share the estate equally.

(d) Except as provided in Code Sections 19-7-1 and 51-4-4 for the right of recovery for the wrongful death of a child, when a minor child dies without a will, a parent who willfully abandoned his or her minor child and has maintained such abandonment shall lose all right to intestate succession to the minor child's estate and shall not have the right to administer the minor child's estate. A parent who has been deprived of the custody of his or her minor child under an order of a court of competent jurisdiction and who has substantially complied with the support requirements of the order shall not be barred from inheriting from the minor child's estate.

(e) For cases in which abandonment is alleged, the moving party shall file a motion with the probate court requesting the judge to determine the issue of abandonment and shall serve all parties as set forth in subsection (f) of this Code section. A hearing shall be conducted and all parties shall have the opportunity to present evidence regarding the party's relationship with the decedent. The burden of proof to show an abandonment is on the person asserting the abandonment by clear and convincing evidence.

(f) All parties to a motion filed pursuant to subsection (e) of this Code section shall be served in accordance with Chapter 11 of this title. If a party cannot be personally served and the party's interest in an estate is subject to forfeiture pursuant to subsection (d) of this Code section, the judge shall appoint a guardian ad litem for the party. If a party cannot be personally served, the citation shall also be published in the newspaper in which sheriff's advertisements are published in the county where the party was last known to reside.

(g) In the event that a parent is disqualified from taking a distributive share in the estate of a decedent under subsection (d) of this Code section, the estate of such decedent shall be distributed in accordance with subsection (c) of this Code section as though the parent had predeceased the decedent.
Chapter 16  Legitimation

Contribution by Mary Hermann, JD, CWLS

*If a putative father is served with a summons and petition for TPR, 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 and standing to contest the termination.

| Authority | § 15-11-2(43) | Legal Father definition 
§ 15-11-11(1 and 2)) | Jurisdiction in juvenile court for legitimation 
§ 19-7-20 to § 19-7-46.1 | Procedure for Legitimation 
§ 19-11-9 | Putative Father Registry 
§ 19-7-46.1 | Paternity evidence 
§ 31-10-13.1 | Clerk of Court duty to send certified copy to Vital Records |

**Purpose**

- Establish “legal father” for the dependent child
- Create legal relationship between child and birth (putative) father
- Expands paternal resources for child
- Change child’s name
- 6 ways to establish “legal father:”
  1. Putative father has legally adopted the child.
  2. Putative father was married to the biological mother at the time the child was conceived or was born, unless paternity was disproved by a final order of paternity.
  3. Putative father married the legal mother of the child after the birth and acknowledged the child as his, unless paternity was disproved by a final order.
  4. Paternity Order and final order, § 19-7-40 et. seq.
  5. Legitimated and final order, § 19-7-22
  6. Administrative Legitimation, § 19-7-22.1

**Jurisdiction**

§ 15-11-11(1), (2)

- Pending dependency in juvenile court
- Concurrent jurisdiction with superior court

**Venue**

§ 19-7-22(a)

- County of residence of mother; venue can be waived
- 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 dependency is pending

**Pleadings**

- Petition to legitimate
- Administrative legitimation forms
- Paternity acknowledgement
- Annulment of legitimation
- DNA test results
<table>
<thead>
<tr>
<th></th>
<th>Birth certificate</th>
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<tbody>
<tr>
<td><strong>Party</strong></td>
<td><strong>Party, §15-11-2(52)</strong></td>
</tr>
<tr>
<td></td>
<td>• Mother, Father, Child, DFCS</td>
</tr>
<tr>
<td></td>
<td>• <strong>Party</strong> defined at § 15-11-2(52) as state, a child, parent, guardian, legal custodian, or other person subject to any judicial proceeding, except in delinquency proceedings; then only a child and the state are parties.</td>
</tr>
<tr>
<td></td>
<td>• <strong>Parent</strong> defined at § 15-11-2(51) as legal father or legal mother of a child.</td>
</tr>
<tr>
<td><strong>Service</strong></td>
<td>• To mother pursuant to Civil Practice Act § 9-11-4 and § 9-11-5</td>
</tr>
<tr>
<td></td>
<td>• Formal service required — summons and copy of petition</td>
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<tr>
<td></td>
<td>• Party may waive if on record and by appearance at hearing; party must make objections to service on the record</td>
</tr>
<tr>
<td></td>
<td>• <strong>Personal service</strong> to parent or legal custodian — if whereabouts known within Georgia, then service must be perfected at least 24 hours prior to the hearing.</td>
</tr>
<tr>
<td></td>
<td>• <strong>Certified/registered mail, overnight delivery</strong> to parent or legal guardian — if within Georgia and 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.</td>
</tr>
<tr>
<td></td>
<td>• <strong>Personal, certified/registered mail, overnight delivery</strong> to parent or legal guardian — if outside Georgia and address is known or can with diligence be ascertained, then service must be perfected at least 5 days prior to the hearing.</td>
</tr>
<tr>
<td></td>
<td>• <strong>Publication</strong> — 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.</td>
</tr>
<tr>
<td></td>
<td>• Pending dependency, so argument may be made for child attorney and DFCS to also be entitled to notice and an opportunity to be heard. Most juvenile courts allow the child attorney and DFCS to be part of the legitimation hearing as being in the child’s best interest.</td>
</tr>
<tr>
<td><strong>§15-11-103 Child and Party</strong></td>
<td>• All parties, including the child, have a right to counsel at all stages of the proceedings.</td>
</tr>
<tr>
<td></td>
<td>• Party defined at § 15-11-2(52) as state, a child, parent, guardian, legal custodian, or other person subject to any judicial proceeding, except in delinquency proceedings; then only a child and the state are parties.</td>
</tr>
<tr>
<td></td>
<td>• Parent defined at § 15-11-2(51) as legal father or legal mother of a child.</td>
</tr>
<tr>
<td></td>
<td>• Child Attorney should be appointed “as soon as practicable to ensure adequate representation” and before the first hearing that may substantially affect the interests of the child.</td>
</tr>
<tr>
<td></td>
<td>o Child attorney has “attorney-client” duty.</td>
</tr>
</tbody>
</table>
- Child attorney representation continues through appeals or until excused by court.
- Child’s right to attorney cannot be waived.

- Party should be advised of right to counsel prior to any hearing:
  - Party has right to obtain or employ attorney
  - If indigent, right to appointed counsel
  - Can waive right to attorney

- 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 (2009)).*

- Father, legal or putative, right to counsel?

- Inquiry about incarcerated parents; transport to hearings?

- Despite his request, the father “was not entitled to have an attorney appointed to represent him at public expense in the legitimatization proceedings.” *Ernst v. Snow*, 305 Ga. App. 194 (Ga. App., 2010).

- Some juvenile courts will appoint an attorney for putative fathers.

<table>
<thead>
<tr>
<th>Right to GAL and GAL Best Interest Advocacy Considerations</th>
<th>§ 15-11-104</th>
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</thead>
<tbody>
<tr>
<td>§ 15-11-104</td>
<td></td>
</tr>
<tr>
<td>• GAL shall be appointed</td>
<td></td>
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<tr>
<td>• May be child’s attorney unless or until a conflict of interest between the attorney’s duty to the child and the attorney’s “considered opinion” of the child’s best interest as a GAL</td>
<td></td>
</tr>
<tr>
<td>• CASA may serve as GAL</td>
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<tr>
<td>• Procedure for removal of GAL for cause § 15-11-104(h)</td>
<td></td>
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<tr>
<td>• CASA appointment § 15-11-106</td>
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| § 15-11-105                                                 |             |
| • To advocate for the child’s best interest, GAL shall consider factors such as the following, in the context of child’s age and developmental needs: |             |
| o Physical safety and welfare, food, shelter, health, clothing |             |
| o Mental and physical health of all individuals involved      |             |
| o Evidence of domestic violence                               |             |
| o Child’s background and ties, including familial, cultural, religious |             |
| o Child’s sense of attachments                                |             |
| o Least disruptive placement alternative                      |             |
| o Child's wishes and long-term goals                         |             |
| o Community ties, church, school, friends                    |             |
| o Child's need for permanence, stability, and continuity of relationships |             |
| o Uniqueness of every family and child                        |             |
| o Risks associated with being in substitute care              |             |
| o Preferences of the persons available to care for the child  |             |
| o Any other factors considered by the GAL to be relevant and proper |             |

<p>| Standard of Proof | • Has father abandoned his “opportunity interest” to develop a familial relationship with child? |</p>
<table>
<thead>
<tr>
<th>If No,</th>
</tr>
</thead>
<tbody>
<tr>
<td>o Father has <strong>not</strong> abandoned his opportunity interest and father has established a familial bond.</td>
</tr>
<tr>
<td>o Court should apply the “parental fitness” test in determining whether to grant the legitimation.</td>
</tr>
<tr>
<td>o Father would have to be shown to be unfit by clear and convincing evidence in order to deny his petition for legitimation.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>If Yes,</th>
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<td>o Father has abandoned his opportunity interest and father has <strong>not</strong> established a familial bond.</td>
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</tr>
</tbody>
</table>


The *Labrec* Court explained the decision in *Eason* as follows:

“Eason, however, does not stand for the proposition that the fitness test is the substantive standard applicable to every legitimation petition but recognized a continuum of rights, specific to the facts of each case, to which varying standards could be applied. In *Eason*, an unwed biological father sought to legitimate his infant child who had been placed with an adoptive family by the State. The adoptive family had developed a relationship with the infant and were providing normal parental care and maintenance. We held that the parental fitness standard must be used to determine the father’s right to legitimate the child because it was the State’s action which interfered with the father’s rights with respect to the child and which allowed for the development of the parent/child relationship between the child and the adopting parents. *Eason*, supra at 297, 358 S.E.2d 459. We made clear, however, that absent the State’s involvement and under other circumstances, the best interests of the child standard would be adequate. *Davis v. LaBrec*, 274 Ga. 5, 7 (2001).”


“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, 74 (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, 158, 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.” *Ghrist v. Fricks*, 219 Ga. App. 415, 419, 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. 805, 806, 637 S.E.2d 446 (2006).

| Order | • Must explicitly state which standard was used and contain findings of fact and 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 and the basis for application of the test. *Jones v. Smith*, 250 Ga. App. 486 (2001).

| Objections | • Mother
|            | • Child attorney or GAL – maybe, but not in statute
|            | • DFCS? Maybe if DFCS is the legal custodian at the time of the legitimation petition, but not in statute

| Important Considerations | • 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 and some courts require DNA test prior to filing or granting a legitimation petition.
### Annulment of Legitimation

<table>
<thead>
<tr>
<th>§ 31-10-13.1. Certified Copy of Order of Legitimation</th>
</tr>
</thead>
<tbody>
<tr>
<td>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 15th 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 § 31-10-23.</td>
</tr>
<tr>
<td>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.</td>
</tr>
</tbody>
</table>

**Practice Note:** Courts favor legitimation and are unlikely to annul, vacate or otherwise modify or undo a legitimation unless there is another “father” willing to legitimate. If there is a pending TPR, then a surrender may be accepted by the court or DFCS.

### One Judge—One Family

| § 15-11-3 |
| A single judge shall hear all successive cases or proceedings involving the same child or family. |
| Direct Calendaring. |

### GAL Participation and Access to Records

| § 15-11-105 (d), (e) |
| GAL shall receive all notices of hearings, reviews, panels, case plan formulation meetings, and shall be served pleadings in the same manner as a party. |
| GAL shall have access to all records and information relevant to the child’s case except |
| o § 19-7-5, Child Abuse Reporting Statute |
| o § 49-4A, Juvenile Justice authorizing statute |
| o Article 11, Office of the Child Advocate for the Protection of Children authorizing statute |

| § 15-11-105 (f), (g) |
| All information acquired by GAL is confidential except as directed by court: |
| o Misdemeanor if violated |
| o Maintain confidential records require by § 37-3-166, Hospitalization and Treatment of Alcoholics and Drug Dependent Individual, clinical records; when release permitted; scope of privileged communications; liability for disclosure; notice to sheriff of discharge |
| o § 37-4-125 – Services for Developmentally Disabled, clinical records, release, privilege |
Practice Notes

- 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 and parenting time may still be an issue which legitimation can address.
- Following legitimation father must go to the Georgia Office of Vital Statistics and get new birth certificate with child’s name changed and father’s name added.
- Legitimation does not change child custody or bestow any custodial rights such as visitation unless the petitioner specifically requests and the court adjudicates these additional issues.

Administrative Legitimation - Voluntary acknowledgment of legitimation

§ 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 and father have freely agreed, consented, and signed a voluntary acknowledgment of paternity and an acknowledgment of legitimation which have not been rescinded
- **Voluntary acknowledgment of paternity and an acknowledgment of legitimation** will not be recognized if:
  - The mother was married to another man when the child was born.
  - The mother was married to another man at any time within the usual period of gestation.
  - There is another legal father.
  - The mother has voluntarily and in writing surrendered all of her parental rights pursuant to the provisions of subsection (a) of any of §§ 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 § 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.
  - The mother has signed a voluntary acknowledgment of legitimation with another man.
  - 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, § 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.

“The public policy of this state favoring the institution of marriage and the legitimacy of children born during a marriage is the strongest public policy recognized by law. This court’s holding in Hardy v. Arcemont, 213 Ga. App. 243, 245(1), 444 S.E.2d 327 (1994), that ‘(a)ll children born in wedlock or within the usual period of gestation thereafter are legitimate, but the legitimacy of such a child 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,’ citing OCGA § 19-7-20(a) and (b), is but one of the latest of a long series of decisions rendered by the appellate courts of Georgia recognizing this public policy and evincing the commitment of Georgia’s courts to enforcing it. ‘This presumption of legitimacy is one of the strongest and most persuasive known to our law.’ Stephens v. State, 80 Ga. App. 823, 825, 57 S.E.2d 493 (1950). Moreover, ‘[t]his statutory presumption is a firmly-established principle of law, evincing a strong state policy favoring marriage and legitimacy.’ (Emphasis supplied.) Miller v. Miller, 258 Ga. 168, 169, 366 S.E.2d 682 (1988).”

Code Sections

§ 15-11-11.
The juvenile court shall have concurrent jurisdiction to hear: (1) Any legitimation petition filed pursuant to Code Section 19-7-22 concerning a child alleged to be dependent; (2) Any legitimation petition transferred to the court by proper order of the superior court; (3) The issue of custody and support when the issue is transferred by proper order of the superior court; provided, however, that 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 the jury trial; and (4) Any petition for the establishment or termination of a temporary guardianship transferred to the court by proper order of the probate court.

§ 15-11-2(43)
'Legal father' means a male who has not surrendered or had terminated his rights to a child and who:
A. Has legally adopted a child;
B. Was married to the biological mother of a child at the time such child was conceived or was born, unless paternity was disproved by a final order pursuant to Article 3 of Chapter 7 of Title 19;
C. Married the legal mother of a child after such child was born and recognized such child as his own, unless paternity was disproved by a final order pursuant to Article 3 of Chapter 7 of Title 19;
D. Has been determined to be the father of a child by a final paternity order pursuant to Article 3 of Chapter 7 of Title 19;
E. Has legitimated a child by a final order pursuant to Code Section 19-7-22; or
F. Has legitimated a child pursuant to Code Section 19-7-22.1.
§ 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.

§ Section 19-11-9 Location of absent parents; assistance of other agencies; 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 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 services 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, of enforcing any state 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 the State Treasurer for deposit in the treasury of the state and shall provide an annual accounting of such fees to the Governor and the General Assembly.
§ Section 19-7-46.1 Paternity evidence

(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  Emancipation and Rescission of Emancipation

*Contribution by Nathan Hayes, JD, CWLS*

<table>
<thead>
<tr>
<th>Authority</th>
<th>§ 15-11-720 to 728</th>
</tr>
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</table>
| **Purpose** | • Establish procedure for a minor to be emancipated by petition to the juvenile court.  
• Minor may be emancipated by  
  o valid marriage  
  o turning 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. |
| **When Emancipation Occurs** | § 15-11-720  
• Emancipation occurs by operation of law when  
  o a child is validly married  
  o a child reaches the age of 18 years  
  o a child is on active military duty, or  
  o juvenile court issues order following a petition filed by the child. |
| **Pleadings for Emancipation** | § 15-11-721  
• Provides the requirements of a petition for emancipation  
• Petition shall be filed in the juvenile court where the child resides  
• Signed and verified by the petitioner  
• Certified copy of petitioner’s birth certificate  
• Name and last known address of petitioner’s parent, guardian, or legal custodian, and if no parent guardian, or legal custodian can be found, the name and address of the petitioner’s nearest living relative residing within the state  
• Present address and length of time at the address  
• Declaration by the petitioner  
  o Demonstrating the ability to manage his or her financial affairs together with any information necessary to support the declaration  
  o Demonstrating the ability to manage his or her personal and social affairs together with any information to support the declaration  
  o Names of individuals who have personal knowledge of the petitioner’s circumstances and believe emancipation is in the best interest of the petitioner  
  ▪ May include any of the following: a licensed physician, physician assistant, or osteopath; a registered professional nurse or licensed practical |
nurse; a licensed psychologist; a licensed professional counselor, social worker, or marriage and family therapist; a school guidance counselor, school social worker, or school psychologist; a school administrator, school principal, or school teacher; a member of the clergy; a law enforcement officer; or an attorney

<table>
<thead>
<tr>
<th>Attorney, GAL, and Affidavit</th>
<th>§ 15-11-723</th>
</tr>
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<tbody>
<tr>
<td>• After a petition is filed the court may:</td>
<td></td>
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<tr>
<td>o appoint a GAL to investigate the allegation of the petition and file a report with the court stating whether it is in the best interest of the petitioner that the petition be granted.</td>
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<tr>
<td>o appoint an attorney for the petitioner</td>
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<tr>
<td>o appoint an attorney for the petitioner’s parent, guardian, or legal custodian if</td>
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<tr>
<td>▪ he or she is indigent, and</td>
<td></td>
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<tr>
<td>▪ he or she opposes the petition.</td>
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<td>• The court shall seek an affidavit from each person identified in the petition that describes why that person believes the petition should be emancipated</td>
<td></td>
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</tbody>
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<table>
<thead>
<tr>
<th>Standard of Proof</th>
<th>§ 15-11-724</th>
</tr>
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<tbody>
<tr>
<td>• the child shall have the burden of showing that emancipation should be ordered by a Preponderance of the Evidence</td>
<td></td>
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<table>
<thead>
<tr>
<th>Required Findings</th>
<th>§ 15-11-725(a)</th>
</tr>
</thead>
<tbody>
<tr>
<td>The court shall issue an emancipation order if the emancipation is in the best interests of the child and</td>
<td></td>
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<tr>
<td>• His or her parent, guardian, or legal custodian does not object to the petition or, if a parent, guardian, or legal custodian objects to the petition, that the best interests of the child are served by allowing the emancipation to occur by court order</td>
<td></td>
</tr>
<tr>
<td>• The child is a resident of this state</td>
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<td>• The child has demonstrated the ability to manage his or her financial affairs, including proof of employment or other means of support</td>
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<tr>
<td>o “Other means of support” shall not include general assistance or aid received from means-tested public assistance programs such as Temporary Assistance for Needy Families as provided in Article 9 of Chapter 4 of Title 49 or similar programs under Title IV-A of the federal Social Security Act</td>
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<tr>
<td>• The child has the ability to manage his or her personal and social affairs, including, but not limited to, proof of housing</td>
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<tr>
<td>• The child understands his or her rights and responsibilities under this article as an emancipated child</td>
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</tbody>
</table>
| **Retain a Copy of Orders of Emancipation and Rescission** | § 15-11-725(b)  
- The court shall retain a copy of the emancipation order until a child is 25 years of age.  
§ 15-11-726(d)  
- The court shall retain a copy of the order rescinding the emancipation until the petitioner becomes 25 years of age |
| **Voidable** | § 15-11-725(c)  
- An emancipation obtained by fraud is voidable. |
| **Effect of Void Emancipation on Obligation, Right, or Interest** |  
- Voiding an emancipation order shall not affect an obligation, responsibility, right, or interest that arose during the period of time the order was in effect. |
| **Appeals** | § 15-11-725(d)  
- A child, his or her parent, guardian, or legal custodian may appeal the court's grant or denial of an emancipation petition.  
§ 15-11-726(f)  
- A child or his or her parent, guardian, or legal custodian may appeal the court's grant or denial of a petition for rescission of an emancipation order to the Court of Appeals |
| **Jurisdiction** | Juvenile Court |
| **Venue** | Child’s county of residence |
| **Timing** | When minor is at least 16 and less than 18 |
| **Parties** |  
- Child  
- Child’s parent, guardian, or legal custodian |
| **Service / Notice** | § 15-11-722  
- Upon filing, a copy of the petition and a summons to appear at the hearing shall be served upon  
  - all persons named in the petition.  
  - any individual who provided an affidavit for emancipation.  
- A person served with a petition may file an answer within 30 days of being served. |
| **Rights of Emancipated Child** | § 15-11-727 (a)  
- Child 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 a child because of his or her age.  
- The rights of a child to receive any transfer of property or money under The Georgia Transfers to Minors Act, 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  
- The Child shall be considered emancipated for the purposes of
<table>
<thead>
<tr>
<th>Liability of Parent, Guardian, or Legal Custodian</th>
<th>§ 15-11-727 (c)</th>
</tr>
</thead>
<tbody>
<tr>
<td>• A parent, guardian, or legal custodian of an emancipated child shall not be liable for any debts incurred by his or her child during the period of emancipation.</td>
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</tbody>
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<thead>
<tr>
<th>Duty to Support</th>
<th>§ 15-11-728(a)-(b)</th>
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<tbody>
<tr>
<td>• The duty to provide support for a child shall continue until an emancipation order is granted. An emancipated child shall not be considered dependent.</td>
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<thead>
<tr>
<th>Marriage</th>
<th>§ 15-11-728(c)</th>
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<tbody>
<tr>
<td>• Age limitations to contract for marriage apply to a child who has been emancipated.</td>
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### Rescission of Emancipation

<table>
<thead>
<tr>
<th>Pleading to Rescind Emancipation</th>
<th>§ 15-11-726</th>
</tr>
</thead>
<tbody>
<tr>
<td>• A child emancipated by court order may petition the juvenile court that issued the emancipation order to rescind such order.</td>
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<tr>
<td>• A copy of the petition for rescission and a summons shall be served on the petitioner's parent, guardian, or legal custodian.</td>
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<tr>
<th>Required Findings for an Order to Rescind Emancipation</th>
<th>§ 15-11-726</th>
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<tbody>
<tr>
<td>• The court shall rescind the order of emancipation if it finds:</td>
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<tr>
<td>o Petitioner is indigent and has no means of support</td>
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<tr>
<td>o Petitioner and the petitioner’s parent, guardian, or legal custodian agree that the order should be rescinded</td>
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<tr>
<td>o There is a resumption of family relations inconsistent with the existing emancipation order</td>
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<tr>
<th>Effect of Rescission on Obligations, Rights, or Interests</th>
<th>§ 15-11-726 (e)</th>
</tr>
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<tbody>
<tr>
<td>• Rescission of an emancipation order shall 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.</td>
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</table>
Code Sections

15-11-720. (a) Emancipation may occur by operation of law or pursuant to a petition filed with the court as provided in this article by a child who is at least 16 years of age. (b) An emancipation occurs by operation of law: (1) When a child is validly married; (2) When a child reaches the age of 18 years; or (3) During the period when a child 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 child with the juvenile court.

15-11-721. A child seeking emancipation shall file a petition for emancipation in the juvenile court in the county where such child resides. The petition shall be signed and verified by the petitioner, and shall include: (1) The petitioner's full name and birth date and the county and state where the petitioner was born; (2) A certified copy of the petitioner's birth certificate; (3) The name and last known address of the petitioner's parent, guardian, or legal custodian and, if no parent, guardian, or legal custodian can be found, the name and address of the petitioner's nearest living relative residing within this state; (4) The petitioner's present address and length of residency at that address; (5) A declaration by the petitioner demonstrating the ability to manage his or her financial affairs together with any information necessary to support the declaration; (6) A declaration by the petitioner demonstrating the ability to manage his or her personal and social affairs together with any information necessary to support the declaration; and (7) The names of individuals who have personal knowledge of the petitioner's circumstances and believe that under those circumstances emancipation is in the best interests of the petitioner. Such individuals may include any of the following: (A) A licensed physician, physician assistant, or osteopath; (B) A registered professional nurse or licensed practical nurse; (C) A licensed psychologist; (D) A licensed professional counselor, social worker, or marriage and family therapist; (E) A school guidance counselor, school social worker, or school psychologist; (F) A school administrator, school principal, or school teacher; (G) A member of the clergy; (H) A law enforcement officer; or (I) An attorney.

15-11-722. (a) Upon filing the petition, a copy of the petition for emancipation and a summons to appear at the hearing shall be served on all persons named in the petition and upon any individual who provided an affidavit for the emancipation. (b) A person served with a petition may file an answer in the juvenile court in which the petition was filed within 30 days of being served.

15-11-723. (a) After a petition for emancipation is filed, the court may: (1) Appoint a guardian ad litem to investigate the allegations of the petition and to file a report with the court, including a recommendation as to whether it is in the best interests of the petitioner that the petition for emancipation be granted; (2) Appoint an attorney for the petitioner; and (3) Appoint an attorney for the petitioner's parent, guardian, or legal custodian if he or she is an indigent person and if he or she opposes the petition. (b) After a petition for emancipation is filed, the court shall seek an affidavit from each person identified in the petition pursuant to paragraph (7) of Code Section 15-11-721 that describes why that person believes the petitioner should be emancipated.
15-11-724. A child who petitions the court for emancipation shall have the burden of showing that emancipation should be ordered by a preponderance of evidence.

15-11-725. (a) The court shall issue an emancipation order if, after a hearing, it determines that emancipation is in the best interests of the child and such child has established: (1) That his or her parent, guardian, or legal custodian does not object to the petition; or, if a parent, guardian, or legal custodian objects to the petition, that the best interests of the child are served by allowing the emancipation to occur by court order; (2) That he or she is a resident of this state; (3) That he or she has demonstrated the ability to manage his or her financial affairs, including proof of employment or other means of support. 'Other means of support' shall not include general assistance or aid received from means-tested public assistance programs such as Temporary Assistance for Needy Families as provided in Article 9 of Chapter 4 of Title 49 or similar programs under Title IV-A of the federal Social Security Act; (4) That he or she has the ability to manage his or her personal and social affairs, including, but not limited to, proof of housing; and (5) That he or she understands his or her rights and responsibilities under this article as an emancipated child. (b) If the court issues an emancipation order, the court shall retain a copy of the order until the emancipated child becomes 25 years of age. (c) An emancipation obtained by fraud is voidable. Voiding an emancipation order shall not affect an obligation, responsibility, right, or interest that arose during the period of time the order was in effect. (d) A child or his or her parent, guardian, or legal custodian may appeal the court's grant or denial of an emancipation petition.

15-11-726. (a) A child 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 petitioner's parent, guardian, or legal custodian. (c) The court shall grant the petition and rescind the order of emancipation if it finds: (1) That the petitioner is an indigent person and has no means of support; (2) That the petitioner and the petitioner's parent, guardian, or legal custodian 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 petitioner becomes 25 years of age. (e) Rescission of an emancipation order shall 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) A child or his or her parent, guardian, or legal custodian 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.

15-11-727. (a) A child 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 a child because of his or her age. The rights of a child 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 child 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) A parent, guardian, or legal custodian of a child emancipated by court order shall not be liable for any debts incurred by his or her child during the period of emancipation.

15-11-728.
(a) The duty to provide support for a child shall continue until an emancipation order is granted. (b) A child emancipated under this article shall not be considered a dependent child. (c) The provisions set forth in Code Section 19-3-2 regarding age limitations to contract for marriage shall apply to a child who has become emancipated under this article.
# Chapter 18 Parental Notification Act

*Contribution by Mary Hermann, JD, CWLS*

<table>
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<tr>
<th>Authority</th>
<th>§ 15-11-680 to § 15-11-688 Parental Notification Act</th>
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| **Purpose** | • For an un-emancipated minor located within Georgia who is seeking to make the abortion decision without notification to her parent or guardian  
• Court does **not** approve abortion; **only** authorizes the minor to make the abortion decision independently and without notice to her parent or guardian |
| **Definitions** | § 15-11-681 (1), (2), (3)  
• **Abortion**: 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  
• **Proper identification**: any document issued by a governmental agency containing a description of the person, the person's photograph, or both; includes driver's license, identification card (40-5-100 to 40-5-104), or similar identification card issued by another state, a military ID card, a passport, or work authorization issued by the United States Immigration and Customs Enforcement Division of the Department of Homeland Security  
• **Unemancipated Minor**: 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 |
| **Procedure to Notify parent or guardian of pending abortion Venue in any county** | § 15-11-682  
• No physician or other person shall perform an abortion upon an unemancipated minor unless:  
  o parent or guardian properly noticed by physician, and does not wish to consult with the minor on the abortion issue or  
  o minor petitions for and obtains a juvenile court order waiving the notice requirements to the parent or guardian  
• Venue is lawful in any county. |
| **Timing of hearing** | § 15-11-683  
• Within 3 days of filing, excluding weekends  
• if no hearing is held within 3 days, minor’s petition deemed granted |
| Right to Attorney | § 15-11-684(a), (b) |
| Complete Anonymity | • Minor has the right to a court appointed attorney |
| Expedited Hearing | • Proceeding and court records to be processed with complete anonymity of minor |
| | • Proceedings to be given precedence over other matters to ensure expeditious decision |
| Court to Decide if Notice | § 15-11-684(c) |
| can be waived | • Notice to parent or guardian may be waived if the court finds the either |
| | o the minor is mature and well informed enough to make the abortion decision with the physician independent of the wishes of the parent or guardian, or |
| | o notice to the parent or guardian would not be in the minor’s best interest. |
| Standard of Proof | |
| Timing of Court Order | § 15-11-684(d) |
| | • Within 24 hours of hearing and certified copy given to the minor |
| No residency required | § 15-11-685 |
| | • Minor does not have to be a resident of Georgia; article applies to all unemancipated minors within the state |
| Medical emergency | § 15-11-686 |
| exception | • This article does not apply if in the best clinical judgment of the attending physician, a medical emergency exists that so complicates the condition of the unemancipated minor as to require an immediate abortion. |
| Reliance on information | § 15-11-687 |
| from minor | • Physician 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. |
| Violation = misdemeanor | §15-11-688 |
| | • Violation of this article is a misdemeanor and any person who intentionally encourages another to provide false information pursuant to this article shall be guilty of a misdemeanor. |
Code Sections

ARTICLE 8

15-11-680.
This article shall be known and may be cited as the 'Parental Notification Act.'

15-11-681.
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.

15-11-682.
(a) No physician or other person shall perform an abortion upon an unemancipated minor unless: (1)(A) The unemancipated minor seeking an abortion is accompanied by his or her parent or guardian who shall show proper identification and state that he or she is the lawful parent or guardian of the unemancipated minor and that he or she has been notified that an abortion is to be performed on the unemancipated minor; (B) The physician or the physician's qualified agent gives at least 24 hours' actual notice, in person or by telephone, to the parent or guardian of the unemancipated minor 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 unemancipated 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 unemancipated 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 registered or certified mail or statutory overnight delivery, return receipt requested with delivery confirmation, addressed to a parent or guardian of the unemancipated minor 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 unemancipated 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 unemancipated 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 unemancipated minor, then in either event the abortion may proceed in accordance with Chapter 9A of Title 31; and (2) The unemancipated 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 unemancipated minor cannot be located, the unemancipated minor may petition, on his or her 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 15-11-684. The juvenile court shall assist the unemancipated minor or next friend in preparing the petition and notices required pursuant to this Code section. Venue shall be lawful in any county. (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 unemancipated minor has obtained a court order waiving such requirements.

15-11-683.
Notwithstanding Code Sections 15-11-40, 15-11-150, 15-11-152, 15-11-160, 15-11-281, 15-11-424, and 15-11-531, 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 weekends and legal holidays. The parent, guardian, or legal custodian 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.

15-11-684.
(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 requirements of subparagraph (a)(1)(A), (a)(1)(B), or (a)(1)(C) of Code Section 15-11-682 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 unemancipated minor is subject to guardianship, the legal guardian pursuant to Code Section 15-11-682 would not be in the best interests of such 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 unemancipated 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 that 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.

15-11-685.
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.

15-11-686.
This article shall not apply when, in the best clinical judgment of the attending physician on the facts of the case before him or her, a medical emergency exists that so complicates the condition of the unemancipated 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.

15-11-687.
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.

15-11-688.
Any person who violates the provisions of this article shall be guilty of a misdemeanor and any person who intentionally encourages another to provide false information pursuant to this article shall be guilty of a misdemeanor.
# Chapter 19  Court of Inquiry

*Contribution by Mary Hermann, JD, CWLS*

| Authority | § 15-11-7  
| § 15-11-9 |
| --- | --- |
| **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 and the matter is pending in the juvenile court under Title 15, Chapter 11. |
| **Actions Toward Adult – 17 years or older** | § 15-11-7  
■ Whenever a person 17 years or older is before the juvenile court in the course of any proceeding instituted under Title 15, Chapter 11, the juvenile court judge 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 and 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 court shall  
    ▪ commit, bind over to the court of proper jurisdiction in this state, or  
    ▪ discharge the person or  
    ▪ set bond or bail. |
| **Actions Toward Child** | § 15-11-9  
■ Juvenile court judge may, based upon personal knowledge or the information of others given under oath, issue a warrant for the arrest of any child for an offense committed against the laws of this state. |
| **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 and juvenile of right to attorney. |
| **Notice** | ■ Usually the “adult” is before the court during the course of a hearing for 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 and brought before the juvenile court, based on sworn testimony presented to the court during a juvenile court proceeding. |
Code Sections

§ 15-11-7
(a) 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 or more years of age that may be in violation of the laws of this state whenever such person is brought before the court in the course of any proceeding instituted under this chapter. 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.
(b) When, 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 such bail as the court shall deem proper under the circumstances and to cause the person to appear before the court of proper jurisdiction in this state to be acted upon as provided by law.

§ 15-11-9.
The juvenile court judge, associate juvenile court judge, and judge pro tempore 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.
# Chapter 20  Mediation – Alternative Dispute Resolution (ADR)

*Contribution by Lynn Holland Goldman, JD*

| Authority | §§ 15-11-20 thru 15-11-25 and 15-11-2(45 and 46) Model Rules for Juvenile Mediation Programs (see below for Model Rules)  
Council of Juvenile Court Judges (CJCJ) has an ADR committee  
Mediators who handle court-connected cases must adhere to the Georgia Supreme Court ADR Rules and Guidelines (see www.godr.org) |
| --- | --- |
| Registered Mediators Mandatory | • The Supreme Court Commission on Dispute Resolution has created statewide standards for mediators who mediate juvenile court cases (both dependency and delinquency).  
• Before mediators can mediate dependency matters, they must be registered Dependency Mediators with the Georgia Office of Dispute Resolution (GODR). Also, before mediators can mediate delinquency or CHINS matters, they must be registered Delinquency Mediators with the GODR.  
• See www.godr.org for a list of registered mediators.  
• Mediators who handle court-connected cases must adhere to the Georgia Supreme Court ADR Rules and Guidelines (see www.godr.org) |
| Mediation Definition | § 15-11-2(45)  
• The definition of mediation in the juvenile code is “the procedure in which a mediator facilitates communication between the parties concerning the matters in [a] dispute and explores possible solutions to promote reconciliation, understanding, 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.  
• Although the parties may be ordered by the court 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.  
• All communication in mediation is confidential, with some exceptions (see Georgia Supreme Court ADR Rules at www.godr.org):  
  o If there are threats of imminent violence to self or others  
  o If the mediator believes that a child is abused or that the safety of any party or third person is in danger.  
• The Georgia Supreme Court has created an exception to a |
mediator’s ability to testify in court, thus possibly affecting confidentiality “when a party contends in court that he or she was not competent to enter a signed settlement agreement that resulted from the mediation.” (See Wilson v. Wilson, 282 Ga. 728, 732 (653 S.E.2d 702) (2007)).

- Note that an agreement or an agreement to mediate generated in mediation is not confidential.

<table>
<thead>
<tr>
<th>Agreement to Mediate</th>
<th>§ 15-11-22(a), (c) Agreement to Mediate</th>
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<tbody>
<tr>
<td></td>
<td>• Parties shall sign and date a written agreement to mediate</td>
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<td>• Agreement to mediate shall</td>
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<tr>
<td></td>
<td>o identify the controversies between the parties</td>
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<td></td>
<td>o affirm the parties’ intent to resolve controversies through mediation</td>
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<td></td>
<td>o specify the circumstances under which mediation may continue</td>
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<td></td>
<td>o specify the confidentiality requirements of mediation and exceptions to confidentiality</td>
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<td>• Prior to parties signing an agreement to mediate, mediator shall advise parties of their right to have an attorney review any agreement reached in mediation.</td>
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<tr>
<th>Referral Order for Mediation</th>
<th>§ 15-11-20(c)</th>
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<tr>
<td></td>
<td>• Parties shall attend mediation and shall mediate in good faith, but are not required to reach an agreement</td>
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<tr>
<th>Court to appoint Mediator</th>
<th>§ 15-11-21</th>
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<td>• Within 5 days of referral order, mediator appointed from list of registered mediators.</td>
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<tr>
<th>Timing of Mediation and Stay of Proceedings</th>
<th>§ 15-11-23</th>
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<tbody>
<tr>
<td></td>
<td>• Within 30 days of referral order unless court extends time frame for an additional 30 days.</td>
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<td></td>
<td>• Court may stay proceedings upon issuing referral order.</td>
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<tr>
<th>Party may Withdraw from Mediation OR Mediator may terminate Mediation Process</th>
<th>§ 15-11-24 (a)</th>
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<tbody>
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<td></td>
<td>• Either party in a mediation may withdraw from or terminate further participation in mediation at any time.</td>
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<tr>
<th>§ 15-11-24 (b)</th>
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<tr>
<td>• A mediator shall terminate mediation when mediator concludes that</td>
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<tr>
<td>o the participants are unable or unwilling to participate meaningfully in the process.</td>
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<tr>
<td>o a party lacks the capacity to perceive and assert his or her own interests to the degree that a fair agreement cannot be reached.</td>
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<tr>
<td>o an agreement is unlikely.</td>
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<tr>
<td>o a party is a danger to himself or herself or others.</td>
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<tr>
<th>Mediation Agreement to be presented</th>
<th>§ 5-11-25</th>
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<tr>
<td></td>
<td>• All mediation agreements shall be presented to the juvenile court judge for approval.</td>
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<tr>
<td>to the Court</td>
<td>• The mediation agreement shall be made an order of the court unless, after further hearing, the court determines by clear and convincing evidence that the agreement is not in the best interests of the child.</td>
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| Benefits of Mediation | • It is the “great equalizer.”  
• It preserves the relationship between the case manager and the parent.  
• It works to bring participants together, whereas court hearings polarize the parties and prevent them from working together in the future.  
• It allows the case manager 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 manager’s role, and what is expected of them.  
• It offers greater judicial economy.  
• It allows cases to move towards permanency faster, reducing:  
  o Appeals  
  o Foster care costs  
  o Court expenses  
• It offers the opportunity to create customized visitation plans.  
• It sharpens the issues if a case goes to trial, thus reducing court time.  
• It is 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  
• When one party has power or leverage over the other party  
• When the outcome of litigation is unpredictable, even harmful or painful for the litigants  
• When the parties want to tailor a solution to meet their needs  
• When parties are willing to try to reach a settlement or have an incentive to settle  
• Whenever appropriate; cases may be referred to mediation at any point in the dependency court process where there is a controversy |
| What to Mediate | • Case plans  
• Custody / Guardianship (private filings)  
• Visitation  
• Family Dynamics / Case Manager Dynamics  
• Services  
• TPR  
• Post-TPR reviews  
• Review Hearing  
• Motion to Modify Custody  
• Motion to Extend Custody |
| **Do Not Mediate** | • When one or more parties does not have the capacity to understand and participate in the mediation  
• When the case is an 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 dependency case |
| **Who Are Mediators** | • Registered dependency mediators if they are mediating dependency cases; registered delinquency mediators if they are mediating delinquency or CHINS cases  
• Some mediation programs require the mediator to be an attorney |
| **Mediator’s Role** | • To serve as a neutral facilitator  
• To empower the parties  
• To create an atmosphere of equality and fairness so all parties can feel free to work on their conflict  
• To serve only as a facilitator; mediators cannot give financial or legal advice |
| **Participants in Mediation** | • Required Participants – should be subpoenaed to attend mediation  
  o Case managers  
  o Parent attorneys  
  o SAAG  
  o Child Attorney  
  o GAL/CASA (see § 15-11-105(c)(8)) (but not a party so they don’t have decision making authority in the mediation)  
  o Parents  
• Possible Participants – participate in mediation by agreement of parties  
  o Foster parent  
  o Child(ren)  
  o Relative  
  o Putative Father |
| **Attorney Role in Mediation** | • Inform the program coordinator of any special needs before the mediation, e.g., interpreter, incarceration, domestic violence, mental status  
• Prepare the client for what to expect in mediation  
• Act as a legal counselor  
• Support and advise, but do not speak “for” the client  
• Evaluate the strengths and weakness of settlement proposals  
• Give legal advice to the client and offer client reality checking  
• Encourage the client to work with, rather than against, opposing
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<tr>
<th><strong>Judge’s Role in Mediation</strong></th>
<th><strong>§ 15-11-25</strong></th>
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<tbody>
<tr>
<td>• Participants may mediate with or without an attorney (except for the child, see § 15-11-103(f))</td>
<td>• Refer cases to mediation sua sponte, at request of party, standing order</td>
</tr>
<tr>
<td>• Participants may mediate without an attorney but may request to have the mediation agreement reviewed by an attorney.</td>
<td>• Review agreements</td>
</tr>
<tr>
<td>• Jurisdictions vary in availability of attorneys for mediation.</td>
<td>• A Judge may:</td>
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<td>• Accept the agreement and sign the order incorporating the agreement</td>
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<td>• Modify the order after a holding a hearing</td>
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<td>• Reject the order and agreement and hold a hearing</td>
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<tr>
<th><strong>Right to Attorney</strong></th>
<th><strong>Mediation Agreements</strong></th>
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<tbody>
<tr>
<td>• Participants may mediate with or without an attorney (except for the child, see § 15-11-103(f))</td>
<td>• Should be very specific—detailing who, what, when, how and why</td>
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<tr>
<td>• Participants may mediate without an attorney but may request to have the mediation agreement reviewed by an attorney.</td>
<td>• Must be signed by all participants in the mediation</td>
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<tr>
<td>• Jurisdictions vary in availability of attorneys for mediation.</td>
<td>• Agreement is not confidential (mediation session is confidential)</td>
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<td>• Parties need to know that the agreement will be incorporated into a court order if accepted by the judge</td>
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<td>• Enforceable by contempt powers</td>
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<td>• If judge does not sign the order, there is a hearing</td>
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<td>• Judge cannot modify the mediation agreement without having a hearing first (due process concerns)</td>
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<tr>
<th><strong>Dependency Mediation Agreements</strong></th>
<th><strong>How to Refer to Mediation</strong></th>
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<tr>
<td>• Use the correct legal terminology in the agreement</td>
<td>• At a hearing or at calendar call, ask the judge to refer the case.</td>
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<tr>
<td>o Know who is the complainant/ respondent</td>
<td>o The judicial case manager can schedule it in court with everyone present. Everyone will then be served.</td>
</tr>
<tr>
<td>o Confirm legal standing of the participants</td>
<td>o Scheduling in court allows case to be scheduled for</td>
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<tr>
<td>o State guardian vs. custodian</td>
<td></td>
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<tr>
<td>o Know legal vs. putative father</td>
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<td></td>
<td>• Know the issue—what is the actual action being mediated?</td>
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<td>• Agreements should state in the 1st line whether the legal action is granted or dismissed.</td>
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<td>• 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.</td>
</tr>
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<td>• Agreements must be reviewed by the judge.</td>
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mediation faster.
  - Saves the court money - eliminates the cost of serving the parties at their home.
- A case can be referred anytime (does not have to be during a court hearing).
- All parties must agree to participate in mediation.
- Contact the program coordinator.

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<tr>
<th>Which Counties Have Juvenile Court Mediation Programs</th>
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<tbody>
<tr>
<td>• Fulton, Gwinnett, 9th District, Clayton, Dekalb, Cobb, Chatham (have both dependency and delinquency)</td>
</tr>
<tr>
<td>• Bartow, Carroll (delinquency, CHINS only),</td>
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<td>• Some counties charge a fee to the parties after a certain number of hours</td>
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<tr>
<td>• Other courts use grant funds or general court funds, so there is no cost to the parties</td>
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<tr>
<td>• In Fulton County, all probate guardianship termination and privately filed modification of custody actions are automatically sent to mediation</td>
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<tr>
<th>Special Protocols for Mediation</th>
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</thead>
<tbody>
<tr>
<td>• Confidentiality requirements and exceptions</td>
</tr>
<tr>
<td>• Domestic violence protocol</td>
</tr>
<tr>
<td>• Protocol for mediating cases that have a pending superior court case</td>
</tr>
<tr>
<td>• Protocol for transporting inmates to mediation</td>
</tr>
<tr>
<td>• Protocol on child participation (child now has a right to participate except under § 15-11-19(a))</td>
</tr>
<tr>
<td>• Protocol on using interpreters</td>
</tr>
</tbody>
</table>
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. Parties are not required to reach an agreement; they are only required to attend the mediation.

Conclude the Mediation Session
Participants complete evaluations of the mediation session. Judge signs the mediation agreement, and copies are mailed to the parties.

Code Sections

§§ 15-11-20 thru 15-11-25 and 15-11-2(45 and 46)

15-11-20.
(a) At any time during a proceeding under this chapter, the court may refer a case to mediation. (b) When referring a case to mediation, the court shall take into consideration the guidelines from the Georgia Commission of Dispute Resolution for mediating cases involving domestic violence or family violence. (c) A referral order shall recite that while the parties shall attend a scheduled mediation session and shall attempt to mediate in good faith, such parties shall not be required to reach an agreement. (d) Victims in a delinquency case referred to mediation may attend and participate in such mediation, but shall not be required to do so as a condition of such case being heard by the juvenile court.

15-11-21.
(a) Once an order referring a case to mediation has been signed, the court shall appoint a mediator from a list of court approved mediators who are registered with the Georgia Office of Dispute Resolution to mediate juvenile court cases. (b) The court shall appoint a qualified mediator within five days of signing the order referring the case to mediation.
15-11-22.  
(a) The parties shall sign and date a written agreement to mediate. The agreement to mediate shall identify the controversies between the parties, affirm the parties’ intent to resolve such controversies through mediation, and specify the circumstances under which mediation may continue. The agreement to mediate shall specify the confidentiality requirements of mediation and the exceptions to confidentiality in mediation as such are set forth in the Supreme Court of Georgia Alternative Dispute Resolution Rules and appendices. (b) A mediator shall not knowingly assist the parties in reaching an agreement which would be unenforceable for reasons such as fraud, duress, the absence of bargaining ability, unconscionability, or lack of court jurisdiction. (c) Prior to the parties signing an agreement to mediate, the mediator shall advise the parties that each of them may obtain review by an attorney of any agreement reached as a result of the mediation. (d) The mediator shall at all times be impartial.

15-11-23.  
(a) Upon issuing a referral to mediation the court may stay the proceeding. (b) Mediation shall occur as soon as practicable and be scheduled within 30 days of the order referring the matter to mediation unless the time frame is extended by the court. (c) The court may extend the timeline for scheduling a mediation for an additional 30 days.

(a) Either party in a mediation may withdraw from or terminate further participation in mediation at any time. (b) A mediator shall terminate mediation when: (1) The mediator concludes that the participants are unable or unwilling to participate meaningfully in the process; (2) The mediator concludes that a party lacks the capacity to perceive and assert his or her own interests to the degree that a fair agreement cannot be reached; (3) The mediator concludes that an agreement is unlikely; or (4) The mediator concludes that a party is a danger to himself or herself or others.

15-11-25.  
(a) All mediation agreements shall be presented to the juvenile court judge for approval. (b) The mediation agreement shall be made an order of the court unless, after further hearing, the court determines by clear and convincing evidence that the agreement is not in the best interests of the child.

15-11-2(45).  
'Mediation' means the procedure in which a mediator facilitates communication between the parties concerning the matters in dispute and explores possible solutions to promote reconciliation, understanding, and settlement.

15-11-2(46).  
'Mediator' means a neutral third party who attempts to focus the attention of the parties upon their needs and interests rather than upon their rights and positions and who lacks the authority to impose any particular agreement upon the parties or to recommend any particular disposition of the case to the court.

MODEL COURT JUVENILE MEDIATION RULES
Editor’s note: These rules have not been revised to reflect the language of the Juvenile Code effective 1/1/2014.

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 MEDIATOR
(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 21   Reasonable Efforts Requirements and Title IV-E Eligibility

Contribution by Laurie-Ann Fallon, JD, CWLS

When reasonable efforts are required

Reasonable efforts must be made by DFCS to
- prevent removal
- facilitate reunification
- eliminate the need for removal when removal was necessary to protect the health and safety of the child
- expeditiously move the child to permanency and finalize the permanent plan

In a child’s case plan, DFCS is required to document the use of RE to
- place siblings together in the same placement unless DFCS documents that placing siblings together would be contrary to the safety or well-being of any of the siblings.
- facilitate frequent visitation or other ongoing interaction when siblings are not placed together unless DFCS documents that sibling contact would be contrary to the safety or well-being of any of the siblings. § 15-11-201(11).
- take actions to promote educational stability for the child. § 15-11-201(12).

ASFA requires that where reunification is the permanency goal, each child’s case plan 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 AACWA nor ASFA provide any definition of RE.

Preventive and reunification services

Federal regulations require each state to submit a plan specifying which pre-placement preventive 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, a publication of the National Council of Juvenile and Family Court Judges, also includes a list of recommended services to facilitate meeting RE 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

• RE to reunify families are not always required under ASFA, and the provision of reunification services is limited.
• As early as the dispositional phase, the court may make an initial finding that RE to reunify are not required and that a nonreunification plan be submitted in lieu of a reunification plan.
• 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:
  o the state has placed the child with a relative;
  o the state has documented a compelling reason for determining that terminating parental rights would not be in the best interests of the child; or
  o If the state was required to provide appropriate reunification services but did not, the state must now provide those services and suffer a finding of no RE in that particular case.
• The court can find that RE to prevent a child’s removal were precluded by an immediate threat of harm to the child. 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. **ASFA, § 15-11-202.**

- **RE are not required to be made with respect to a parent of a child who has:**
  - subjected the child to aggravated circumstances including abandonment, torture, chronic abuse or sexual abuse
  - been convicted of the murder or voluntary manslaughter of another child of the parent
  - been convicted of aiding or abetting, attempting, conspiring or soliciting to commit murder or voluntary manslaughter of another child of the parent
  - been convicted of causing serious bodily injury to the alleged dependent child or another child of the parent
  - been convicted of rape or other sexual battery/molestation of the alleged dependent child or another child of the parent
  - been required to register as a sex offender and preservation of the parent-child relationship is not in the child’s best interest
  - had his or her parental rights to another child involuntarily terminated, and the circumstances that led to termination have not been cured.

**§ 15-11-203(a)(1)-(8).**

**Reasonable Efforts in Georgia Code**

DFCS shall make **RE** to

- prevent removal of an alleged dependent child (preliminary protective hearing).
- eliminate the need for removal of an alleged or adjudicated dependent child (adjudication).
- return the dependent child safely to his or her home or finalize an alternative permanency plan for the child (periodic reviews and subsequent hearings).

The child’s health and safety shall be the paramount concern in determining the type of **RE** required. **§ 15-11-202(b).**

When evaluating services and whether “reasonable” efforts have been made, the court shall consider whether the services were

- relevant to the safety and protection of the child
- adequate to meet the needs of the child and his or her family
- culturally and linguistically appropriate
- consistent and timely
- realistic under the circumstances.

A finding that **RE** have not been made does not preclude a finding that the child is dependent and that the child should be placed outside the home. **§ 15-11-202(g).**
IV-E Eligibility and Funding

Title IV-E of the Social Security Act defines eligibility and funding requirements for children in foster care. Court orders at different stages of the dependency process determine a child’s eligibility for IV-E funding.

- Once a child is found eligible, subsequent court orders must include the appropriate language and findings to maintain the child’s eligibility.
- Funding for the child’s entire episode in foster care, as well as future adoption supplements, are affected if IV-E eligibility is not addressed.
- When making RE findings, the child’s safety and health is of paramount concern.

Three Steps to IV-E Eligibility and Funding

1. First court ruling (order) which sanctions removal of the child from the home must include
   a. an explicit statement that continuation in the home would be “contrary to the welfare of the child”
   b. specific findings of fact supporting the “contrary to the welfare” finding (based on evidence presented by DFCS)
   c. explicit documentation of the case-specific findings.
2. Within 60 days of the child’s removal from the home, a court must issue an order containing a specific finding that either RE have been made to preserve the family or reunify the family or that RE were not required because of the limited circumstances of § 15-11-203(a)(1)-(8).
3. A judicial finding of RE to finalize the permanency plan during the permanency plan hearing must be made
   a. within 9 months from the date of removal for children under the age of 7 and every 6 months thereafter, or
   b. within 12 months from the date of removal for children 7 years or older and every 6 months thereafter or
   c. within 30 days of the court’s determination at the nonreunification hearing that RE for reunification are not required. § 15-11-230.

Practice note: Georgia’s time frames for judicial findings of RE are shorter than time frames under federal statutes.

Recommend Reading

*Family Preservation in Georgia: A Legal and Judicial Guide to Preventing Unnecessary Removal to State Custody*

This guide addresses the laws and policies that determine Georgia’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 Georgia.
This document may be downloaded from the Barton Center website at http://bartoncenter.net/uploads/fall2011updates/dependency/Family_Preservation_In_Georgia.pdf.

*Making Reasonable Efforts: A Permanent Home for Every Child*

An update of the Youth Law Center’s earlier publication, *Making Reasonable Efforts: Steps for Keeping Families Together*, this 2000 handbook explains RE, describing pre- and post-ASFA RE requirements in detail. It 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/wp/wp-content/uploads/childrenmakingreason.pdf.

*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/wp/wp-content/uploads/modelquestionsrereasonableefforts.pdf.
Chapter 22  Case plan and Citizen Panel Review

Contribution by Laurie-Ann Fallon, JD, CWLS

§§ 15-11-200, 15-11-201

- Within 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 factual basis for its determination that a reunification plan is not appropriate.
- Parents shall be given written notice of the meeting at least 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 parent(s), guardian or legal custodian, the child (if age 14 or older), the child’s attorney and GAL. 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 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
  - 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
  - The services offered and provided to prevent the removal of the child from the home
  - 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
  - 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)
  - Specific time frames in which the goals of the plan are to be accomplished to fulfill the purpose of the reunification plan
  - The person within DFCS who is directly responsible for ensuring that the plan is implemented
  - 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 **nonreunification hearing** must be held within 30 days of the filing of the case plan.
- A case plan with a nonreunification 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 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 § 15-11-310.

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 6 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.

Code Sections

24. JUDICIAL AND CITIZEN REVIEW OF CHILDREN IN FOSTER CARE

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 care. 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 23  Discovery

*Contribution by Jen Carreras, JD, CWLS, Mary Hermann, JD, CWLS, and Stephany Zaic, JD, CWLS*

<table>
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<tr>
<th>Authority</th>
<th>§ 15-11-170</th>
<th>Discovery at Dependency and Other hearings</th>
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<tr>
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<td>§ 15-11-264</td>
<td>Discovery at Termination of Parental Rights</td>
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## Discovery at Dependency and Other hearings

Sample forms for Request for Discovery and Motion for Discovery included

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<th>Authority</th>
<th>§ 15-11-170(a)</th>
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<tr>
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<td>• Upon written request to the party having actual custody, control, or possession of the material to be produced, any party shall have full access to the following for inspection, copying, or photographing:</td>
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<td>o Names and telephone numbers of each witness likely to be called to testify</td>
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<td>o Formal written statement of child or witness</td>
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<td>o Scientific or other report</td>
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<td>o Drug screen</td>
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<td>o Case plan</td>
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<td>o Visitation schedule</td>
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<td>o Photographs</td>
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<td>o Copies of police incident reports</td>
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<td>o Any other relevant evidence not requiring consent or a court order under subsection (b) of this code section</td>
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<td>• By court order or written consent from the appropriate person, any party shall have access to the following for inspection, copying, or photographing:</td>
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<td>o Psychological, developmental, physical, mental or emotional health, or other assessments of the child or family, parent, guardian, or legal custodian</td>
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<td>o School records of child</td>
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<td>o Medical records of child</td>
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<td>o Transcriptions, recordings and summaries of oral statement of child or witness, except child abuse reports that are confidential § 19-7-5 (Child Abuse Reporting Statute) and attorney work product</td>
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<td>o Family team meeting or Multidisciplinary team meetings report</td>
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<td>o Supplemental police reports</td>
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<td>o Child’s immigration records</td>
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<td>Discovery Reciprocal Discovery Contents</td>
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<td>§ 15-11-170(c)</td>
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<td>• If a party makes a discovery request, then that party shall provide to all parties for inspection, copying and photographing:</td>
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<tr>
<td>o Names and last known addresses and telephone numbers of each witness to the party's defense or claim</td>
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<td>o Any scientific or other report which is intended to be introduced at the hearing or that pertains to physical evidence which is intended to be introduced</td>
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<td>o Photographs and any physical evidence which are intended to be introduced at the hearing</td>
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<td>o Copy of any written statement by any witness that relates to the testimony of the witness to be called during hearing</td>
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<th>Discovery Timing, Continuing Discovery, Response Required</th>
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<td>§ 15-11-170(d)</td>
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<td>• Prompt compliance required:</td>
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<td>o not later than 5 days after request received or</td>
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<td>o at least 72 hours prior to hearing (depending on when request received)</td>
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<td>• If request is made less than 48 hours prior to hearing then response shall be timely.</td>
</tr>
<tr>
<td>• If new evidence is found after discovery provided, party shall promptly provide it to other parties.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Discovery, Motion for Discovery if Refusal, or Denial of Consent to Discoverable Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 15-11-170(e)</td>
</tr>
<tr>
<td>• If a request for discovery or consent for release is refused, then motion for discovery and written court order are required.</td>
</tr>
<tr>
<td>• Discovery motions must certify that a good faith request for discovery or consent was made and was unsuccessful.</td>
</tr>
<tr>
<td>• An order granting discovery shall require reciprocal discovery and court may deny, limit, or condition discovery response upon a sufficient showing that disclosure of the information would</td>
</tr>
<tr>
<td>o jeopardize the safety of a party, witness, or confidential informant.</td>
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<tr>
<td>o create a substantial threat of physical or economic harm to a witness or other person.</td>
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<tr>
<td>o endanger the existence of physical evidence.</td>
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<tr>
<td>o disclose privileged information.</td>
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<tr>
<td>o impede criminal prosecution of a minor who is being prosecuted as an adult or the prosecution of an adult charged with an offense arising from the same event.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Deposition of Child</th>
<th>§ 15-11-170(f)</th>
</tr>
</thead>
<tbody>
<tr>
<td>No deposition of child except by court order.</td>
<td></td>
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</table>

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<thead>
<tr>
<th>Sanction for Failure to Comply with Discovery</th>
<th>§ 15-11-170(g)</th>
</tr>
</thead>
<tbody>
<tr>
<td>If a party fails to comply with a discovery order, court may grant a continuance, prohibit the use of the evidence during hearings, or enter other order the court deems just.</td>
<td></td>
</tr>
</tbody>
</table>
§ 15-11-170(h)
Court has authority to order disclosure of any information deemed necessary for proper adjudication.

§ 15-11-170(i)
Information obtained through discovery shall only be used during pending case and use may be further limited by court.

Discovery in Termination of Parental Rights Cases

§ 15-11-264
- Parties may seek discovery from one another by making a written request for the following, provided the party has actual possession of the documents:
  - Information for each witness likely to be called to testify at the hearing
  - Copy of any formal written statement made by the child or any witness that the party intends to call as witness at the hearing
  - Scientific or other report which is intended to be introduced or pertaining to physical evidence intended to be introduced at the hearing
  - Any drug screen of the child or the parent, guardian, or legal custodian
  - Any case plan for the child or the parent, guardian, or legal custodian
  - Any visitation schedule related to the child
  - Photographs and any physical evidence intended to be introduced at the hearing
  - Copies of any law enforcement incident reports regarding the occurrence that forms basis of petition for dependency
  - Any other relevant evidence not requiring consent or a court order.

- Upon presentation of a court order or release of information, parties shall have access to the following documents from one another, provided the party has actual possession of the documents:
  - Psychological evaluation; developmental assessment; physical, mental, or emotional health assessment of child or child’s family or parent
  - Child’s school records
  - Child’s medical records
  - Any family team meeting or multi-disciplinary team meeting report concerning the child or the parent, guardian, or legal custodian
  - Supplemental law enforcement reports regarding occurrence that forms basis of petition for dependency
  - Immigration records concerning child
  - Transcripts, recordings and summaries of any oral statement made by child or any witness.
Exceptions: child abuse and neglect report received by DFCS and anything covered by attorney work product.

**Reciprocal discovery obligations:** If a party requests the above discovery, that party must promptly make the following available:
- Names and contact information for each witness to occurrence that forms basis of party’s defense or claim
- Scientific or other report which is intended to be introduced or pertaining to physical evidence intended to be introduced at the hearing
- Photographs and any physical evidence intended to be introduced at the hearing
- Copy of any written statement made by any witness that the party intends to call as a witness at the hearing.

**Timing of discovery responses:**
- Responses due no later than 5 days after request is received, or
- 72 hours prior to any hearing,
- Except when later compliance is required based upon the timing of the discovery request.
- If discovery request is made less than 48 hours before the adjudicatory hearing, responses are to be produced in a timely manner.

If a party fails to respond to the above discovery requests, option to file **motion for discovery**.
- Motion must certify that request for discovery or consent for release was made and was refused, despite good faith efforts by the requesting party.
- Order granting motion must also require reciprocal discovery.
- Court may deny motion for discovery in whole or in part or may set conditions on discovery responses if the court finds that disclosure of information would:
  - Jeopardize safety of party, witness, or confidential informant
  - Create substantial threat of physical or economic harm to a witness or other person
  - Endanger existence of physical evidence
  - Disclose privileged information
  - Impede criminal prosecution.

**Deposition of the child** only permitted pursuant to court order.

When the other party fails to respond to an order granting motion for discovery, the court may:
- grant a continuance request.
- prohibit party from introducing into evidence the information not disclosed.
- enter such other order as court deems just under circumstances.
Code Sections

15-11-170. Discovery
(a) In all cases under this article, any party shall, upon written request to the party having actual custody, control, or possession of the material to be produced, have full access to the following for inspection, copying, or photographing: (1) The names and telephone numbers of each witness likely to be called to testify at the hearing by another party; (2) A copy of any formal written statement made by the alleged dependent child or any witness that relates to the subject matter concerning the testimony of the witness that a party intends to call as a witness at the hearing; (3) Except as otherwise provided in subsection (b) of this Code section, any scientific or other report which is intended to be introduced at any hearing or that pertains to physical evidence which is intended to be introduced; (4) Any drug screen concerning the alleged dependent child or his or her parent, guardian, or legal custodian; (5) Any case plan concerning the alleged dependent child or his or her parent, guardian, or legal custodian; (6) Any visitation schedule related to the alleged dependent child; (7) Photographs and any physical evidence which are intended to be introduced at any hearing; (8) Copies of any police incident reports regarding an occurrence which forms part or all of the basis of the petition; and (9) Any other relevant evidence not requiring consent or a court order under subsection (b) of this Code section. (b) Upon presentation of a court order or written consent from the appropriate person or persons permitting access to the party having actual custody, control, or possession of the material to be produced, any party shall have access to the following for inspection, copying, or photographing: (1) Any psychological, developmental, physical, mental or emotional health, or other assessments of the alleged dependent child or his or her family, parent, guardian, or legal custodian; (2) Any school record concerning the alleged dependent child; (3) Any medical record concerning the alleged dependent child; (4) Transcriptions, recordings, and summaries of any oral statement of the alleged dependent child or of any witness, except child abuse reports that are confidential pursuant to Code Section 19-7-5 and work product of counsel; (5) Any family team meeting report or multidisciplinary team meeting report concerning the alleged dependent child or his or her parent, guardian, or legal custodian; (6) Supplemental police reports, if any, regarding an occurrence which forms part of all of the basis of the petition; and (7) Immigration records concerning the alleged dependent child. (c) If a party requests disclosure of information pursuant to subsection (a) or (b) of this Code section, it shall be the duty of such party to promptly make the following available for inspection, copying, or photographing to every other party: (1) The names and last known addresses and telephone numbers of each witness to the occurrence which forms the basis of the party's defense or claim; (2) Any scientific or other report which is intended to be introduced at the hearing or that pertains to physical evidence which is intended to be introduced; (3) Photographs and any physical evidence which are intended to be introduced at the hearing; and (4) A copy of any written statement made by any witness that relates to the subject matter concerning the testimony of the witness that the party intends to call as a witness. (d) A request for discovery or reciprocal discovery shall be complied with promptly and not later than five days after the request is received or 72 hours prior to any hearing except when later compliance is made necessary by the timing of such request. If such request for discovery is made fewer than 48 hours prior to an adjudicatory hearing, the discovery response shall be produced in a timely manner. If, subsequent to providing a discovery response in compliance with this Code section, the existence of additional evidence is found, it shall be promptly provided to the party making the discovery request. (e) If a request for discovery or consent for
release is refused, application may be made to the court for a written order granting discovery. Motions for discovery shall certify that a request for discovery or consent was made and was unsuccessful despite good faith efforts made by the requesting party. An order granting discovery shall require reciprocal discovery. Notwithstanding the provisions of subsection (a) or (b) of this Code section, the court may deny, in whole or in part, or otherwise limit or set conditions concerning a discovery response upon a sufficient showing by a person or entity to whom a request for discovery is made that disclosure of the information would: (1) Jeopardize the safety of a party, witness, or confidential informant; (2) Create a substantial threat of physical or economic harm to a witness or other person; (3) Endanger the existence of physical evidence; (4) Disclose privileged information; or (5) Impede the criminal prosecution of a minor who is being prosecuted as an adult or the prosecution of an adult charged with an offense arising from the same transaction or occurrence. (f) No deposition shall be taken of an alleged dependent child unless the court orders the deposition, under such conditions as the court may order, on the ground that the deposition would further the purposes of this part. (g) If at any time during the course of the proceedings it is brought to the attention of the court that a person or entity has failed to comply with an order issued pursuant to this Code section, the court may grant a continuance, prohibit the party from introducing in evidence the information not disclosed, or enter such other order as the court deems just under the circumstances. (h) Nothing contained in this Code section shall prohibit the court from ordering the disclosure of any information that the court deems necessary for proper adjudication. (i) Any material or information furnished to a party pursuant to this Code section shall remain in the exclusive custody of the party and shall only be used during the pendency of the case and shall be subject to such other terms and conditions as the court may provide.

§ 15-11-264. Discovery in TPRs
(a) In all cases under this article, any party shall, upon written request to the party having actual custody, control, or possession of the material to be produced, have full access to the following for inspection, copying, or photographing: (1) The names and telephone numbers of each witness likely to be called to testify at the hearing by another party; (2) A copy of any formal written statement made by the child adjudicated as a dependent child or any witness that relates to the subject matter concerning the testimony of the witness that a party intends to call as a witness at the hearing; (3) Except as otherwise provided in subsection (b) of this Code section, any scientific or other report which is intended to be introduced at any hearing or that pertains to physical evidence which is intended to be introduced; (4) Any drug screen concerning the child adjudicated as a dependent child or his or her parent, guardian, or legal custodian; (5) Any case plan concerning the child adjudicated as a dependent child or his or her parent, guardian, or legal custodian; (6) Any visitation schedule related to the child who is adjudicated as a dependent child; (7) Photographs and any physical evidence which are intended to be introduced at any hearing; (8) Copies of the police incident report regarding an occurrence which forms part or all of the basis of the petition; and (9) Any other relevant evidence not requiring consent or a court order under subsection (b) of this Code section. (b) Upon presentation of a court order or written consent from the appropriate person or persons permitting access to the party having actual custody, control, or possession of the material to be produced, any party shall have access to the following for inspection, copying, or photographing: (1) Any psychological, developmental, physical, mental or emotional health, or other assessments of the child adjudicated as a dependent child or the family, parent, guardian, or legal custodian of such child; (2) Any school
record concerning the child adjudicated as a dependent child; (3) Any medical record concerning the child adjudicated as a dependent child; (4) Transcriptions, recordings, and summaries of any oral statement of the child adjudicated as a dependent child or of any witness, except child abuse reports that are confidential pursuant to Code Section 19-7-5 and work product of counsel; (5) Any family team meeting report or multidisciplinary team meeting report concerning the child adjudicated as a dependent child or his or her parent, guardian, or legal custodian; (6) Supplemental police reports, if any, regarding an occurrence which forms part of all of the basis of the petition; and (7) Immigration records concerning the child adjudicated as a dependent child. (c) If a party requests disclosure of information pursuant to subsection (a) or (b) of this Code section, it shall be the duty of such party to promptly make the following available for inspection, copying, or photographing to every other party: (1) The names and last known addresses and telephone numbers of each witness to the occurrence which forms the basis of the party's defense or claim; (2) Any scientific or other report which is intended to be introduced at the hearing or that pertains to physical evidence which is intended to be introduced; (3) Photographs and any physical evidence which are intended to be introduced at the hearing; and (4) A copy of any written statement made by any witness that relates to the subject matter concerning the testimony of the witness that the party intends to call as a witness. (d) A request for discovery or reciprocal discovery shall be complied with promptly and not later than five days after the request is received or 72 hours prior to any hearing except when later compliance is made necessary by the timing of the request. If the request for discovery is made fewer than 48 hours prior to an adjudicatory hearing, the discovery response shall be produced in a timely manner. If, subsequent to providing a discovery response in compliance with this Code section, the existence of additional evidence is found, it shall be promptly provided to the party making the discovery request. (e) If a request for discovery or consent for release is refused, application may be made to the court for a written order granting discovery. Motions for discovery shall certify that a request for discovery or consent was made and was unsuccessful despite good faith efforts made by the requesting party. An order granting discovery shall require reciprocal discovery. Notwithstanding the provisions of subsection (a) or (b) of this Code section, the court may deny, in whole or in part, or otherwise limit or set conditions concerning the discovery response upon a sufficient showing by a person or entity to whom a request for discovery is made that disclosure of the information would: (1) Jeopardize the safety of a party, witness, or confidential informant; (2) Create a substantial threat of physical or economic harm to a witness or other person; (3) Endanger the existence of physical evidence; (4) Disclose privileged information; or (5) Impede the criminal prosecution of a minor who is being prosecuted as an adult or the prosecution of an adult charged with an offense arising from the same transaction or occurrence. (f) No deposition shall be taken of a child adjudicated as a dependent child unless the court orders the deposition, under such conditions as the court may order, on the ground that the deposition would fur ther the purposes of this part. (g) If at any time during the course of the proceedings it is brought to the attention of the court that a person or entity has failed to comply with an order issued pursuant to this Code section, the court may grant a continuance, prohibit the party from introducing in evidence the information not disclosed, or enter such other order as the court deems just under the circumstances. (h) Nothing contained in this Code section shall prohibit the court from ordering the disclosure of any information that the court deems necessary for proper adjudication. (i) Any material or information furnished to a party pursuant to this Code section shall remain in the exclusive custody of the party and shall only be used during the
pendency of the case and shall be subject to such other terms and conditions as the court may provide.

Sample forms for Request for Discovery and Motion for Discovery

Name
Address
Via US Mail and email to ___

Re: Request for Mandatory Discovery
Case
Civil Action File No.
In the Juvenile Court of ____________ County

Dear _____________

I hope this letter finds you well! Please find below a written request for discovery on behalf of. As you are aware, O.C.G.A. §§ 15-11-170(d) and 264(d) provide that a request for discovery or reciprocal discovery shall be complied with promptly and not later than five days after the request is received or 72 hours prior to any hearing except when later compliance is made necessary by the timing of such request. If such request for discovery is made fewer than 48 hours prior to an adjudicatory hearing, the discovery response shall be produced in a timely manner. If, subsequent to providing a discovery response in compliance with this Code section, the existence of additional evidence is found, it shall be promptly provided to the party making the discovery request.

All discovery can be provided in person or can be mailed or emailed to counsel for the ___ ____________ at the following:

Jenifer L. Carreras
Law Office of Jen Carreras LLC
Address
jencarreras@yahoo.com

1. Request for mandatory discovery

O.C.G.A. §§ 15-11-170(a) and 264(a) provide for mandatory discovery in all cases where dependency is alleged and/or termination of parental rights is sought. This letter constitutes a written request that the ________________ County Department of Family and Children Services produce to counsel for ______________________ the following for inspection, copying or photographing:

a. The names and telephone numbers of each witness likely to be called to testify at a hearing by another party;
b. A copy of any formal written statement made by the alleged dependent child or any witness that relates to the subject matter concerning the testimony of the witness that a party intends to call as a witness at the hearing;

c. Except as otherwise provided in subsection (b) of this Code section, any scientific or other report which is intended to be introduced at any hearing or that pertains to physical evidence which is intended to be introduced at any hearing or that pertains to physical evidence which is intended to be introduced;

d. Any drug screen concerning the alleged dependent child or his or her parent, guardian, or legal custodian;

e. Any case plan concerning the alleged dependent child or his or her parent, guardian, or legal custodian;

f. Any visitation schedule related to the alleged or dependent child;

g. Photographs and any physical evidence which are intended to be introduced at any hearing;

h. Copies of any police reports regarding an occurrence which forms part or all of the basis of the petition; and

i. Any relevant evidence not requiring consent or a court order under subsection (b) of O.C.G.A. §§15-11-170 and 15-11-264.

2. Request for mandatory reciprocal discovery

O.C.G.A. §§ 15-11-170(c) and 264(c) further provide that if a party requests disclosure of information pursuant to subsection (a) or (b) of said code sections, it shall be the duty of such party to promptly make the following available for inspection, copying, or photographing to every other party. As such, this letter constitutes a written request that counsel for the ________ be provided with copies of any and all of the following if provided to any other party:

a. The names and last known addresses and telephone numbers of each witness to the occurrence which forms the basis of the party’s defense or claim;

b. Any scientific or other report which is intended to be introduced at the hearing or that pertains to physical evidence which is intended to be introduced;

c. Photographs and any physical evidence which are intended to be introduced at the hearing; and

d. A copy of any written statement made by any witness that related to the subject matter concerning the testimony of the witness that the party intends to call as a witness.
3. **Additional Requests for Discovery**

In addition to the mandatory discovery provided above, request, pursuant to O.C.G.A. §§ 15-11-170(h) and 264(h) that the Department provide their counsel access to the following for the purpose of inspection, copying, and/or photographing:

a. Any psychological, developmental, physical, mental or emotional health, or other assessments of the alleged dependent child or his or her family, parent, guardian, or legal custodian;

b. Any school record concerning the alleged dependent child;

c. Any medical record concerning the alleged dependent child;

d. Transcriptions, recordings, and summaries of any oral statement of the alleged dependent child or any witness, except child abuse reports that are confidential pursuant to Code Section 19-7-5 and work product of counsel;

e. Any family team meeting report or multidisciplinary team meeting report concerning the alleged dependent child or his or her parent, guardian or legal custodian;

f. Supplemental police reports, if any, regarding an occurrence which forms part or all of the basis of the petition;

g. Immigration records concerning the alleged dependent child;

h. A copy of the home evaluation report and all other documentation related to the evaluation of ______________________ or any other agency;

i. Copies of all criminal background checks, drug screens, CPS history, and any and all other documentation related to the fitness of the Movants in the Department’s possession;

j. Any and all contact narratives recorded in the Department’s SHINES system with regard to the above-named child;

k. Any further information contained in the Department’s hard file or in the Department’s SHINES system that is related to the assessment of the Movants for placement of the child, with the exclusion of work product; and

l. Any other and further information from the Department’s file that, upon in-camera inspection of the Court, the Court deems relevant to the Petition for ______________________

Thank you for your assistance with this matter. I look forward to hearing from you to set up a time when I may review and make copies of the above documentation.
Sincerely Yours,

Jenifer L. Carreras
Attorney for the
Georgia Bar No.

Cc: Attorneys
CASA

IN THE JUVENILE COURT OF ______________ COUNTY
STATE OF GEORGIA

In the Interest of:

DOB: AGE: SEX: CASE NO:

Minor child under the age of eighteen (18) years.

RULE NISI
The Motion for Discovery, having been read and considered, shall be filed. Let any party appear before the Honorable _________________ on the _____ day of ____________, 2013, at _______ a.m. to show cause why the prayers of the Movants should not be granted.
This ______ day of __________________, 2013.

______________________________
Clerk

Submitted by:

______________________________
Jenifer L. Carreras
Attorney for Petitioners
Georgia Bar No.
599 West Crossville Road, Suite 116
Roswell, Georgia 30075
(678) 387-1806
IN THE JUVENILE COURT OF ______________ COUNTY
STATE OF GEORGIA

In the Interest of:

DOB:    AGE:    SEX:    CASE NO:

Minor child under the age of eighteen (18) years.

MOTION FOR DISCOVERY

COMES NOW, __________________________, __________________ of the above-named child, by and through counsel and pursuant to O.C.G.A. § 15-11-170 and O.C.G.A. § 15-11-264, and says the following in support of this Motion for Discovery:

1. Request for Mandatory Discovery

O.C.G.A. §§ 15-11-170(a) and 15-11-264(a) provide for mandatory discovery in all cases where dependency is alleged and/or termination of parental rights is sought. This Motion constitutes a written request that the ______________ County Department of Family and Children Services produce to the Movants the following for inspection, copying or photographing:

j. The names and telephone numbers of each witness likely to be called to testify at a hearing by another party;
k. A copy of any formal written statement made by the alleged dependent child or any witness that relates to the subject matter concerning the testimony of the witness that a party intends to call as a witness at the hearing;
l. Except as otherwise provided in subsection (b) of this Code section, any scientific or other report which is intended to be introduced at any hearing or that pertains to physical evidence which is intended to be introduced at any hearing or that pertains to physical evidence which is intended to be introduced;
m. Any drug screen concerning the alleged dependent child or his or her parent, guardian, or legal custodian;
n. Any case plan concerning the alleged dependent child or his or her parent, guardian, or legal custodian;
o. Any visitation schedule related to the alleged or dependent child;
p. Photographs and any physical evidence which are intended to be introduced at any hearing;
q. Copies of any police reports regarding an occurrence which forms part or all of the basis of the petition; and
r. Any relevant evidence not requiring consent or a court order under subsection (b) of O.C.G.A. §§15-11-170 and 15-11-264.
2. **Request for Mandatory Reciprocal Discovery**
   O.C.G.A. §§ 15-11-170(c) and 15-11-264(c) provide that if a party requests disclosure of information pursuant to subsection (a) or (b) of said code sections, it shall be the duty of such party to promptly make the following available for inspection, copying, or photographing to every other party:
   
   e. The names and last known addresses and telephone numbers of each witness to the occurrence which forms the basis of the party’s defense or claim;
   f. Any scientific or other report which is intended to be introduced at the hearing or that pertains to physical evidence which is intended to be introduced;
   g. Photographs and any physical evidence which are intended to be introduced at the hearing; and
   h. A copy of any written statement made by any witness that related to the subject matter concerning the testimony of the witness that the party intends to call as a witness.

3. **Motion for Discovery**
   O.G.G.A. §§ 15-11-170(b) and 15-11-264(b) provide for discovery upon presentation of a court order…any party shall have access to the following for inspection, copying or photographing:
   
   m. Any psychological, developmental, physical, mental or emotional health, or other assessments of the alleged dependent child or his or her family, parent, guardian, or legal custodian;
   n. Any school record concerning the alleged dependent child;
   o. Any medical record concerning the alleged dependent child;
   p. Transcriptions, recordings, and summaries of any oral statement of the alleged dependent child or any witness, except child abuse reports that are confidential pursuant to Code Section 19-7-5 and work product of counsel;
   q. Any family team meeting report or multidisciplinary team meeting report concerning the alleged dependent child or his or her parent, guardian or legal custodian;
   r. Supplemental police reports, if any, regarding an occurrence which forms part or all of the basis of the petition;
   s. Immigration records concerning the alleged dependent child;

4. **Additional Requests for Discovery**
   Pursuant to O.C.G.A. §§ 15-11-170(h) and 15-11-264(h), the Movants request the following additional discovery:
   
   a. A copy of the home evaluation report and all other documentation related to the evaluation of Movant’s home performed by Focus Counseling or any other agency;
   b. Copies of all criminal background checks, drug screens, CPS history, and any and all other documentation related to the fitness of the Movants in the Department’s possession;
   c. Any and all contact narratives recorded in the Department’s SHINES system with regard to the above-named child;
   d. Any further information contained in the Department’s hard file or in the Department’s SHINES system that is related to the assessment of the Movants for placement of the child, with the exclusion of work product; and
e. Any other and further information from the Department’s file that, upon in-camera inspection of the Court, the Court deems relevant to the Petition for Permanent Guardianship or permanency of the child.

5. The Movants, by and through counsel, hereby certify to the Court that a request for mandatory discovery or consent to disclose was made and was unsuccessful despite good faith efforts made by the requesting party.

WHEREFORE, the Movants respectfully request that this Court order the ________________ County Department of Family and Children Services to produce the discovery detailed and enumerated herein or, as an alternative, and in relevant portion, that the Court conduct an in-camera inspection of the Department’s file and release the discovery enumerated herein to counsel for the ________________.

Respectfully submitted, this _____ day of ______________, 2014.

____________________________
Jenifer L. Carreras
Attorney for the Movants

Law Office of Jen Carreras LLC
599 West Crossville Road, Suite 116
Roswell, Georgia 30075
678.387.1806 (telephone)
678.387.1801 (facsimile)
jencarreras@yahoo.com
Chapter 24  Evidence, Objections, Exceptions

Contribution by Mary Hermann, JD, CWLS

Introduction

- Georgia’s current evidence code became effective January 1, 2013.
- The preamble to the enacting legislation states, “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.”

Rules

§ 15-11-181(d)
- Title 24 Rules of Evidence Apply, §§ 24-1-103 to 24-10-1003.
- Only privilege exclusions from dependency actions:
  - Party - attorney communication
  - Priest, rabbi or ordained minister - communicant

§15-11-210(b), (c) At Disposition
- Any evidence may be considered that is relevant, reliable and necessary to determine the needs of a child, including hearsay
- Even though some hearsay is accepted during disposition hearings, the Georgia Court of Appeals has 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 Georgia Court of Appeals has ruled there must be relevant witness testimony or documentary evidence properly certifying the record before the hearsay is probative. In the Interest of E. C., 271 Ga. App. 133, 135 (1), 609 S.E.2d 381 (2004) and In the Interest of H. S., 285 Ga. App. 839, 842, 648 S.E.2d 143 (2007).

<table>
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<tr>
<th>Code Section</th>
<th>Summary of code section</th>
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<td>24-1-103</td>
<td>Party must make timely objection to preserve error or make offer of proof if evidence is excluded</td>
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<tr>
<td>24-1-104</td>
<td>Preliminary questions of qualification of person to be witness, existence of privilege, or admissibility of evidence for judge using preponderance of the evidence standard</td>
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<td>Topic</td>
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<td>Judicial Notice of Adjudicative Facts</td>
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<td>Witness Credibility</td>
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<td>Witness Credibility</td>
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<tr>
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<td>24-6-612(b)</td>
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<td>Impeachment by Prior Inconsistent Statement</td>
<td>24-6-613</td>
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<tr>
<td><strong>Trial Notebook for Child Welfare Attorneys</strong></td>
<td><strong>March 31, 2014</strong></td>
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Prior inconsistent statement admissible as both impeachment and 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 § 24-7-702

<table>
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<tr>
<th>Expert Opinion</th>
<th>24-7-702</th>
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| 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
  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 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. | 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
| Prior Witness Out of Court Statements are Not Hearsay | 24-8-801(d) et seq. | But may be inadmissible if considered cumulative and 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 and admissible if a party does not object to the hearsay |
| Not Excluded by The Hearsay Rule | 24-8-803 | Present sense impression (replaces Res Gestae exception) |
| 24-8-803(1) | Excited utterance (replaces Res Gestae exception) |
| 24-8-803(2) | Then existing mental, emotional or physical condition – limited to declarant’s intent (replaces Res Gestae exception) |
| 24-8-803(3) | Statements for purposes of medical diagnosis or treatment |
| 24-8-803(4) | Recorded recollection |
| 24-8-803(5) | Records of regularly conducted activity
- may include “conditions, opinions, or diagnoses” but require foundation (§§ 24-7-701, 24-7-702)
- “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(6) | Absence of entry in records kept in accordance with paragraph (6) of this Code section |
| 24-8-803(7) | Public records and reports
Includes:
- activities of office or agency
- matters observed pursuant to a duty to report (excluding police or law enforcement in criminal action)
- factual findings resulting from an investigation (might include opinions but not legal conclusions) |
<p>| 24-8-803(8) | Records of vital statistics |
| 24-8-803(9) | Absence of public record or entry |
| 24-8-803(10) | Records of religious organizations |</p>
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<td>24-8-803(23)</td>
<td>Judgment as to personal family or general history or boundaries</td>
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### Unavailable Witness Rules

- **Reference:** 24-8-804
- **Description:** 24-8-804(b)(3) Statement against interests

### Necessity Exception

- **Reference:** 24-8-807
- **Description:** Necessity exception requires advance notice to opposing party

### Child Hearsay Statue

- **Reference:** 24-8-820
- **Description:** 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

- **Reference:** 24-9-901 et seq.
- **Description:** 24-9-901(a) Authentication satisfied by “evidence sufficient to support finding that the matter in question is what its proponent claims.”

### “Best Evidence” Rules

- **Reference:** 24-10-1001 et seq.
- **Description:** Applies to writings, photographs, recordings, any form of recorded facts or data

- **Reference:** 24-10-1002
- **Description:** To prove the contents it must be produced

- **Reference:** 24-10-1003
- **Description:** 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. 589, 593 (1999)
- If doubtful evidence is 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 of mental capacity
  2. child must be available to testify for both parties
  3. statement made by the child must be a statement which explicitly and directly describes sexual or physical abuse, and the trustworthiness and the reliability of the statement
  4. Factors to be considered in reference to reliability:
     - atmosphere and 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 of coaching by the parents or other 3rd parties
     - consistency between out of court statement and testimony at trial.

Calling the parent for purposes of cross examination
- Dependency 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).

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’s 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. In Re S.B. 242 Ga. App. 184, 187 (2000).

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 or 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’s prior inconsistent statements, 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 any more 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’s 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’s 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 burden of proof; 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 25  Special Immigrant Juvenile Status – SIJS

Contribution by Mary Hermann, JD, CWLS

In every dependency case, the parties and the court should confirm the child is a U.S. citizen or the child’s lawful immigration status.

|-----------|------------------------------------------------------------------------------------------------------------------------------------------|

**Purpose of SIJS**
- SIJS is a process for a “dependent” child:
  - to obtain legal permanent residence status (green card)
  - it is a path to citizenship
  - provides the child eligibility for employment and financial assistance for education

**Timing of SIJS process**
- This process is complicated and time sensitive.
- Time is of the essence in making the SIJS application
- A specialized immigration attorney is recommended to assist in the filings and documentation required by the U.S. Citizenship and Immigration Services (USCIS)

**Specialized Immigration Attorney is recommended**
- Key to beginning the SIJS in time to affect the benefit for the child is identifying the dependent child who is eligible for SIJS status.
- In every case, DFCS obtains the birth certificate for the child; child attorneys should at least view this document or obtain a copy.
- Consider requesting “adjustment of the child’s immigration status” as a case plan goal once the child is identified as SIJS eligible.

**Beginning SIJS**
- Specific Findings are Required in the Juvenile Court Order
- The juvenile court is required to make child-specific findings of fact in the juvenile court order:
  - declared dependent on a juvenile court
  - reunification with one 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 proceeding 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.
- SIJS applies to children who fit all of the following
### SIJS is a way to solve the problem of children who are:

<table>
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<tr>
<th>Descriptors:</th>
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<tr>
<td>- children of foreign birth, who are not legally in US</td>
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<td>- have entered state foster care as the result of abuse, neglect or abandonment, “dependent”</td>
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<td>- for whom reunification with either one or both parents is not a viable option</td>
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<tr>
<td>- it is not in best interest of child to be returned to country of origin</td>
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<tr>
<td>- child is expected to age out of the foster care system</td>
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<td>- prior to turning 18, child needs permanent, lawful immigration status</td>
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- The problem SIJS solves: once child turns 18, if no lawful status then subject to deportation, cannot lawfully work, not eligible for in-state tuition.
SIJS General Flow Chart for Undocumented Foster Children

Dependency Complaint / Probable Cause / Petition Issue
↓
Dependency Adjudication
↓
Special SIJS Order from dependency proceeding with particular findings of fact, the immigrant child has been:
- declared dependent on a juvenile court
- reunification with one 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 proceeding 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.

↓
Application for SIJS status (min. 12 month prior to 18th 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

↓
Adjustment of Status and Adjustment Interview
    Medical Exam/ Form I – 693

↓
Permanent Resident (green card)

↓
Five Years then application for Naturalized Citizenship

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 one 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.”

See
### Chapter 26  Interstate Compact on the Placement of Children (ICPC)

*Contribution by Thomas B. “Britt” Hammond, Judge, Juvenile Courts, Toombs Judicial Circuit and Mary Hermann, JD, CWLS*

| Authority | §§ 39-4-1 to 39-4-10 | ICPC
| § 15-11-10(2)(C) | Exclusive Jurisdiction of Juvenile Court
| § 15-11-201(b)(10) | Case Plan Contents
| § 15-11-212(a)(2)(D) | Disposition Hearings

### 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 where the ICPC does not apply:
  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 bringing of a child into a receiving state pursuant to any other interstate compact to which both states 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:
  - The name, date, and place of birth of the child.
  - The identity and address or addresses of the parents or legal guardian.
  - 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.
  - A full statement of the reasons for such a proposed action and
For more information and discussion of the ICPC and why it should be applied to non-custodial parents see the following links

• National Association of Counsel for Children, Amicus Brief submitted in the *In Re Emoni W. et. al.* case at

• *In Re. Emoni W. et. al.*, 305 Conn. 723, 48 A.3d 1 (2012) at

### Specific Georgia cases

- *Rokowski v. Gilbert, et al.*, 275 Ga. App. 305, 313 (2005), is an important case to mention as to ICPC Article VIII limitations. In this case the court held that the ICPC did not apply to an adoption where the aunt brought the child into Georgia from another state and then later adopted the child.

- *In re R.B.*, 285 Ga. App. 556, 560 (2007) also bears on ICPC Article VIII limitations in the sense that if the agency has legal custody of the child and retains legal custody, then placement in the other state with a parent can only legally be accomplished by using the ICPC.

- *In the Interest of K.W.*, 261 Ga. App. 654, 655-656 (2003) addressed ICPC Article V and holds that when an agency from another state places a child in Georgia pursuant to the ICPC, that agency retains jurisdiction over the child.

### 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)

### Practice Notes

- ICPC takes several months. Frequent checking on the paperwork is necessary.
- 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.
- CASA may be of assistance.
Other Resources for ICPC Information
Georgia ICPC page
http://icpcstatepages.org/Georgia/info/

Association for the Administrators for the ICPC
http://www.aphsa.org/content/AAICPC/en/home.html

Georgia’s ICPC Consultants

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Compact Administrators

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Georgia has executed several ICPC Border Agreements with Florida, Alabama, South Carolina and Tennessee. Contact one of the above-listed ICPC Consultants or Administrators listed above or contact Judge Hammond to obtain copies of these agreements.
**Code Sections**

15-11-10. **Exclusive Jurisdiction of Juvenile Court (ICPC reference emphasis added)**

Except as provided in Code Section 15-11-560, the juvenile court shall have exclusive original jurisdiction over juvenile matters and shall be the sole court for initiating action: (1) Concerning any child who: (A) Is alleged to be a delinquent child; (B) Is alleged to be a child in need of services; (C) Is alleged to be a dependent child; (D) Is alleged to be in need of treatment or commitment as a mentally ill or developmentally disabled child; (E) Is alleged to have committed a juvenile traffic offense as defined in Code Section 15-11-630; (F) Has been placed under the supervision of the court or on probation to the court; provided, however, that such jurisdiction shall be for the purpose of completing, effectuating, and enforcing such supervision or a probation begun prior to such child's seventeenth birthday; (G) Has remained in foster care after such child's eighteenth birthday or who is receiving independent living services from DFCS after such child's eighteenth birthday; provided, however, that such jurisdiction shall be for the purpose of reviewing the status of such child and the services being provided to such child as a result of such child's independent living plan or status as a child in foster care; or (H) Requires a comprehensive services plan in accordance with Code Section 15-11-658; or (2) Involving any proceedings: (A) For obtaining judicial consent to the marriage, employment, or enlistment in the armed services of any child if such consent is required by law; (B) For permanent guardianship brought pursuant to the provisions of Article 3 of this chapter; (C) Under Code Section 39-3-2, the Interstate Compact on Juveniles, or any comparable law, enacted or adopted in this state; (D) For the termination of the legal parent-child relationship and the rights of the biological father who is not the legal father of the child in accordance with Article 2 of this chapter; provided, however, that such jurisdiction shall not affect the superior court's exclusive jurisdiction to terminate the legal parent-child relationship as set forth in Chapters 6 through 9 of Title 19; (E) For emancipation brought pursuant to the provisions of Article 10 of this chapter; (F) Under Article 8 of this chapter, relating to prior notice to a parent, guardian, or legal custodian relative to an unemancipated minor's decision to seek an abortion; or (G) Brought by a local board of education pursuant to Code Section 20-2-766.1, relating to court orders requiring that a parent, guardian, or legal custodian attend a conference or participate in programs or treatment to improve a student's behavior.

15-11-201. **Case Plan Contents (ICPC reference emphasis added)**

(a) A case plan shall be designed to achieve placement in the most appropriate, least restrictive, and most family-like setting available and in close proximity to the alleged dependent child's parent's home, consistent with the best interests and special needs of such child, and shall consider the placement's proximity to the school in which such child is enrolled at the time of placement. (b) A case plan shall be developed by DFCS and the parent, guardian, or legal custodian of the alleged dependent child and, when appropriate, such child. A case plan shall include, but not be limited to, all of the following: (1) A description of the circumstances that resulted in such child being placed under the jurisdiction of the court and in foster care; (2) An assessment of such child's and his or her family's strengths and needs and the type of placement best equipped to meet those needs; (3) A description of the type of home or institution in which such child is to be placed, including a discussion of the safety and appropriateness of the placement; (4) Specific time-limited goals and related activities designed to enable the safe
return of such child to his or her home, or, in the event that return to his or her home is not possible, activities designed to result in permanent placement or emancipation; (5) Assignment of specific responsibility for accomplishing the planned activities; (6) The projected date of completion of the case plan objectives; (7) The date time-limited services will be terminated; (8) A schedule of visits between such child and his or her siblings and other appropriate family members and an explanation if no visits are scheduled; (9) When placement is made in a foster family home, group home, or other child care institution that is either a substantial distance from the home of such child's parent, guardian, or legal custodian or out of state, the case plan shall specify the reasons why the placement is the most appropriate and is in the best interests of the child; (10) When an out-of-state group home placement is recommended or made, the case plan shall comply with Code Section 39-4-4, the Interstate Compact on the Placement of Children. In addition, documentation of the recommendation of the multidisciplinary team and the rationale for such particular placement shall be included. The case plan shall also address what in-state services or facilities were used or considered and why they were not recommended; (11) If applicable, a statement that reasonable efforts have been made and a requirement that reasonable efforts shall be made for so long as such child remains in the custody of the department: (A) To place siblings removed from their home in the same foster care, kinship care, guardianship, or adoptive placement, unless DFCS 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 DFCS documents that such frequent visitation or other ongoing interaction would be contrary to the safety or well-being of any of the siblings; (12) Provisions ensuring the educational stability of such child while in foster care, including: (A) An assurance that the placement of such child in foster care takes into account the appropriateness of the current educational setting and the proximity to the school in which such 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 such child remains in the school in which such 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 DFCS that 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 such child provided to such new school; (13) An account of health and education information about such child including school records, immunizations, known medical problems, any known medications he or she may be taking, names and addresses of his or her health and educational providers; such child's grade level performance; assurances that such child's placement in foster care takes into account proximity to the school in which he or she was enrolled at the time of placement; and other relevant health and educational information; (14) A recommendation for a permanency plan for such child. If, after considering reunification, adoptive placement, or permanent guardianship, DFCS recommends placement in another planned permanent living arrangement, the case plan shall include documentation of a compelling reason or reasons why termination of parental rights is not in the child's best interests. For purposes of this paragraph, a 'compelling reason' shall have the same meaning as in paragraph (2) of subsection (b) of Code Section 15-11-233; (15) A statement that the parent, guardian, or legal custodian of such child and the child have had an opportunity to participate in the development of the case plan, to review the case plan, to sign the case plan, and to receive a copy of the plan, or an explanation about why such persons were not able to participate or sign the case plan; (16) A requirement that the DFCS case manager and staff and, as appropriate,
other representatives of such child provide him or her with assistance and support in developing a transition plan that is personalized at the direction of such child, including 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 such child may elect. The transition plan shall be completed in the 90 day period: (A) Immediately prior to the date on which such child will attain 18 years of age; or (B) If such child remains in the care of DFCS past his or her eighteenth birthday, before his or her planned exit from DFCS care. (17) For such child in out-of-home care who is 14 years of age or older, a written description of the programs and services which will help him or her prepare for the transition from foster care to independent living; and (18) The identity of the person within DFCS or other agency who is directly responsible for ensuring that the case plan is implemented.

15-11-212. Disposition (ICPC reference emphasis added)
(a) The court may make any of the following orders of disposition or a combination of those best suited to the protection and physical, emotional, mental, and moral welfare of a child adjudicated as a dependent child: (1) Permit such child to remain with his or her parent, guardian, or legal custodian subject to conditions and limitations as the court prescribes, including supervision as directed by the court for the protection of such child; (2) Grant or transfer temporary legal custody to any of these persons or entities: (A) Any individual, including a biological parent, 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 such child; (B) An agency or other private organization licensed or otherwise authorized by law to receive and provide care for such child; (C) Any public agency authorized by law to receive and provide care for such child; provided, however, that for the purpose of this Code section, the term 'public agency' shall not include DJJ; or (D) An individual in another state with or without supervision by an appropriate officer pursuant to the requirements of Code Section 39-4-4, the Interstate Compact on the Placement of Children; (3) Transfer jurisdiction over such child in accordance with the requirements of Code Section 39-4-4, the Interstate Compact on the Placement of Children; (4) Order such child and his or her parent, guardian, or legal custodian 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, physician assistants, 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 dependency or other conduct or conditions which would be harmful to a child or society; (5) Order the parent, guardian, or legal custodian of such child to participate in a court approved educational or counseling program designed to contribute to the ability of such parent, guardian, or legal custodian to provide proper parental care and supervision of such child, including, but not limited to, parenting classes; (6) Order DFCS to implement and such child's parent, guardian, or legal custodian to cooperate with any plan approved by the court; or (7) Order temporary child support for such child to be paid by that person or those persons determined to be legally obligated to support such child. In determining such temporary child support, the court shall apply the child support guidelines provided in Code Section 19-6-15 and the implementation and any review of the order shall be held as provided in Code Section 19-6-15. Where there is an existing order of a superior court or other court of competent jurisdiction, the court may order the child support obligor in the existing order to make payments to such child's caretaker on a temporary basis but shall not otherwise modify the
terms of the existing order. A copy of the juvenile court's order shall be filed in the clerk's office of the court that entered the existing order. Temporary child support orders entered pursuant to this paragraph shall be enforceable by the court's contempt powers so long as the court is entitled to exercise jurisdiction over the dependency case. (b) The transfer of temporary legal custody may be subject to conditions and limitations the court may prescribe. Such conditions and limitations shall include a provision that the court shall approve or direct the return of the physical custody of a child adjudicated as a dependent child to his or her parent, guardian, or legal custodian either upon the occurrence of specified circumstances or at the direction of the court. The return of physical custody of a child adjudicated as a dependent child to his or her parent, guardian, or legal custodian may be made subject to conditions and limitations the court may prescribe, including, but not limited to, supervision for the protection of such child. (c) A child adjudicated as a dependent child shall not be committed to or confined in an institution or other facility designed or operated for the benefit of delinquent children unless such child is also adjudicated to be a delinquent child and such child's detention is warranted under the requirements of Article 6 of this chapter. (d) After transferring temporary legal custody of a child adjudicated as a dependent child to DFCS, the court may at any time conduct sua sponte a judicial review of the current placement plan being provided to such child. After its review, the court may order DFCS to comply with the current placement plan, order DFCS to devise a new placement plan, or make any other order relative to placement or custody outside DFCS as the court finds to be in the best interests of such child. Placement or a change of custody by the court outside DFCS shall relieve DFCS of further responsibility for such child except for any provision of services ordered by the court to ensure the continuation of reunification services to such child's family when appropriate. (e) A court shall not be required to make an order of disposition regarding a child who is discharged from a facility in which such child was hospitalized or habilitated pursuant to Chapter 3, 4, or 7 of Title 37 unless such child is to be discharged into the physical custody of any person who had such custody when the court made its most recent adjudication that the child was a dependent child. (f) If a child is adjudicated as a dependent child and the dependency is found to have been the result of substance abuse by his or her parent, guardian, or legal custodian and the court orders transfer of temporary legal custody of such child, the court shall be authorized to further order that legal custody of such child may not be transferred back to his or her parent, guardian, or legal custodian unless such parent, guardian, or legal custodian undergoes substance abuse treatment and random substance abuse screenings and those screenings remain negative for a period of no less than six consecutive months. (g) If the court finds that DFCS preventive or reunification efforts have not been reasonable but that further efforts could not permit a child adjudicated as a dependent child to safely remain at home, the court may nevertheless authorize or continue the removal of such child. (h) When the case plan requires a concurrent permanency plan, the court shall review the reasonable efforts of DFCS to recruit, identify, and make a placement in a home in which a relative of a child adjudicated as a dependent child, foster parent, or other persons who have demonstrated an ongoing commitment to the child has agreed to provide a legally permanent home for such child in the event reunification efforts are not successful.

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.

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 No. 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 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.

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
   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
# Chapter 27 Indian Child Welfare Act – ICWA

*Contribution by Stephany L. Zaic, JD, CWLS*

<table>
<thead>
<tr>
<th>Authority</th>
<th>United States Code Title 25, Chapter 21</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Purpose</strong></td>
<td>25 U.S.C. § 1902</td>
</tr>
<tr>
<td></td>
<td>To protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster and adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.</td>
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<td></td>
<td>ICWA was passed in 1978, in response to the high number of Indian children being removed from their homes by both public and private agencies. The intent of Congress under ICWA was to “protect the best interests of Indian children and to promote the stability and security of Indian tribes and families” (25 U.S.C. § 1902). ICWA sets federal requirements that apply to state child custody proceedings involving an Indian child who is a member of or eligible for membership in a federally recognized tribe.</td>
</tr>
<tr>
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<td><a href="http://www.nicwa.org">www.nicwa.org</a></td>
</tr>
<tr>
<td><strong>Definitions</strong></td>
<td>25 U.S.C. § 1903</td>
</tr>
<tr>
<td></td>
<td><strong>Child custody proceeding</strong>: includes foster care placement, TPR, preadoptional placement, and adoptive placement</td>
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<tr>
<td></td>
<td><strong>Foster care placement</strong>: any action removing an Indian child from the parent or Indian custodian for temporary placement in a foster home, institution, or the home of a guardian or conservator where the Indian parent cannot have the child returned upon demand, but parental rights have not been terminated</td>
</tr>
<tr>
<td></td>
<td><strong>Indian child</strong>: any unmarried person under the age of 18 years who is either a member of a federally recognized Indian tribe or eligible for membership in a federally Indian tribe AND is the biological child of a member of a federally recognized Indian tribe.</td>
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<tr>
<td></td>
<td><strong>Practice notes</strong>:</td>
</tr>
<tr>
<td></td>
<td>ICWA applies whether the child is eligible for the same Indian tribe or a different Indian tribe than that of the biological parent.</td>
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<tr>
<td></td>
<td>A child may become qualified as an Indian child during the pendency of the child custody proceeding. For example, if the biological parent becomes a member of an Indian tribe during the case, the child may qualify as an Indian child, and ICWA would apply to the remainder of the case.</td>
</tr>
</tbody>
</table>
- Review the Federal Register to determine if the Indian tribe is federally recognized.
- If a child might qualify as an Indian child, conduct the case as an ICWA case unless and until Indian child status is ruled out.

**Indian custodian**: any Indian person who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody and control has been transferred by the parent of the Indian child.

<table>
<thead>
<tr>
<th>Jurisdictional Analysis and Procedures</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>25 U.S.C. § 1911 and 44 Federal Register 67584</strong></td>
</tr>
<tr>
<td>Does the case involve a child custody proceeding?</td>
</tr>
<tr>
<td>ICWA applies to:</td>
</tr>
<tr>
<td>o Voluntary and involuntary foster care placements where the parent cannot regain custody of the child upon demand</td>
</tr>
<tr>
<td>o Only ICWA placement preferences apply to voluntary placements where the parent can regain custody of the child upon demand.</td>
</tr>
<tr>
<td>o Divorce proceedings where neither parent will be awarded custody of the child</td>
</tr>
<tr>
<td>o Divorce proceedings where one of the parents will be awarded custody are <strong>not</strong> covered by ICWA.</td>
</tr>
<tr>
<td>o TPR cases</td>
</tr>
<tr>
<td>o Preadoptive and adoptive cases</td>
</tr>
<tr>
<td>o Transfers of placement</td>
</tr>
<tr>
<td>o Juvenile delinquency proceedings involving status offenses and through which parental rights may be terminated.</td>
</tr>
<tr>
<td>o Juvenile delinquency proceedings involving violations of criminal law are not covered by ICWA.</td>
</tr>
<tr>
<td>If the case involves a child custody proceeding, is the child an Indian child?</td>
</tr>
<tr>
<td>o Determine whether there is a tribal State agreement that has specific procedures to follow. Several federally recognized Indian tribes have agreements with State agencies on child welfare issues. <strong>25 U.S.C. § 1919</strong>.</td>
</tr>
<tr>
<td>If the child is an Indian child, is the child domiciled on or residing on the reservation? Regardless of where the child resides, is the child a ward of the tribal court?</td>
</tr>
<tr>
<td>o If yes to either question, the tribal court has exclusive jurisdiction except for the state court’s emergency jurisdiction to protect the child from imminent physical damage or harm. <strong>25 U.S.C. § 1911(a) and 1922</strong>.</td>
</tr>
<tr>
<td>o If no to either question, then:</td>
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<tr>
<td>- <strong>Notice</strong>: The petitioner must notify the parents, Indian custodian and Indian tribe (Notice of Court Proceedings below). <strong>25 U.S.C. § 1912</strong>.</td>
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</tbody>
</table>
|   - **Transfer of proceedings**: Either parent, the Indian
A custodian or the relevant Indian tribe may petition the state court for a transfer of a case on the foster care placement of or on TPR to the Indian child. Unless good cause is shown to the contrary or either parent objects, the state court must transfer the case to the tribal court. The tribal court may decline the transfer.

- If no parent, Indian custodian or Indian tribe requests a transfer, the case remains in the state court. ICWA compliance is required.
- If transfer is requested but a parent objects, good cause supports denying the transfer or the tribal court denies the transfer, the case remains in the state court. ICWA compliance is required.
- **44 Federal Register 67584**: Good cause to deny the transfer exists if the Indian child’s tribe does not have a tribal court to which the case can be transferred.
- **44 Federal Register 67584**: Good cause to deny the transfer may exist if:
  - The child custody proceeding was at an advanced stage when the petition to transfer was filed with the state court and the petition to transfer was not filed promptly after notice was received of the proceeding.
  - The Indian child is over 12 years of age and objects to the transfer.
  - Evidence necessary for the court to rule on the case could not be adequately presented in the tribal court without undue hardship on the parties or the witnesses.
  - Parents of an Indian child over 5 years of age are not available and the Indian child has had little or no contact with the Indian tribe or members of the tribe.
- The tribal court may decline the transfer orally or in writing. **44 Federal Register 67584**.
- Parties must file with the tribal court any argument for or against the transfer.
- If transfer is requested, no parent objects, no good cause is shown to deny the transfer, and the tribal court accepts the transfer, then the tribal court has exclusive jurisdiction except for the state court’s emergency jurisdiction to protect the child.

**Practice note**: Review the Bureau of Indian Affairs’ Guidelines for State Courts; Indian Child Custody Proceedings. **44 Federal Register 67584**.

**Application of State and Federal Law**

25 U.S.C. § 1921 and 44 Federal Register 67584

- In any child custody proceeding where relevant state or other federal law provides a higher standard of protection to the rights of the parents or the Indian custodian than the protection provided under ICWA, the state court shall apply the state or other federal law, provided that application does not infringe upon any right provided to the Indian child or the Indian tribe under ICWA.
Notice of Court Proceedings

25 U.S.C. § 1912 and 44 Federal Register 67584

- Petitioner must give notice to the parents, Indian custodian and Indian tribe of an involuntary state court proceeding regarding the foster care placement of or TPR to the Indian child.
- Notice must be sent through registered mail with return receipt requested.
- Recipient must receive the notice at least 10 days before the hearing.
- If the identity or whereabouts of a parent or the Indian custodian are unknown, notice must be sent to the Secretary of the Interior, who must be given at least 15 days to locate the parent.
- If the Indian child is eligible for membership in more than one tribe but not a member of any Indian tribe, notice must be given to all tribes for which the child is eligible. 44 Federal Register 67584.
- The state court must determine which Indian tribe the child has the most significant contacts with.
- Notice must identify the other Indian tribes being considered by the state court as the child’s Indian tribe.
- Notice must invite each Indian tribe to provide their opinion on which Indian tribe should be identified as the child’s Indian Tribe.
- Notice must include:
  - Child’s name, date of birth and birthplace
  - Child’s tribal affiliation
  - Names of child’s parents or Indian custodian, their birthdates, birth places and the mother’s maiden name
  - Copy of the petition or complaint
  - Name of the petitioner
  - Name and address of petitioner’s attorney
  - Statement of the right of the parents and the Indian custodian to have court-appointed counsel if they qualify
  - Statement of the right of the parents, Indian custodian and Indian tribe to have an additional 20 days to prepare for the hearing, if they request it
  - Court’s location, mailing address and telephone number
  - Statement of the right of the parents, Indian custodian and Indian tribe to request the transfer of the case to the tribal court
  - Statement of the right of the parents to object to the transfer of the case to the tribal court
  - Statement of the potential legal consequences of an adjudication on future custodial and parental rights
  - Statement that tribal officials must maintain the confidentiality of the information contained in the notice.

- If the state court or the petitioner has reason to believe that the parent or Indian custodian is not likely to understand the notice contents because of a lack of sufficient proficiency in the English language, a copy of the notice must be sent to the Bureau of Indian
Affairs agency located closest to the parent or Indian custodian’s residence. 44 Federal Register 67584.

- The state court or petitioner must request that the Bureau of Indian Affairs agency arrange to have the notice explained to the parent or Indian custodian in the language that person best understands.
- Notice and proof of service must be filed with the state court.
- 44 Federal Register 67584: If the parent or Indian custodian appears in state court without an attorney, the state court must inform the parent or Indian custodian of the following:
  - Right to court-appointed counsel if qualifies
  - Right to request that the child custody proceeding be transferred to the tribal court
  - Right to object to the transfer of the child custody proceeding to the tribal court
  - Right to request 20 days of additional time to prepare for the child custody proceeding
  - If the parent or Indian custodian is not already a party, the right to intervene in the child custody proceeding.

<table>
<thead>
<tr>
<th>Right to Intervene</th>
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<tbody>
<tr>
<td>25 U.S.C. § 1911(c)</td>
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<tr>
<td>- If not already a party, the parents, Indian custodian and the Indian tribe have the right to intervene at any point during a state court child custody proceeding.</td>
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<table>
<thead>
<tr>
<th>Evidentiary Standards for Foster Care Placements</th>
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<tbody>
<tr>
<td>25 U.S.C. § 1912</td>
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<tr>
<td>- Burden of proof: clear and convincing evidence.</td>
</tr>
<tr>
<td>- State court may only order the foster care placement of an Indian child where the court determines that continued custody by the parents or Indian custodian is likely to result in serious emotional or physical damage to the child.</td>
</tr>
<tr>
<td>- Evidence must include testimony from one or more qualified expert witnesses.</td>
</tr>
<tr>
<td>- 44 Federal Register 67584: Examples of persons most likely to meet the requirements for qualified expert witnesses in Indian child custody proceedings:</td>
</tr>
</tbody>
</table>
  - Member of the Indian child’s tribe who is recognized by the Indian tribe as being knowledgeable in tribal customs that relate to child welfare issues.
  - Layperson with substantial education and experience in his or her specialty and substantial knowledge of current tribal customs that relate to child welfare issues.
  - Professional person with substantial education and experience in his or her specialty and substantial knowledge of current tribal customs that relate to child welfare issues.
| - 44 Federal Register 67584: The state court or any party may request assistance from the child’s Indian tribe and/or the Bureau of Indian Affairs agency serving the child’s Indian tribe in identifying and locating persons qualified to serve as an expert witness. |
• Evidence must establish the relationship between conditions that exist and the damage that will likely result.

• “Evidence that only shows the existence of community or family poverty, crowded or inadequate housing, alcohol abuse, or nonconforming social behavior does not constitute clear and convincing evidence that continued custody is likely to result in serious emotional or physical damage to the child. To be clear and convincing evidence, the evidence must show the existence of particular conditions in the home that are likely to result in serious emotional or physical damage to the particular child who is the subject of the proceeding. The evidence must show the causal relationship between the conditions that exist and the damage that is likely to result.” 44 Federal Register 67584.

• Petitioner must also show that “active efforts” have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the family, and that the active efforts were unsuccessful.

Practice note: According to case law, “active efforts” are more than reasonable efforts. Possible examples:

• Was a tribal representative or the tribal social services program involved in case planning in the early stages of the case?

• Did the petitioner utilize the services of a tribal representative with knowledge of current social and cultural standards within the relevant Indian tribe?

• If yes, did the tribal representative conduct an assessment of the family’s strengths and needs?

• Was a case plan developed that utilized the results of the tribal representative’s assessment along with the Indian tribe’s community resources (e.g. extended family, urban Indian program and individual Indian caregivers)?

• Was a visitation plan developed to maintain the child’s bond with individuals in his or her Indian community to whom the child is attached?

• Every party has a right to examine all reports or other documents filed with the court and upon which any judicial ruling in the case may be based.

• The state court cannot base its ruling upon any report or other document that is not filed with the court. 44 Federal Register 67584.

<table>
<thead>
<tr>
<th>Foster Care or Preadoptive Placements</th>
<th>25 U.S.C. § 1915</th>
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</thead>
<tbody>
<tr>
<td>The Indian child must be placed in the least restrictive placement that most approximates a family and is appropriate for the needs of the child.</td>
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<tr>
<td>The placement must meet the child’s special needs, if any, and the child should be placed in reasonable proximity to the child’s home,</td>
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taking into account the child’s special needs.

**Practice note:** Obtain the testimony of an expert witness to establish the child’s special needs.

- In the absence of good cause shown, preference in placement shall be given as follows:
  - Member of the Indian child’s extended family
  - Foster home licensed, approved, or specified by the child’s Indian tribe
  - Indian foster home licensed or approved by an authorized non-Indian licensing authority
  - Institution for children approved by an Indian tribe or operated by an Indian organization, which institution has a program suitable to meet the child’s needs.

- **44 Federal Register 67584:** Good cause to modify the preferences must be based upon one of the following:
  - Request of the biological parents or the Indian child when the child is of sufficient age.
  - Indian child’s extraordinary physical or emotional needs as established by a qualified expert witness.
  - Unavailability of suitable families for placement after the completion of a diligent search for families meeting the preference criteria.
  - **Existing Indian Family Doctrine:** Judicially created exception to the placement preferences or judicial determination that ICWA does not apply where the child is not being removed from an existing Indian family.

- **In re: Matter of Adoption of Baby Boy L.,** 231 Kan. 199 (1982): A child who has never been a member of an Indian home should not be removed from the child’s primary, non-Indian cultural heritage and background and be placed in an Indian home and environment that is foreign to the child.

- **Matter of Adoption of D.M.J.,** 741 P.2d 1386 (Okla. 1985): ICWA only applies where the Indian child is being removed from an existing Indian family.

- If the Indian tribe established a different order of preference by tribal resolution, this order of preference must be followed as long as the placement is the least restrictive placement that is appropriate for the needs of the child.

- Where appropriate, the court shall consider the preferences of the Indian child and the parents.

- If a consenting parent expresses a desire for anonymity, the state court shall give weight to the parent’s desire in applying the above placement preferences, if that weight is consistent with the best interests of the child.
When the parent desires anonymity, the state court shall inquire into the child’s status as an Indian child in a manner that does not cause the parent’s Indian identity to become publically known. 44 Federal Register 67584.

The standards to be applied when determining the Indian child’s placement are the current social and cultural standards of the Indian community in which the parent or the extended family members reside or the Indian community with which the parent or extended family members maintain social and cultural ties.

25 U.S.C. § 1912

- **Burden of proof:** beyond a reasonable doubt.
- State court may only order the TPR of an Indian child where the court determines that continued custody by the parents or Indian custodian is likely to result in serious emotional or physical damage to the child.
- Evidence must include testimony from one or more qualified expert witnesses.
- 44 Federal Register 67584: Examples of persons most likely to meet the requirements for qualified expert witnesses in Indian child custody proceedings:
  - Member of the Indian child’s tribe who is recognized by the Indian tribe as being knowledgeable in tribal customs that relate to child welfare issues.
  - Layperson with substantial education and experience in his or her specialty and substantial knowledge of current tribal customs that relate to child welfare issues.
  - Professional person with substantial education and experience in his or her specialty and substantial knowledge of current tribal customs that relate to child welfare issues.
- 44 Federal Register 67584: The state court or any party may request assistance from the child’s Indian tribe and/or the Bureau of Indian Affairs agency serving the child’s Indian tribe in identifying and locating persons qualified to serve as an expert witness.
- Evidence must establish the relationship between conditions that exist and the damage that will likely result.
- Petitioner must also show that “active efforts” have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the family, and that the active efforts were unsuccessful.

**Practice notes:** According to case law, “active efforts” are more than reasonable efforts. Possible examples:

- Was a tribal representative or the tribal social services program involved in case planning in the early stages of the case?
- Did the petitioner utilize the services of a tribal representative with knowledge of current social and cultural standards within the
relevant Indian tribe?

- If yes, did the tribal representative conduct an assessment of the family’s strengths and needs?
- Was a case plan developed that utilized the results of the tribal representative’s assessment along with the Indian tribe’s community resources (e.g. extended family, urban Indian program and individual Indian caregivers)?
- Was a visitation plan developed to maintain the child’s bond with individuals in his or her Indian community to whom the child is attached?
- Every party has a right to examine all reports or other documents filed with the court and upon which any judicial ruling in the case may be based.
- The state court cannot base its ruling upon any report or other document that is not filed with the court. 44 Federal Register 67584.

<table>
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<tr>
<th>Adoptive Placements</th>
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<tbody>
<tr>
<td><strong>25 U.S.C. § 1915</strong></td>
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<tr>
<td>- In the absence of good cause shown, preference in adoptive placements shall be given to the following placements:</td>
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<tr>
<td>- Member of the Indian child’s extended family</td>
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<tr>
<td>- Other members of the child’s Indian tribe</td>
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<tr>
<td>- Other Indian families.</td>
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<tr>
<td>- Along with the parents, Indian custodian and the child, the Indian tribe should be asked for assistance in identifying the child’s extended family members and members of the child’s Indian tribe interested in providing a placement for the child.</td>
</tr>
<tr>
<td>- <strong>44 Federal Register 67584</strong>: Good cause to modify the preferences must be based upon one of the following:</td>
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<td>- Request of the biological parents or the Indian child when the child is of sufficient age.</td>
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<td>- Indian child’s extraordinary physical or emotional needs as established by a qualified expert witness.</td>
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<td>- Unavailability of suitable families for placement after the completion of a diligent search for families meeting the preference criteria.</td>
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<td>- <strong>Existing Indian Family Doctrine</strong>: Judicially created exception to the placement preferences or judicial determination that ICWA does not apply where the child is not being removed from an existing Indian family.</td>
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existing Indian family.

- If the Indian tribe established a **different order of preference by tribal resolution**, this order of preference must be followed as long as the placement is the least restrictive placement that is appropriate for the needs of the child.
- The placement must meet the child’s special needs, if any, and the child should be placed in reasonable proximity to the child’s home, taking into account the child’s special needs.

**Practice note:** Obtain the testimony of an expert witness to establish the child’s special needs.

- Where appropriate, the court shall consider the preferences of the Indian child and the parents.
- If a consenting parent expresses a desire for anonymity, the state court shall give weight to the parent’s desire in applying the above placement preferences, if that weight is consistent with the best interests of the child.
- When the parent desires anonymity, the state court shall inquire into the child’s status as an Indian child in a manner that does not cause the parent’s Indian identity to become publically known. **44 Federal Register 67584.**
- Unless a consenting parent expresses a desire for anonymity, the state court shall notify the Indian child’s extended family and the Indian tribe that their members will be given preference in the adoption decision. **44 Federal Register 67584.**
- The standards to be applied when determining the Indian child’s placement are the current social and cultural standards of the Indian community in which the parent or the extended family members reside or the Indian community with which the parent or extended family members maintain social and cultural ties.

### Consent by Parent or Indian Custodian

**25 U.S.C. § 1913**

- In order for the parent or Indian custodian to voluntarily consent to a foster care placement or the TPR, the consent must be written consent.

  **44 Federal Register 67584:** Consent must include
  
  - The child’s name and date of birth
  - Name of the child’s Indian tribe and any tribal membership number or other membership identification
  - Name and address of the consenting parent or Indian custodian
  - Name and address of the person or entity through whom foster care placement, preadoptive placement or adoptive placement was arranged
  - For consent to foster care placements only, the name and address of the prospective foster parents, if known.
• Recorded before the judge of a court with competent jurisdiction
• Accompanied by the judge’s certification that the terms and legal consequences of the consent were explained by the judge and understood by the parent or Indian custodian
• Accompanied by the judge’s certification that the parent or Indian custodian understood the explanation in English or was provided with an appropriate court interpreter.

• Consent by the parent or Indian custodian is **invalid** if given prior to or within 10 days of the birth of the child.

• Consent to a **foster care placement may be withdrawn** by the parent or Indian custodian at any time.

• The parent or Indian custodian may withdraw consent by filing a notarized written statement of withdrawal with the state court where consent was executed and filed. The withdrawal statement must be executed by the parent or Indian custodian. **44 Federal Register 67584.**

• When the parent or Indian custodian withdraws consent, the Indian child shall be returned as soon as practicable to the parent or Indian custodian. **44 Federal Register 67584.**

• Consent in any **voluntary termination of parental proceeding** or adoptive placement of the Indian child may be withdrawn by the parent at any time prior to the court’s issuance of the TPR order or adoption decree.

• The parent may withdraw consent by filing a notarized written statement of withdrawal with the state court where the consent was executed and filed. The withdrawal statement must be executed by the parent or Indian custodian. **44 Federal Register 67584.**

• When the parent withdraws consent and files a petition for return of custody, the Indian child shall be returned as soon as practicable to the parent unless there is a showing in a child custody proceeding subject to **25 U.S.C. § 1912** that return is not in the best interests of the child. **25 U.S.C. § 1916 and 44 Federal Register 67584.**

**Vacation of the Adoption Decree And Return of Custody**

**25 U.S.C. § 1913(d) and 1916**

• Vacation of Adoption Decree:
  
  o Following the state court’s issuance of an adoption decree, the parent may withdraw consent based upon the grounds that the consent was obtained pursuant to fraud or duress and file a petition for vacation of the adoption decree.

  o The parent who consented to the TPR or adoption must file the petition to vacate the adoption decree within 2 years of the date of the adoption decree.

  o Following a hearing for which all parties received notice, if the state court finds that parental consent was based upon fraud and/or duress, the state court shall vacate the adoption decree.
Return of Custody:
- If the adoption decree has been vacated or the adoptive parents voluntarily consented to TPR and withdrew their consent, the biological parent or prior Indian custodian may petition the state court for return of custody.
- The state court shall grant the petition for return of custody unless there is a showing in a child custody proceeding subject to 25 U.S.C. § 1912 that return is not in the best interests of the child.

Invalidation of Order

Invalidation petition may be brought by the Indian child, parents, Indian custodian or the Indian tribe.
- Petition may be brought seeking invalidation of the following orders:
  - Dependency order
  - TPR order
  - Voluntary placement order
  - Adoption decree
  - Juvenile delinquency order on status offenses or delinquency proceedings through which parental rights were terminated
  - Delinquency order where the Indian child was placed outside of the home due to the parent's inability to meet the needs of the child, as opposed to the child's delinquent act
  - Guardianship orders
  - Third part custody orders
  - Order awarding custody to the putative father who has not acknowledged paternity, not adopted the Indian child under tribal law or custom, and who does not qualify as an Indian custodian.
- Grounds for invalidation:
  - Following the transfer petition of the parent, the Indian custodian or the relevant Indian tribe, the state court failed to transfer the case to the tribal court, despite no objection by a parent, no good cause shown to deny the transfer, and no refusal by the tribal court to accept the transfer. 25 U.S.C. § 1911(b).
  - The parent, Indian custodian or the Indian tribe was denied the right to intervene at any point during the proceedings. 25 U.S.C. § 1911(c).
  - The state court failed to give full faith and credit to the public acts, records, and judicial proceedings of the Indian tribe applicable to Indian child custody proceedings to the same extent the state court gives full faith and credit to any other entity. 25 U.S.C. § 1911(d).
  - Proper statutory notice was not given to the parents, Indian...
custodian or Indian tribe. 25 U.S.C. § 1912(a).

- The state court held the child custody proceedings too soon after the notice was given. 25 U.S.C. § 1912(a).
- The parent, Indian custodian, or Indian tribe requested an additional 20 days to prepare for the hearing, and state court held the hearing less than 30 days after the parent, Indian custodian or Indian tribe received notice.
- The parent, Indian custodian, or Indian tribe did not request an additional 20 days to prepare for the hearing, and state court held the hearing less than 10 days after the parent, Indian custodian or Indian tribe received notice.
- The state court failed to appoint counsel for the indigent parent or Indian custodian. 25 U.S.C. § 1912(b).
- The state court failed to appoint counsel for the child where the appointment was in the best interests of the child. 25 U.S.C. § 1912(b).
- The state court denied any party’s right to examine all reports or other documents filed with the court and upon which any judicial ruling in the case was based. 25 U.S.C. § 1912(c).
- The party seeking foster care placement or TPR failed to show that “active efforts” had been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the family, and that the active efforts were unsuccessful. 25 U.S.C. § 1912(d).
- The party seeking foster care placement or TPR failed to submit expert witness testimony that continued custody by the parents or Indian custodian was likely to result in serious emotional or physical damage to the child. 25 U.S.C. § 1912(e) and (f).
- The parent or Indian custodian’s voluntary consent to placement or TPR was not in writing, not recorded before the judge of a court with competent jurisdiction, and/or not accompanied by the court’s certification. 25 U.S.C. § 1913(a).
- The state court did not allow the parent or Indian custodian to withdraw consent to placement. 25 U.S.C. § 1913(b).
- The state court did not return the child after the parent or Indian custodian withdrew voluntary consent to placement. 25 U.S.C. § 1913(b).
- The state court did not allow the parent or Indian custodian to withdraw consent to TPR prior to the issuance of the adoption decree. 25 U.S.C. § 1913(c).
- The state court did not return the child after the parent or Indian custodian withdrew voluntary consent to the TPR within 10 days of the consent or prior to the issuance of the adoption decree, whichever occurred later, and there was no
showing in a child custody proceeding subject to 25 U.S.C. § 1912 that return was not in the best interests of the child. 25 U.S.C. § 1913(c) and 1916.

- Despite the state court’s finding that parental consent to the TPR was obtained through fraud or duress, the state court did not vacate the adoption decree. 25 U.S.C. § 1913(d).
- The state court did not return the Indian child to the parents after finding that the parents’ consent to adoption was secured through fraud or duress. 25 U.S.C. § 1913(d).


<table>
<thead>
<tr>
<th>Adult Adoptee Rights</th>
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<tbody>
<tr>
<td><strong>44 Federal Register 67584</strong></td>
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<tr>
<td>- Upon reaching the age of 18 years, the Indian adult who was the subject of an adoptive placement may apply to the state court that issued the adoption decree and request information on the Indian adult’s tribal affiliations, if any. The court must provide this information and any other information necessary to protect the rights that arise from the Indian adult’s tribal relationship.</td>
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<tr>
<td>- This right exists regardless of whether the adoption decree was subject to ICWA.</td>
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<tr>
<td>- If state law prohibits the court from releasing the identity of the biological parents, the state court must seek assistance from the Bureau of Indian Affairs to help the Indian adult who is eligible for membership in an Indian tribe establish that right without breaching the state law prohibition.</td>
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**§ 1901. Congressional findings**

Recognizing the special relationship between the United States and the Indian tribes and their members and the Federal responsibility to Indian people, the Congress finds--

1. that clause 3, section 8, article I of the United States Constitution provides that "The Congress shall have Power * * * To regulate Commerce * * * with Indian tribes" and, through this and other constitutional authority, Congress has plenary power over Indian affairs;
2. that Congress, through statutes, treaties, and the general course of dealing with Indian tribes, has assumed the responsibility for the protection and preservation of Indian tribes and their resources;
3. that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe;
4. that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and
that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and

5. that the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families. (Pub. L. 95-608, § 2, Nov. 8, 1978, 92 Stat. 3069.)

Short Title Section 1 of Pub. L. 95-608 provided: ``That this Act [enacting this chapter] may be cited as the `Indian Child Welfare Act of 1978'."

§ 1902. Congressional declaration of policy
The Congress hereby declares that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs. (Pub. L. 95-608, § 3, Nov. 8, 1978, 92 Stat. 3069.)

§ 1903. Definitions
For the purposes of this chapter, except as may be specifically provided otherwise, the term--

1. "child custody proceeding" shall mean and include--
   i. "foster care placement" which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;
   ii. "termination of parental rights" which shall mean any action resulting in the termination of the parent-child relationship;
   iii. "preadoptive placement" which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and
   iv. "adoptive placement" which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption. Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents.

2. "extended family member" shall be as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent;

3. "Indian" means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in 1606 of title 43;

4. "Indian child" means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe;

5. "Indian child's tribe" means (a) the Indian tribe in which an Indian child is a member or eligible for membership or (b), in the case of an Indian child who is a member of or
eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts;

6. "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal law or custom or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of such child;

7. "Indian organization" means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians;

8. "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in section 1602(c) of title 43;

9. "parent" means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established;

10. "reservation" means Indian country as defined in section 1151 of title 18 and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation;

11. "Secretary" means the Secretary of the Interior; and (12) "tribal court" means a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings. (Pub. L. 95-608, § 4, Nov. 8, 1978, 92 Stat. 3069.) Section Referred to in Other Sections This section is referred to in sections 1727, 3202, 3653, 4302 of this title; title 12 section 4702; title 26 section 168.

§ 1911. Indian tribe jurisdiction over Indian child custody proceedings
  a. Exclusive jurisdiction
  An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.
  b. Transfer of proceedings; declination by tribal court
  In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe: Provided, That such transfer shall be subject to declination by the tribal court of such tribe.
  c. State court proceedings; intervention
  In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child's tribe shall have a right to intervene at any point in the proceeding.
  d. Full faith and credit to public acts, records, and judicial proceedings of Indian tribes
The United States, every State, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity. (Pub. L. 95-608, title I, § 101, Nov. 8, 1978, 92 Stat. 3071.) Section Referred to in Other Sections This section is referred to in sections 1914, 1918, 1923 of this title.

§ 1912. Pending court proceedings

a. Notice; time for commencement of proceedings; additional time for preparation
In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary in like manner, who shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary: Provided, That the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceeding.

b. Appointment of counsel
In any case in which the court determines indigency, the parent or Indian custodian shall have the right to court-appointed counsel in any removal, placement, or termination proceeding. The court may, in its discretion, appoint counsel for the child upon a finding that such appointment is in the best interest of the child. Where State law makes no provision for appointment of counsel in such proceedings, the court shall promptly notify the Secretary upon appointment of counsel, and the Secretary, upon certification of the presiding judge, shall pay reasonable fees and expenses out of funds which may be appropriated pursuant to section 13 of this title.

c. Examination of reports or other documents
Each party to a foster care placement or termination of parental rights proceeding under State law involving an Indian child shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to such action may be based.

d. Remedial services and rehabilitative programs; preventive measures
Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

e. Foster care placement orders; evidence; determination of damage to child
No foster care placement may be ordered in such proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

f. Parental rights termination orders; evidence; determination of damage to child
No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian
custodian is likely to result in serious emotional or physical damage to the child. (Pub. L. 95-608, title I, § 102, Nov. 8, 1978, 92 Stat. 3071.) Section Referred to in Other Sections This section is referred to in sections 1914, 1916 of this title.

§ 1913. Parental rights; voluntary termination

a. Consent; record; certification matters; invalid consents

Where any parent or Indian custodian voluntarily consents to a foster care placement or to termination of parental rights, such consent shall not be valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten days after, birth of the Indian child shall not be valid.

b. Foster care placement; withdrawal of consent

Any parent or Indian custodian may withdraw consent to a foster care placement under State law at any time and, upon such withdrawal, the child shall be returned to the parent or Indian custodian.

c. Voluntary termination of parental rights or adoptive placement; withdrawal of consent; return of custody

In any voluntary proceeding for termination of parental rights to, or adoptive placement of, an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption, as the case may be, and the child shall be returned to the parent.

d. Collateral attack; vacation of decree and return of custody; limitations

After the entry of a final decree of adoption of an Indian child in any State court, the parent may withdraw consent thereto upon the grounds that consent was obtained through fraud or duress and may petition the court to vacate such decree. Upon a finding that such consent was obtained through fraud or duress, the court shall vacate such decree and return the child to the parent. No adoption which has been effective for at least two years may be invalidated under the provisions of this subsection unless otherwise permitted under State law. (Pub. L. 95-608, title I, § 103, Nov. 8, 1978, 92 Stat. 3072.) Section Referred to in Other Sections This section is referred to in section 1914 of this title.

§ 1914. Petition to court of competent jurisdiction to invalidate action upon showing of certain violations

Any Indian child who is the subject of any action for foster care placement or termination of parental rights under State law, any parent or Indian custodian from whose custody such child was removed, and the Indian child's tribe may petition any court of competent jurisdiction to invalidate such action upon a showing that such action violated any provision of sections 1911, 1912, and 1913 of this title. (Pub. L. 95-608, title I, § 104, Nov. 8, 1978, 92 Stat. 3072.)
§ 1915. Placement of Indian children

a. Adoptive placements; preferences

In any adoptive placement of an Indian child under State law, a preference shall be given, in the absence of good cause to the contrary, to a placement with (1) a member of the child's extended family; (2) other members of the Indian child's tribe; or (3) other Indian families.

b. Foster care or preadoptive placements; criteria; preferences

Any child accepted for foster care or preadoptive placement shall be placed in the least restrictive setting which most approximates a family and in which his special needs, if any, may be met. The child shall also be placed within reasonable proximity to his or her home, taking into account any special needs of the child. In any foster care or preadoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with--

i. a member of the Indian child's extended family;

ii. a foster home licensed, approved, or specified by the Indian child's tribe;

iii. an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or

iv. an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

c. Tribal resolution for different order of preference; personal preference considered; anonymity in application of preferences

In the case of a placement under subsection (a) or (b) of this section, if the Indian child's tribe shall establish a different order of preference by resolution, the agency or court effecting the placement shall follow such order so long as the placement is the least restrictive setting appropriate to the particular needs of the child, as provided in subsection (b) of this section. Where appropriate, the preference of the Indian child or parent shall be considered. Provided, That where a consenting parent evidences a desire for anonymity, the court or agency shall give weight to such desire in applying the preferences.

d. Social and cultural standards applicable

The standards to be applied in meeting the preference requirements of this section shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties. (e) Record of placement; availability A record of each such placement, under State law, of an Indian child shall be maintained by the State in which the placement was made, evidencing the efforts to comply with the order of preference specified in this section. Such record shall be made available at any time upon the request of the Secretary or the Indian child's tribe. (Pub. L. 95-608, title I, § 105, Nov. 8, 1978, 92 Stat. 3073.)

§ 1916. Return of custody

a. Petition; best interests of child

Notwithstanding State law to the contrary, whenever a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child, a biological parent or prior Indian custodian may petition for return of custody and the court shall grant such petition unless there is a showing, in a proceeding subject to the provisions of section 1912 of this title, that such return of custody is not in the best interests of the child.

b. Removal from foster care home; placement procedure
Whenever an Indian child is removed from a foster care home or institution for the purpose of further foster care, preadoptive, or adoptive placement, such placement shall be in accordance with the provisions of this chapter, except in the case where an Indian child is being returned to the parent or Indian custodian from whose custody the child was originally removed. (Pub. L. 95-608, title I, § 106, Nov. 8, 1978, 92 Stat. 3073.)

§ 1917. Tribal affiliation information and other information for protection of rights from tribal relationship; application of subject of adoptive placement; disclosure by court

Upon application by an Indian individual who has reached the age of eighteen and who was the subject of an adoptive placement, the court which entered the final decree shall inform such individual of the tribal affiliation, if any, of the individual's biological parents and provide such other information as may be necessary to protect any rights flowing from the individual's tribal relationship. (Pub. L. 95-608, title I, § 107, Nov. 8, 1978, 92 Stat. 3073.)

§ 1918. Reassumption of jurisdiction over child custody proceedings

a. Petition; suitable plan; approval by Secretary

Any Indian tribe which became subject to State jurisdiction pursuant to the provisions of the Act of August 15, 1953 (67 Stat. 588), as amended by title IV of the Act of April 11, 1968 (82 Stat. 73, 78), or pursuant to any other Federal law, may reassume jurisdiction over child custody proceedings. Before any Indian tribe may reassume jurisdiction over Indian child custody proceedings, such tribe shall present to the Secretary for approval a petition to reassume such jurisdiction which includes a suitable plan to exercise such jurisdiction.

b. Criteria applicable to consideration by Secretary; partial retrocession

1. In considering the petition and feasibility of the plan of a tribe under subsection (a) of this section, the Secretary may consider, among other things:
   i. whether or not the tribe maintains a membership roll or alternative provision for clearly identifying the persons who will be affected by the reassumption of jurisdiction by the tribe;
   ii. the size of the reservation or former reservation area which will be affected by retrocession and reassumption of jurisdiction by the tribe;
   iii. the population base of the tribe, or distribution of the population in homogeneous communities or geographic areas; and (iv) the feasibility of the plan in cases of multitribal occupation of a single reservation or geographic area.

2. In those cases where the Secretary determines that the jurisdictional provisions of section 1911(a) of this title are not feasible, he is authorized to accept partial retrocession which will enable tribes to exercise referral jurisdiction as provided in section 1911(b) of this title, or, where appropriate, will allow them to exercise exclusive jurisdiction as provided in section 1911(a) of this title over limited community or geographic areas without regard for the reservation status of the area affected.

c. Approval of petition; publication in Federal Register; notice; reassumption period; correction of causes for disapproval

If the Secretary approves any petition under subsection (a) of this section, the Secretary shall publish notice of such approval in the Federal Register and shall notify the affected State or States of such approval. The Indian tribe concerned shall reassume jurisdiction sixty days after publication in the Federal Register of notice of approval. If the Secretary disapproves any petition under subsection (a) of this section, the Secretary shall provide such technical assistance.
as may be necessary to enable the tribe to correct any deficiency which the Secretary identified
as a cause for disapproval.

d. Pending actions or proceedings unaffected
Assumption of jurisdiction under this section shall not affect any action or proceeding over
which a court has already assumed jurisdiction, except as may be provided pursuant to any
3074.)

References in Text
Act of August 15, 1953, referred to in sub§ (a), is act Aug. 15, 1953, ch. 505, 67 Stat. 588, as
amended, which enacted section 1162 of Title 18, Crimes and Criminal Procedure, section 1360
of Title 28, Judiciary and Judicial Procedure, and provisions set out as notes under section 1360
of Title 28. For complete classification of this Act to the Code, see Tables.

Section Referred to in Other Sections
This section is referred to in sections 1727, 1923 of this title.

§ 1919. Agreements between States and Indian tribes
a. Subject coverage
States and Indian tribes are authorized to enter into agreements with each other respecting care
and custody of Indian children and jurisdiction over child custody proceedings, including
agreements which may provide for orderly transfer of jurisdiction on a case-by-case basis and
agreements which provide for concurrent jurisdiction between States and Indian tribes.

b. Revocation; notice; actions or proceedings unaffected
Such agreements may be revoked by either party upon one hundred and eighty days' written
notice to the other party. Such revocation shall not affect any action or proceeding over which a
court has already assumed jurisdiction, unless the agreement provides otherwise. (Pub. L. 95-
608, title I, § 109, Nov. 8, 1978, 92 Stat. 3074.)

Section Referred to in Other Sections
This section is referred to in sections 1918, 1923 of this title.

§ 1920. Improper removal of child from custody; declination of jurisdiction; forthwith return
of child: danger exception
Where any petitioner in an Indian child custody proceeding before a State court has improperly
removed the child from custody of the parent or Indian custodian or has improperly retained
custody after a visit or other temporary relinquishment of custody, the court shall decline
jurisdiction over such petition and shall forthwith return the child to his parent or Indian
custodian unless returning the child to his parent or custodian would subject the child to a
substantial and immediate danger or threat of such danger.

§ 1921. Higher State or Federal standard applicable to protect rights of parent or Indian
custodian of Indian child
In any case where State or Federal law applicable to a child custody proceeding under State or
Federal law provides a higher standard of protection to the rights of the parent or Indian
custodian of an Indian child than the rights provided under this subchapter, the State or Federal
court shall apply the State or Federal standard.
§ 1922. Emergency removal or placement of child; termination; appropriate action
Nothing in this subchapter shall be construed to prevent the emergency removal of an Indian child who is a resident of or is domiciled on a reservation, but temporarily located off the reservation, from his parent or Indian custodian or the emergency placement of such child in a foster home or institution, under applicable State law, in order to prevent imminent physical damage or harm to the child. The State authority, official, or agency involved shall insure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall expeditiously initiate a child custody proceeding subject to the provisions of this subchapter, transfer the child to the jurisdiction of the appropriate Indian tribe, or restore the child to the parent or Indian custodian, as may be appropriate.

§ 1923. Effective date
None of the provisions of this subchapter, except sections 1911(a), 1918, and 1919 of this title, shall affect a proceeding under State law for foster care placement, termination of parental rights, preadoptive placement, or adoptive placement which was initiated or completed prior to one hundred and eighty days after November 8, 1978, but shall apply to any subsequent proceeding in the same matter or subsequent proceedings affecting the custody or placement of the same child.

§ 1931. Grants for on or near reservation programs and child welfare codes
a. Statement of purpose; scope of programs
The Secretary is authorized to make grants to Indian tribes and organizations in the establishment and operation of Indian child and family service programs on or near reservations and in the preparation and implementation of child welfare codes. The objective of every Indian child and family service program shall be to prevent the breakup of Indian families and, in particular, to insure that the permanent removal of an Indian child from the custody of his parent or Indian custodian shall be a last resort. Such child and family service programs may include, but are not limited to--

1. a system for licensing or otherwise regulating Indian foster and adoptive homes;
2. the operation and maintenance of facilities for the counseling and treatment of Indian families and for the temporary custody of Indian children;
3. family assistance, including homemaker and home counselors, day care, afterschool care, and employment, recreational activities, and respite care;
4. home improvement programs;
5. the employment of professional and other trained personnel to assist the tribal court in the disposition of domestic relations and child welfare matters;
6. education and training of Indians, including tribal court judges and staff, in skills relating to child and family assistance and service programs;
7. a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as foster children, taking into account the appropriate State standards of support for maintenance and medical needs; and
8. guidance, legal representation, and advice to Indian families involved in tribal, State, or Federal child custody proceedings.
**§ 1932. Grants for off-reservation programs for additional services**

The Secretary is also authorized to make grants to Indian organizations to establish and operate off-reservation Indian child and family service programs which may include, but are not limited to--

1. a system for regulating, maintaining, and supporting Indian foster and adoptive homes, including a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as Indian foster children, taking into account the appropriate State standards of support for maintenance and medical needs;

2. the operation and maintenance of facilities and services for counseling and treatment of Indian families and Indian foster and adoptive children;

3. family assistance, including homemaker and home counselors, day care, afterschool care, and employment, recreational activities, and respite care; and


Section Referred to in Other Sections

This section is referred to in section 1934 of this title.

**§ 1933. Funds for on and off reservation programs**

a. Appropriated funds for similar programs of Department of Health and Human Services; appropriation in advance for payments In the establishment, operation, and funding of Indian child and family service programs, both on and off reservation, the Secretary may enter into agreements with the Secretary of Health and Human Services, and the latter Secretary is hereby authorized for such purposes to use funds appropriated for similar programs of the Department of Health and Human Services: Provided, That authority to make payments pursuant to such
agreements shall be effective only to the extent and in such amounts as may be provided in advance by appropriation Acts.


Change of Name
"Secretary of Health and Human Services" and "Department of Health and Human Services" substituted for "Secretary of Health, Education, and Welfare" and "Department of Health, Education, and Welfare", respectively, in sub§ (a) pursuant to section 509(b) of Pub. L. 96-88, which is classified to section 3508(b) of Title 20, Education.

Section Referred to in Other Sections
This section is referred to in section 1934 of this title.

§ 1934. "Indian" defined for certain purposes
For the purposes of sections 1932 and 1933 of this title, the term "Indian" shall include persons defined in section 1603(c) of this title.

§ 1951. Information availability to and disclosure by Secretary
a. Copy of final decree or order; other information; anonymity affidavit; exemption from Freedom of Information Act
   2. Any State court entering a final decree or order in any Indian child adoptive placement after November 8, 1978, shall provide the Secretary with a copy of such decree or order together with such other information as may be necessary to show--
      1. the name and tribal affiliation of the child;
      2. the names and addresses of the biological parents;
      3. the names and addresses of the adoptive parents; and
      4. the identity of any agency having files or information relating to such adoptive placement. Where the court records contain an affidavit of the biological parent or parents that their identity remain confidential, the court shall include such affidavit with the other information. The Secretary shall insure that the confidentiality of such information is maintained and such information shall not be subject to the Freedom of Information Act (5 U.S.C. 552), as amended.

   c. Disclosure of information for enrollment of Indian child in tribe or for determination of member rights or benefits; certification of entitlement to enrollment Upon the request of the adopted Indian child over the age of eighteen, the adoptive or foster parents of an Indian child, or an Indian tribe, the Secretary shall disclose such information as may be necessary for the enrollment of an Indian child in the tribe in which the child may be eligible for enrollment or for determining any rights or benefits associated with that membership. Where the documents relating to such child contain an affidavit from the biological parent or parents requesting anonymity, the Secretary shall certify to the Indian child's tribe, where the information warrants, that the child's parentage and other circumstances of birth entitle the child to enrollment under the criteria established by such tribe.
§ 1952. Rules and regulations
Within one hundred and eighty days after November 8, 1978, the Secretary shall promulgate such rules and regulations as may be necessary to carry out the provisions of this chapter.

Locally convenient day schools
a. Sense of Congress
It is the sense of Congress that the absence of locally convenient day schools may contribute to the breakup of Indian families.

b. Report to Congress; contents, etc.
The Secretary is authorized and directed to prepare, in consultation with appropriate agencies in the Department of Health and Human Services, a report on the feasibility of providing Indian children with schools located near their homes, and to submit such report to the Select Committee on Indian Affairs of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives within two years from November 8, 1978. In developing this report the Secretary shall give particular consideration to the provision of educational facilities for children in the elementary grades. (Pub. L. 95-608, title IV, § 401, Nov. 8, 1978, 92 Stat. 3078; Pub. L. 96-88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

c. Change of Name
"Department of Health and Human Services" substituted for "Department of Health, Education, and Welfare" in sub§ (b), pursuant to section 509(b) of Pub. L. 96-88 which is classified to section 3508(b) of Title 20, Education.

Select Committee on Indian Affairs of the Senate redesignated Committee on Indian Affairs of the Senate by section 25 of Senate Resolution No. 71, Feb. 25, 1993, One Hundred Third Congress.
Committee on Interior and Insular Affairs of the House of Representatives changed to Committee on Natural Resources of the House of Representatives on Jan. 5, 1993, by House Resolution No. 5, One Hundred Third Congress.
Committee on Natural Resources of House of Representatives treated as referring to Committee on Resources of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

§ 1962. Copies to the States
Within sixty days after November 8, 1978, the Secretary shall send to the Governor, chief justice of the highest court of appeal, and the attorney general of each State a copy of this chapter, together with committee reports and an explanation of the provisions of this chapter.

§ 1963. Severability
If any provision of this chapter or the applicability thereof is held invalid, the remaining provisions of this chapter shall n
Chapter 28  Fostering Connection to Success and Increasing Adoptions Act

Contribution by Mary Hermann, JD, CWLS

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

<table>
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<th>Title I – Connecting and Supporting Relative Caregivers</th>
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<td><strong>Section 101</strong></td>
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<td><strong>Kinship Guardianship Assistance Payments for Children</strong></td>
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<tr>
<td>• Allows states the option of using Title IV-E funds to pay for kinship guardianship. These funds are available where all of the following exist:</td>
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<td>o the child has been in relative foster care with the relative for at least 6 consecutive months</td>
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<td>o the child has a strong attachment to the relative</td>
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<td>o the relative has committed to permanently caring for the child</td>
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<td>o neither adoption nor returning to the parents’ home is an option for the child.</td>
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<td>• Directs the state to make a written, binding kinship agreement to include</td>
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<td>o the amount of the kinship payments.</td>
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<td>o how to apply for modifications of the kinship payments in the future.</td>
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<td>o any services available the child and family under the kinship agreement.</td>
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<tr>
<td>• Makes siblings of the child eligible for kinship care payments.</td>
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<td>• Mandates that the case plans for children receiving kinship guardianship payments include six additional statements describing</td>
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<td>1. the steps taken by the state to determine it is not appropriate for the child to be adopted or returned home.</td>
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<td>2. the reasons why any siblings are separated during placement.</td>
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<td>3. the reasons why kinship guardianship as a permanent plan is in the child’s best interest.</td>
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<td>4. how the child meets the kinship guardianship requirements.</td>
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<td>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.</td>
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<td>6. the efforts made to discuss kinship guardianship with the parents.</td>
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<td>• Makes Medicaid automatic for kinship care children and children receiving adoption assistance.</td>
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<td>• Independent living services and education or training vouchers are also federally required for children moving into kinship guardianships after age 16.</td>
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<td>Section 102</td>
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<tr>
<th>Section 103</th>
<th>Notification of Relatives</th>
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<td>• 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.</td>
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<td>• 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.</td>
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<tr>
<th>Section 104</th>
<th>Licensing Standards for Relatives</th>
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<tr>
<td></td>
<td>• 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.</td>
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<td>• 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.</td>
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</tbody>
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**Title II – Improving Outcomes for Children in Foster Care**

<table>
<thead>
<tr>
<th>Section 201</th>
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<tr>
<td></td>
<td>• 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</td>
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<td>o completing high school or an equivalency program.</td>
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<td>o enrolled in post-secondary or vocational school.</td>
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<td>o participating in a program that promotes employment.</td>
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<td>o employed for at least 80 hours per month.</td>
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<td>o incapable of doing any of these activities due to a documented medical condition.</td>
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<td>• Placements for youth 18-21 years include an independent living yet supervised setting, a foster family home or group home.</td>
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<td>• States may also extend adoption assistance or guardianship payments until 21 years.</td>
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<table>
<thead>
<tr>
<th>Section 202</th>
<th>Transition Plan for Children Aging Out of Foster Care</th>
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<tr>
<td></td>
<td>• 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.</td>
</tr>
<tr>
<td></td>
<td>• The state agency caseworker and other representatives of the youth should</td>
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</table>
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.

<table>
<thead>
<tr>
<th>Section 203</th>
<th>Short Term Training for Child Welfare Agencies, Relative Guardians, and Court Personnel</th>
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<tbody>
<tr>
<td></td>
<td>Makes federal Title IV-E training funds available for staff in state agencies, private child welfare agencies, court personnel, attorneys, GALs, court appointed special advocates, prospective relative guardians, and foster or adoptive parents.</td>
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<table>
<thead>
<tr>
<th>Section 204</th>
<th>Educational Stability</th>
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<tbody>
<tr>
<td></td>
<td>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.</td>
</tr>
<tr>
<td></td>
<td>Increases the amount of federal funding available to cover education-related transportation costs for children in foster care.</td>
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<tr>
<td></td>
<td>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.</td>
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<td></td>
<td>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.</td>
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<tr>
<th>Section 205</th>
<th>Health Oversight and Coordination Plan</th>
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<tbody>
<tr>
<td></td>
<td>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 care for the child.</td>
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<tr>
<td></td>
<td>Includes 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.</td>
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<tr>
<td></td>
<td>Suggests the development of electronic health records and establishing a medical home for each child in foster care.</td>
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<tr>
<th>Section 206</th>
<th>Sibling Placement</th>
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<tbody>
<tr>
<td></td>
<td>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.</td>
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<td></td>
<td>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.</td>
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<table>
<thead>
<tr>
<th>Title III – Tribal Foster Care and Adoption Access</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 301</td>
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<tr>
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</table>
care.  
- Provides for tribes to have either direct access to IV-E funds or access 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 funds.

<table>
<thead>
<tr>
<th>Section 302</th>
<th>Technical Assistance and Implementation</th>
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<tbody>
<tr>
<td></td>
<td>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</td>
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</table>

### Title IV – Improvement of Incentives for Adoption

<table>
<thead>
<tr>
<th>Section 401</th>
<th>Adoption Incentives Program</th>
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<tbody>
<tr>
<td></td>
<td>Renews the Adoption Incentive Grant Program for five years, increases the states’ adoption incentive payments for special needs children from $2,000 to $4,000 and for older children from $4,000 to $8,000.</td>
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<tr>
<td></td>
<td>Requires the adoption incentive payments be used by the states within 24 months.</td>
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<td></td>
<td>States may be eligible for additional incentive payments for exceeding their highest adoption rates since 2002 adoption rates.</td>
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<tr>
<th>Section 402</th>
<th>Promotion of Adoption of Children with Special Needs</th>
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<tbody>
<tr>
<td></td>
<td>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.</td>
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<tr>
<td></td>
<td>Creates adoption assistance eligibility for the child based upon the child’s needs.</td>
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<tr>
<td></td>
<td>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.</td>
</tr>
<tr>
<td></td>
<td>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.</td>
</tr>
<tr>
<td></td>
<td>Special needs children placed with or relinquished to Indian tribal organizations or licensed private child placement agencies are also eligible for this adoption assistance.</td>
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<tr>
<th>Section 403</th>
<th>Information on Adoption Tax Credit</th>
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<tbody>
<tr>
<td></td>
<td>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.</td>
</tr>
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</table>

### Title V – Clarification of Uniform Definitions of Child and Other Provisions

<table>
<thead>
<tr>
<th>Section 403</th>
<th>Clarification of Uniform Definition of Child</th>
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<tbody>
<tr>
<td></td>
<td>Defines child under §152(c)(3)(A) of the 1986 Internal Revenue Code</td>
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<thead>
<tr>
<th>Section 403</th>
<th>Investment of Operating Cash</th>
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<tr>
<td></td>
<td>– not relevant to foster care issues</td>
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</table>
## Title VI – Effective Date

<table>
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<tr>
<th>Effective Date</th>
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<tbody>
<tr>
<td>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.</td>
</tr>
</tbody>
</table>
Chapter 29  Educational Rights of Dependent Youth

Contribution by Araceli Jacobs, JD

INTRODUCTION

Attorneys working in child welfare need to know the basics of education law at the federal and state level in order to properly advocate for a child’s needs. Schools can give dependent children the permanency they desire and allow them to successfully transition into adulthood.

The statistics are glaring; only 2-9% of dependent youth attain a bachelor’s degree. Dependent youth are twice as likely to be absent from school than their peers and three times more likely to be eligible for special education services. Unlike their peers, foster children do not always have parents who attend parent-teacher conferences and monitor their progress in school. Residential insecurity, frequent school changes, and the lack of an informed educational advocate contribute to foster youth developing educational challenges. Unmet, these challenges can derail a child from capitalizing on their talents and lead to homelessness, criminality and emotional instability.

Attorneys can improve a dependent child’s educational outcomes by knowing the specific issues facing this population and the rights afforded to them. Each child is entitled to the bundle of rights afforded all school aged children. Enforcement of the education rights of children becomes more complicated when that child is in foster care. The transient nature of foster care may lead the child to miss multiple days of school, fall behind academically, and become a disruption to the school climate. Attorneys should be prepared to address the wide range of educational issues facing dependent youth as well as recognize the educational resources available to these children.

This chapter addresses the seven main areas influencing the educational outcomes of foster youth:

- school admission/enrollment
- school stability
- access to educational records
- academic progress and performance
- school discipline
- special education

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6 Id.

7 Casey Family Programs, Endless Dreams (a video and curriculum to educate teachers about dependent care), available at http://www.casey.org/resources/initiatives/endlessdreams/ (last visited March 29, 2014).
• post-secondary transition planning.
This purpose of this chapter is to give attorneys a snapshot of these issues and encourage attorneys to seek out other training opportunities to develop their expertise in this area.

LEGAL FOUNDATION

Education law is governed by federal, state, and local laws and regulations as well as local school board policies. Article III, Section 1 of the Georgia Constitution requires the state to provide adequate public education to all citizens. The administrative aspects of this provision are embedded in State Board of Education rules and local school board rules and policies. The following chart details federal law, state law, state board of education rules, and DFCS policy for educational issues facing dependent youth.

### Admission, Enrollment & Attendance

**Issue:** Foster youth have higher rates of absenteeism and school dropouts than their peers. There are several laws that help advocates enroll and maintain foster children in school.

<table>
<thead>
<tr>
<th>Authority</th>
<th>Purpose</th>
<th>Case Law</th>
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<tbody>
<tr>
<td>§ 20-2-690.1</td>
<td>Gives any parent, guardian, or other person having control or charge of a child the authority to enroll that child in a publicly-funded Georgia school during the ages of mandatory attendance (6-16 years of age).</td>
<td><em>Kenny A. ex rel. Winn vs. Perdue</em>, 218 F.R.D. 277 (N.D. Ga. 2003) (constructing foster child’s constitutional right to education)</td>
</tr>
<tr>
<td>GDOE Rule § 160-5 1-288</td>
<td></td>
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## School Stability

**Issue:** Changing schools contributes to learning losses and may cause a school to retain a child. There are several laws to help advocates minimize school disruptions in a foster child’s life.

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<tr>
<th>Authority</th>
<th>Purpose</th>
<th>Case Law</th>
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| 42 U.S.C. § 675 (Fostering Connections to Success and Increasing Adoptions Act of 2008) § 15-11-201 (a) § 15-11-26 (11) GDOE Rule § 160-4-8-.17 Section 1011.7 of DFCS Dependent Care Services Manual 42 U.S.C § 11431 (McKinney-Vento Homeless Assistance Education Act) | Requires that child remains in the same school in which child is enrolled in at the time of removal unless that school is not in the best interest of the child. Fostering Connections expands the definition of dependent care maintenance payments to include reasonable transportation to a child’s school. If child is transferred:  
- School transfer should be immediate and appropriate  
- DFCS notice to receiving school within 5 days of transfer  
- School records request within 10 days  
McKinney-Vento protects children who lack a fixed, regular, adequate nighttime residence. Children who are “awaiting dependent care placement” or living in shelters are eligible for supplemental services funded by this Act. Each school district has a McKinney-Vento liaison who is responsible for determining a child’s eligibility. |

## Access to Educational Records

**Issue:** The transfer of educational records must be immediate in order for educators to properly address the child’s educational needs.

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<tr>
<th>Authority</th>
<th>Purpose</th>
<th>Case Law</th>
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<tbody>
<tr>
<td>20 U.S.C § 1232g; 34 C.F.R. § 99 (Family Educational Rights)</td>
<td>FERPA protects the privacy interests of parents to control access to education records. Child welfare agencies are</td>
<td>Owasso Independent School District v. Falvo, 534 U.S. 426</td>
</tr>
</tbody>
</table>
and Privacy Act, also known as FERPA)

§ 20-2-720 exempted from this rule and allowed to receive records without parental consent through Uninterrupted Scholars Act. It is important to note that not all documents in a school are deemed educational records.

(2002)

### Academic Performance & Early Invention Program

**Issue:** Foster youth are more likely to be retained at least one grade level. Several laws are designed to address a child’s academic progress early in order to prevent poor academic outcomes.

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<tr>
<th>Authority</th>
<th>Purpose</th>
<th>Case Law</th>
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<tbody>
<tr>
<td>20 U.S.C § 6301, Ch. 70, Subch. I, Part D.</td>
<td>Allocates funding to state or local educational agency to improve educational services for dependent youth so they have the opportunity to meet state academic content standards and achievement standards.</td>
<td></td>
</tr>
<tr>
<td>GDOE Rule § 160-5-1.08 (E)</td>
<td>Creates a tiered system called Pyramid of Intervention to identify and assess students who need extra instructional assistance in order to meet performance standards.</td>
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### School Discipline

**Issue:** Foster youth are more likely to be suspended or expelled for negative behavior. The suspension or expulsion may implicate due process rights of the child. Advocates must be aware of the timelines and procedures in order to properly assess and assist children in these matters.

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<tr>
<th>Authority</th>
<th>Purpose</th>
<th>Case Law</th>
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<tbody>
<tr>
<td>School Code of Conduct</td>
<td>Schools must adhere to a progressive discipline policy. LEA shall hold a disciplinary hearing for suspension or expulsion longer than ten school days (targeted violations). Due Process rights include:</td>
<td></td>
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Special Education and similar services

**Issue:** Foster youth are three times more likely to be eligible for special education services. Advocates have a number of tools to help them obtain the proper evaluations for their clients.

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<tr>
<th>Authority</th>
<th>Purpose</th>
<th>Case Law</th>
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<tbody>
<tr>
<td>20 U.S.C. §1414; 34 C.F.R. §§ 300.301-304</td>
<td>Specially designed instruction to meet the unique needs of a child with disability</td>
<td><em>Forest Grove Sch. Dist. v. T. A.</em>, 129 S. Ct. 2484 (2009) (permitting private school reimbursement when a public school failed to provide a free appropriate public education)</td>
</tr>
<tr>
<td><strong>BOE Rule § 160-4-7-.04</strong></td>
<td>Schools are required to identity, evaluate, determine eligibility and place children the least restrictive environment to meet their educational needs (Child Find).</td>
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</tr>
<tr>
<td>§504 of the Rehabilitation Act of 1973</td>
<td>Free Appropriate Public Education (FAPE): All qualified persons with disabilities within the jurisdiction of a school district are entitled to a free appropriate public education.</td>
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<td>Student must be educated in the Least Restrictive Environment (LRE)</td>
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<td>LRE requirement ensures children with disabilities are educated among their non-disabled peers to the maximum extent appropriate.</td>
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<td></td>
<td>Section 504 protects individuals with disabilities from discrimination.</td>
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Post Secondary Opportunities & Transition Planning

**Issue:** Many foster youth age out of foster care without permanency. Advocates can help children properly transition to adulthood through careful and individual planning. Several laws and opportunities operate to transition foster children to adulthood successfully.

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Other Resources

Educational Programming, Assessment, Consultation (E.P.A.C.)
Internal DFCS educational unit responsible for providing comprehensive academic support services focused on improving educational outcomes and academic achievement of children and youth, ages 5 to 17 in the custody of DFCS. E.P.A.C services are supported through TANF funding and are initiated through case manager referrals.

Top Ten Questions Every Attorney Should Ask about Education in Dependency Cases

1. Who has the legal right to make educational decisions for this child? Who is involved in the child’s daily educational activities and decision-making?

2. Does the child have the appropriate supplies/clothing to be successful at school?

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11 See E.P.A.C website available at [https://dfcs.dhs.georgia.gov/epac](https://dfcs.dhs.georgia.gov/epac) & DHS Policy 1011.7.3
3. Did the foster care placement consider the appropriateness and proximity of the child’s home school? Has DFCS released educational information to child’s caregiver?

4. Did DFCS coordinated with local educational supports to ensure a successful transition? Were academic records and credits transferred to the new school?

5. Is the child enrolled in an age appropriate, educationally supportive school setting which meets the child’s educational needs and goals?

6. Does the child have any challenges related to school climate or academic performance? Are these challenges being addressed?

7. Is the child receiving services under IDEA and Section 504?

8. What activities or classes does the child excel at? What efforts are being made to develop the child’s talents?

9. Does the child have a plan addressing post-secondary goals?

10. Is the child aware of his or her educational status and involved in the educational decision-making process?
Overview of Education Discipline Process
Each step represents a place where attorneys can advocate on behalf of children and families.
Look to federal and state law regarding timelines.

**Suspected Disability**
Does this child’s behavior or academic performance indicate a disability that requires specialized services?

**Referral for Special Education Evaluation**
What are the child’s specific educational needs?
What special education services are appropriate to address those needs?

**Eligibility Determination**
Does this child have a disability and eligible for services?

**Individual Education Plan (IEP)**
**Developed**
What accommodations, modifications and supports must be in place to meet this child’s needs?

**Placement**
What is the least restrictive environment in which to educate this child?
Overview of Education Discipline Process
Each step represents a place where attorneys can advocate on behalf of children and families. Look to federal and state law regarding timelines.

Offense
↓
School Removal Pending Hearing
↓
Formal Hearing
↓
Appeal to Local School Board of Education (LBOE)
↓
LBOE Decision
↓
Appeal
↓
Notice to Local Superintendent
↓
Superintendent Transmit to Georgia Board of Education (GDOE)
↓
GBOE Dockets Appeal
↓
Request Oral Argument
↓
Submit Student Brief
↓
LBOE Brief
↓
Oral Argument
↓
GDOE Decision

See Georgia Board of Education Decisions, available at http://www.doe.k12.ga.us
Sample Records Request Letter on Behalf of Parent

[Attorney’s Name]
[Street Address]
[City, State, Zip Code]
[Date]

[Principal]
[School]
[Street Address]
[City, ST, Zip Code]

Re: School Records Request for [child] on behalf of [parent]

Dear [Recipient Name]:

Pursuant to O.C.G.A § 20-2-720, I am writing to request a copy of all records related to [child’s name], including but not limited to,

1. Attendance records
2. Records of tardiness
3. Academic records
4. Discipline records
5. Evaluations
6. IEPs and/or plans and progress reports produced under IDEA and/or Section 504
7. Progress Reports
8. Any other school records regarding student

We request these records within two weeks. The records can be sent to me at [address]. If you want to discuss anything related to this request, please contact me at [phone number]. Thank you for your attention to this matter.

Sincerely,

[Attorney]

Enclosure
Sample school records request on behalf of Child

[Attorney’s Name]
[Street Address]
[City, ST ZIP Code]
[Date]

[Principal]
[School]
[Street Address]
[City, ST ZIP Code]

RE: School Records Request for [child’s name]

Dear [Recipient Name]:

I am writing on behalf of [child’s name] to request a complete copy of the child’s educational records and any documents related to the child’s performance at school. Please send me all educational records including, but not limited to,

1. Attendance records
2. Records of tardiness
3. Academic records
4. Discipline records
5. Evaluations
6. IEPs and/or plans and progress reports produced under IDEA and/or Section 504
7. Progress Reports
8. Any other school records regarding student

The records can be sent to me at [address]. If you want to discuss anything related to this request, please contact me at [phone number]. Thank you for your attention to this matter.

Sincerely,

[Attorney]

Enclosure
Chapter 30  Independent Living and IDEA Transition Services

Contribution by Mary Hermann, JD, CWLS and Judge Cassandra Kirk, JD, CWLS

Independent Living Program or Services 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 participating 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 and they must maintain their eligibility for ILP through participation. After 18 years of age, youth may receive ILP services regardless of whether the youth remains in DFCS custody or has signed out of custody.

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 and found at http://www.abanet.org/child/education/National_EdFactSheet_2008.pdf, reports numerous studies indicating 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 that 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.

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<tr>
<th>Authority</th>
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<tr>
<td>§ 15-11-201(17)</td>
<td>For foster youth 14 years and older, the case plan shall include a determination of the services needed to assist the child in making a transition from foster care to independent living.</td>
</tr>
<tr>
<td>The Foster Care Independence Act of 1999 (FCIA), The John H. Chafee Foster Care Independence Program (CFCIP) (P.L. No. 106-</td>
<td>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 to involve community partners in developing independent living programs for transitioning teens, and establishes a role for the</td>
</tr>
<tr>
<td>169, 113 Stat. 1822), youth in designing their individual transition program.</td>
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<tr>
<td>• Chafee Medicaid – youth must be in DFCS custody on 18th birthday</td>
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<tr>
<td><strong>Promoting Safe and Stable Families Amendments of 2001 (P.L. No. 107-133, 115 Stat. 2413)</strong></td>
<td>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</td>
</tr>
<tr>
<td><strong>Individuals with Disabilities Education Act - IDEA Transition Services (IDEA 2004, P.L. 108-476)</strong></td>
<td>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 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 transition services needed to attain the goals, the child’s participation, and a statement that the child has been informed of rights under Part B that transfer to the child upon reaching the age of majority. (Further details below.)</td>
</tr>
<tr>
<td><strong>O.C.G.A. § 20-3-660 Postsecondary Tuition Grants</strong></td>
<td>Created a program of grants for the payment of post-secondary tuition, ancillary fees, and living expenses for Georgia foster children and adopted children.</td>
</tr>
<tr>
<td><strong>The Fostering Connection to Success and Increasing Adoptions Act (H.R. 6893) 2008, Sections 202 and 202</strong></td>
<td><strong>State Option for Children in Foster Care, and Certain Children in an Adoptive or Guardianship Placement, After Attaining Age 18</strong></td>
</tr>
<tr>
<td>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.</td>
<td></td>
</tr>
<tr>
<td>o Placements for youth 18-21 years include an independent living yet supervised setting, a foster family home or group home.</td>
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</tr>
<tr>
<td>o States may also extend adoption assistance or guardianship payments until 21 years. <strong>Transition Plan for Children Aging Out of Foster Care</strong></td>
<td></td>
</tr>
<tr>
<td>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</td>
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</table>
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.

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.”

In the 90 days prior to the foster youth’s 18th birthday, DFCS case manager, staff and 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. The transition plan is to include specific options on housing, health insurance, education, local opportunities for mentors and continuing support services, and work force supports and employment services.

This window is generally open for six months following an exit from foster care after the youth’s 18th birthday. There may be exceptions to extend this time frame and attorneys or GAL for youth may assist obtaining services for these youth. It is possible to request a post-18 in-court review. The expanded juvenile court jurisdiction is new and practice is evolving on this issue.


http://issuu.com/fosterclub/docs/transition_toolkit

To ensure non-minor dependents remaining in foster care receive the supports and services to help them navigate the transition from foster care to independence.

Expands the definition of “child” to include any individual who is:
- under the age of 22 years and in the care of DFCS or
- under the age of 23 years and eligible for and receiving independent living services through DFCS.
<table>
<thead>
<tr>
<th>§ 15-11-10</th>
</tr>
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<tr>
<td>• Gives the juvenile court exclusive original jurisdiction over juvenile matters and requires it be the sole court for initiating action concerning any child who:</td>
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<tr>
<td>o has remained in foster care after such child's 18th birthday or</td>
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<tr>
<td>o who is receiving independent living services from DFCS after such child’s 18th birthday.</td>
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<tr>
<th>§ 15-11-214</th>
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<tr>
<td>• Allows an order of disposition in a dependency proceeding to continue when a child remains in DFCS care or continues to receive services from DFCS.</td>
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<tr>
<td>• DFCS will not automatically be discharged of obligation or control of children remaining in care or continuing to receive services and the order adjudicating them dependent will not automatically terminate at age 18.</td>
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<tr>
<th>§ 15-11-230(c)</th>
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<tr>
<td>• Review is required every 6 months following the initial permanency plan hearing.</td>
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<tr>
<td>• Court has discretion to schedule any subsequent review hearings as necessary.</td>
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<tr>
<td>• The juvenile code does not identify a specific time frame for the “over 18 review.” However, as there is no parental compliance with case plans to review, the review period seems to most closely correspond to the post-TPR review and nonreunification review. Those reviews are set by statute to occur every 6 months. §§ 15-11-230(c), 15-11-322.</td>
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<tr>
<th>Time Limits</th>
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<tr>
<th>§ 15-11-108(a)(3)</th>
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<tr>
<td>• As a periodic review hearing, the court shall give all parties written notice of the date, time, place, and purpose of the hearings.</td>
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<tr>
<td>• Written notice shall be delivered to the recipient at least 72 hours before the hearing or review by United States mail, e-mail, or hand delivery.</td>
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<tr>
<th>§ 15-11-202(b)</th>
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<tr>
<td>• Type of RE based on child's health and safety, which is of “paramount concern.”</td>
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<tr>
<th>§ 15-11-202(c)</th>
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<tr>
<td>• Appropriate services to meet the needs of the child may be provided by DFCS or in the community.</td>
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<tr>
<th>§ 15-11-202(d)</th>
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<tr>
<td>• The court shall review the appropriateness of DFCS's RE at each stage of the dependency proceedings.</td>
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<th>§ 15-11-202(e)(3)</th>
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<tr>
<td>• DFCS has the burden of demonstrating that it has made reasonable efforts to finalize an alternative permanent home for a child adjudicated as a dependent child.</td>
</tr>
<tr>
<td>• Subsection (A) includes the option of the court making a finding of</td>
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reasonable efforts based on the elimination of the need for removal from home and efforts to reunify the child with family at the earliest possible time. These may remain relevant considerations at the over 18 review.

<table>
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<tr>
<th>§ 15-11-201(b)(16)</th>
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<tr>
<td>For children remaining in the care of DFCS past their 18th birthday, 90 days before their planned exit from DFCS care, DFCS case manager and staff and, as appropriate, other representatives of the child must provide assistance and support in developing a transition plan.</td>
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<tr>
<td>The plan is:</td>
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<tr>
<td>o personalized at the direction of such child</td>
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<td>o as detailed as the child elects</td>
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<td>o includes specific options on:</td>
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<tr>
<td>▪ housing</td>
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<tr>
<td>▪ health insurance</td>
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<td>▪ education</td>
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<td>▪ local opportunities for mentors and continuing support services</td>
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<td>▪ work force supports and employment services</td>
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<tr>
<th>§ 15-11-103</th>
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<tr>
<td>A child and any other party shall have the right to an attorney at all stages of the proceedings.</td>
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<tr>
<td>Child’s attorney should be appointed “as soon as practicable to ensure adequate representation” and before the first hearing that may substantially affect the interests of the child.</td>
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<tr>
<td>o Child attorney has “attorney-client” duty.</td>
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<tr>
<td>o Child attorney representation continues through appeals or until excused by court.</td>
</tr>
<tr>
<td>o Child’s right to attorney cannot be waived.</td>
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<tr>
<td>If an attorney has been appointed to represent a child in a prior proceeding, the court, when possible, shall appoint the same attorney to represent the child in any subsequent proceeding.</td>
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<tr>
<th>§ 15-11-10</th>
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<tr>
<td>At the review, the court’s jurisdiction is limited to review of:</td>
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<tr>
<td>o the status of the child and</td>
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<td>o the services being provided as a result of the child's independent living plan or status as a child in foster care.</td>
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<th>§ 15-11-201</th>
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<tr>
<td>In order to conduct the review, in addition to the child or child’s representative, the court requires:</td>
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<tr>
<td>o the document which confirms the non-minor dependent’s (child’s) status as either (1) remaining in foster care or (2) receiving independent living services</td>
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<tr>
<td>o the current case plan or written transition living plan</td>
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<td>o information about the child’s</td>
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- services (provided by or funded by DFCS, e.g., individual counseling, substance abuse counseling, independent living, skill building)
- supportive services (community based, e.g., mentor, other adult relationship)
- income (Title IV-E maintenance payments, accrued Social Security Income benefits, establishment and maintenance of child’s individual development account)
- living arrangement or placement (will child remain in home state; if not, will move change status)
- education
- employment, vocational training or job placement services
- status of the child’s mental and physical health
  - Medicaid remains active and available for the child to meet needs
  - Additionally, courts need to be aware of the federal requirements and options available under The Chaffee Foster Care Independence Act and the Fostering Connections to Success Act.

21 THINGS YOU MUST DO BEFORE YOU LEAVE FOSTER CARE

www.georgialp.org

1. Test your Life Skills. Take the Ansell Casey Life Skills Assessment (ACLSA). This assessment will help you see where your strengths and needs are when it comes to skills for living on your own. All ILP eligible youth must take an ACLSA assessment at 14, 16, and 17 1/2. Contact your IL Coordinator or caseworker for more details.

2. Join the Independent Living Program (ILP). Want FREE help applying for college, finding financial aid, getting scholarships, landing a job, and learning skills for life after foster care? How about some MONEY for renting your first apartment? Then the Independent Living Program (ILP) is for you! It’s designed to help youth prepare for life on their own after foster care. To find the local ILP near you, check out our website www.georgialp.org and search for your region or your county listings.


4. Get Solid: Understand What Permanence is about...and get it if you can. You may have heard the word “permanence,” but do you know what it is? Can you list the five types of permanency? Talk to your caseworker and find out what your permanency plan is (every youth should have one), or visit www.fosterclub.com.

5. Surround yourself with a safety net. Make a PACT with Supportive adults. Youth who are successful when they transition out foster care have one thing in common: they have supportive adults in their lives who they can count on. Talk to a supportive adult in your life.
about a PACT. Learn more at www.fosterclub.com.

6. Find out about Chafee. You may be eligible for assistance for paying for rent or other costs associated with living on your own. Talk to your caseworker, IL Coordinator or visit www.georgiailp.org.

7. Get a rental reference from your foster home. Consider creating a rental agreement with your foster home or group home for the last few months you’re in foster care. If you are a good tenant, they could provide a reference for your first apartment. A reference can provide information about on-time rent payments, cleanliness, and respect for the property and other tenants.

8. Secure a place to live, have a backup plan. Transitioning out of foster care to homelessness is never a good idea. Homelessness includes living in your car, camping, and even sacking out on a couch at a friend’s house. There’s plenty of help in locating housing, but you have to do some of the legwork. Talk to your caseworker, and your IL Coordinator.

9. Get your social security card and birth certificate. These personal documents can be particularly hard to get if you wait...Ask your caseworker to provide you with own ORIGINALS of these items before you leave care.

10. Get a state-issued photo-ID. You’ll need photo ID for lots of things when you are living on your own: to rent an apartment, get a job, travel on an airplane, and much more. Even if you don’t have a driver’s license, make sure you get state-issued identification.

11. Get a copy of court documents that prove you were in care. You may need this proof to quality for special benefits, such as scholarships and financial aid for higher education.

12. Open a bank account (and savings too). If possible, open a bank account EARLY (at least a year before you leave foster care) so that you have time to practice money management (it can be surprisingly tough!). Georgia’s ILP has an Individual Development Account Program (IDAs) for youth between the ages of 14 and 21, who are or have been in foster care in the state of Georgia. Money that youth save and deposit in their IDA account can be matched at a rate one-to-one, up to $1,000. To learn more about the IDA, please contact your ILP Coordinator.

13. Save Money. Most young adults are taken by surprise by the cost of living on their own. Have an adult help you work out a monthly budget for life after foster care. Try to save enough money to cover three months of the budget, plus the move-in cost for your first apartment.

14. Get a high school diploma or GED. Once you’re on your own, it can become very difficult to concentrate on school because you’ll be busy making money to pay your way. Try to finish getting your GED or High School diploma while you’re still in foster care- before you pile on all the extra worries of supporting yourself.

15. Find out about money for higher education. The federal government has handed down millions of dollars for scholarships and Educational Training Vouchers (ETV) for foster youth! Best of all, in most cases this money can help pay for a Trade or Vocational School, housing, transportation, books, fees and other costs related to your education. Find out how to access this money in your region or county by visiting www.georgiailp.org.

16. Get a job. This one’s a no brainer; of course you need a job before you set out on your own! Getting a job can be tougher than you think. Even if you are receiving funds from other government sources, no one is really self-sufficient until they earn their own living. It’s best if you can gain work experience while you are still in care.

17. Get medical coverage. See a doctor. Before leaving care check with your caseworker or your IL Coordinator to find out about Chafee Medicaid. If you will be losing your health coverage, make sure you see a doctor for a check-up before you leave care. Make sure all your
shots are up to date and that you are in the best health you can be in.

18. Get mental health coverage. See a therapist before leaving care. Youth transitioning from foster care may be eligible for mental health coverage. If you will be losing your mental health coverage, you may want to see a counselor before you leave care and get help coping with the stress and anxiety most youth have when transitioning out of foster care.

19. Take daily living skills classes. Get set for adulthood by learning skills for life after foster care. Get with your local ILP Coordinator or caseworker about classes offered. Check out the ILP website to find classes within your region at www.georgiailp.org. Or ask your foster parents to work with you on life skills (they can download an entire book of ideas called Ready, Set, Fly! at www.caseylifeskills.org).

20. Build an independent living portfolio. Keep a professional portfolio containing the following: complete sample job application and apartment rental application, resume, education records, awards and achievements, and copies of personal documents. For ideas, check out the FYI binder at www.fosterclub.com or contact your IL Coordinator for a Transition Packet.

21. Find out if you can stay in care until you're 21. You may have a lot to gain. What do you have to lose? You may want to make a list of the pros and cons of staying in care or leaving. If you take a close look, you may just find out that there are many advantages to staying in care. If you prove your maturity and readiness, you may even be able to live on your own while you are in foster care – talk to your caseworker, IL Coordinator or Judge.
### i. Independent Living Chapter 1012

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<td>Individual Development Accounts (IDA)</td>
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<td>Credit Reports for Youth in Care (Place Holder)</td>
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<td>Chafee Medicaid and Georgia Advance Directive for Health Care</td>
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<td>1012.9</td>
<td>National Youth in Transition Database (NYTD)</td>
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<td>Youth who Request Services Beyond Age 21</td>
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<td>Youth in Care Obtaining a Lerner’s Permit</td>
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<td>1012.13</td>
<td>Youth in Care Owning a Motorized Vehicle</td>
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**FORMS**
- Transition Living Supportive Services 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
- Georgia Advance Directive for Health Care (GADHC)
- Transition Roundtable (TRT) Forms
- WTLP Roundtable Action Plan
- TRT Youth Presentation Outline
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
WTLP Cheat Sheet
14 Year Old Check List
15.16 Year Old Checklist
17 Year Old Checklist
For more resources for Independent Living please visit our website at www.georgiailp.org

POLICY TITLE: Independent Living Program Eligibility and Enrollment

POLICY NUMBER: 1012.1

CODES
O.C.G.A. Section 15-11-5(o)
O.C.G.A. Section 49-5-7

REQUIREMENT
The Division of Family and Children (DFCS) will determine the eligibility of all youth ages 14-21, for the Independent Living Program (ILP), based on the following criteria:
Youth deprived by a Georgia Court, who is or was in the temporary or permanent custody of DFCS for at least 6 months\(^\text{12}\), or the youth is/was dually adjudicated\(^\text{13}\) and;
Youth is a citizen or a permanent legal resident of the United States, and a legal resident of Georgia.
NOTE: Services will be discontinued if the youth does not obtain the Special Immigrant Juvenile Status\(^\text{14}\) by their 18th birthday.
Independent Living Services include the following:
Educational and Life Skills Supportive Services

\(^{12}\) The six months is noncontiguous time. For example: the youth was in care for 3 months when he was 5 and then for 2 months at age 9 and finally for 1 month at age 14. This youth would meet the six month requirement. **All eligible youth must be in care at some point on or after their 14th birthday**, but could accumulate the six months prior to turning age 14 and be eligible for aftercare services.

\(^{13}\) A youth is dually adjudicated if he or she is in the legal custody of DFCS and is receiving services though the DJJ.

\(^{14}\) Special Immigrant Juvenile Status allows youth who are in DFCS custody and are under age 21 to become lawful residents.
Tutoring  
College Workshops/tours  
General Education Diploma (GED) Support  
Applying for Financial Aid for Post Secondary Education  
Money Management and budgeting  
Establishment and maintenance of bank account  
Career Preparation skills  
Meal preparation and nutrition  
House/Apartment search  
Post Foster Care Resources (see policy 1012.8)  
Transitional Living Supportive Services  
Emergency Financial Assistance  
Education and Training Vouchers

DFCS will enroll youth in the Independent Living Program (ILP) within 15 days of the youth meeting eligibility criteria.

PROCEDURE  
The Social Services Case Manager (SSCM) will  
Determine ILP eligibility of youth within five (5) working days of a youth in foster care turning 14, or a youth ages 14-17 entering foster care.  
NOTE: If youth is deemed ineligible due to length of time in foster care, eligibility must be reviewed again within 6 months of entry into care.

Refer all youth for ILP within 15 work days of their eligibility:  
Assign the Independent Living Specialist 15 as the secondary worker in SHINES;  
Update the Youth Detail page in SHINES with the following information: Tribe status, Casey Life Skills, Adjudicated Delinquent, Education information, other current information;  
Generate the Youth Detail Report Page in SHINES;  
Review and update SHINES with the youth’s adjudication, placement, education, health, and/or employment information;  
Ensure that the youth has a current court approved case plan;  
Assist the youth in completing the Casey Life Skills Assessment with the (see Policy 1012.2 Casey Life Skills Assessment);  
Engage youth for and participate in the development of their Written Transitional Living Plan (WTLP) (See policy 1012.3 Written Transitional Living Plan);  
Refer the youth to an ILP Orientation. (Information can be accessed at www.georgailp.org.)  
After a youth is enrolled in ILP,  
Communicate the ongoing needs of the youth with the Independent Living Specialist to ensure that they receive the most appropriate services.  
Encourage and monitor youth’s participation in identified services as well as their attendance to the ongoing ILP workshops.

15 Both the Independent Living Specialist of the legal county and the county of residence should be assigned as secondary workers in SHINES. The assigned boarding county ILS shall coordinate service delivery and payments for the youth. Services should be accessed in the county of residence.
NOTE: If the youth is placed in a Child Caring Institution (CCI), that is contracted to provide teen development, independent living services, and or transitional living services, coordination of services should involve the appropriate CCI staff persons.

The Independent Living Specialist will:
Upon receipt of a referral for a youth in care for ILP services:
Review the youth’s adjudication, placement, education, health, and/or employment information;
Review the youth’s foster care case plan;
Collaborate with the SSCM to:
Work with the youth to complete the Casey Life Skill Assessment; and
Participate in the development of the Written Transitional Living Plan (WTLP) with the youth. (See policy 1012.3 Written Transitional Living Plan).
Ensure the youth is receiving the most appropriate services based on their needs.
Encourage and monitor the youth’s participation in the ongoing ILP workshops.
When requested, enroll eligible youth who were previously in foster care:
Accept all requests from youth ages 14-21 and determine their eligibility;
Assess eligibility within five days of request:
Gather the following information for the youth requesting services:
Name and Date of Birth (DOB);
Contact information for youth (address, phone number, etc.); and
Deprivation information (date youth entered and exited foster care and county that held custody).
Review case information in Georgia SHINES or IDS (only if youth was deprived in Georgia).
If eligible, determine the type of independent living services being requested and assess availability;
Enroll eligible youth:
Reopen the case as a Post Foster Care Stage in SHINES.
Provide requested support and services in meeting the youth’s ILP needs.

PRACTICE GUIDANCE
Independent Living Program
The mission of the 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.

John Chafee Foster Care Independence Program
The Division of Family and Children Services adopts the standards of the John Chafee Foster Care Independence Program. The purpose of the program is to:
Identify children who are likely to remain in foster care until 18 years of age and to help these children make the transition to self-sufficiency by providing services such as assistance in obtaining a high school diploma, career exploration, vocational training, job placement and retention, training in daily living skills, training in budgeting and financial management skills, substance abuse prevention, and preventive health activities (including smoking avoidance, nutrition education, and pregnancy prevention)
Help children who are likely to remain in foster care until 18 years of age receive the education, training, and services necessary to obtain employment;
Help children who are likely to remain in foster care until 18 years of age prepare for and enter post-secondary training and education institutions;
Provide personal and emotional support to children aging out of foster care, through mentors and the promotion of interactions with dedicated adults;
Provide financial, housing, counseling, employment, education and other appropriate support and services to former foster care recipients between 18 and 21 years of age to complement their own efforts to achieve self-sufficiency and to assure that program participants recognize and accept their personal responsibility for preparing for and then making the transition from adolescence to adulthood; and
Make available vouchers for education and training, including postsecondary training and education, to youths who have aged out of foster care.

Georgia’s ILP provides an array of resources and opportunities for eligible youth to maximize their potential and achieve successful transition into adulthood. “What are My Options?” is a guide that should be utilized to provide youth with information about ILP and services offered.

Disabled Youth
Youth that have physical or mental impairments who meet eligibility requirements must be provided Independent Living Services. The youth’s Written Transitional Living Plan (WTLP) must include information regarding the youth’s disabilities and what individualized services are needed. Depending on the needs of the youth these services may be accessed through agencies specializing in this area. The Independent Living Specialist in conjunction with community agencies and organizations will provide services to the disabled youth to ensure their individualized needs are addressed as outlined in their WTLP.

Youth Awaiting Services
The Social Service Case Manager (SSCM) should assist youth in connecting with community resources while awaiting verification of eligibility for ILP services.

ICPC Youth
Youth under the age of 18, who were in the custody or adjudicated dependent by another state and relocates to Georgia through Interstate Compact for the Placement of Children (ICPC) are the financial responsibility of the state from which they were deprived. The depriving state is responsible for funding independent living services, case planning and all maintenance payments for the youth. Coordination of services to youth that meet this definition must be done through the State ICPC Office.

Special Immigrant Juvenile Status
Georgia Security and Immigration and Compliance Act (GSICA) provide regulations concerning immigrants in Georgia who do not have a lawful US immigration status. It is unlawful for the agency to provide federal, state, or local benefits to undocumented immigrants. These regulations directly impact and apply to youth who reach age 18 and older that are discharged from foster care; therefore the agency shall make all efforts to ensure that youth receive a Special Immigrant Juvenile Status (SIJS) prior to their 18th birthday. This planning should occur once a
youth is identified to have an unlawful status as the application process can take up to 2 years to process and finalize.

Incarcerated Youth
Youth that are incarcerated in juvenile detention facilities (e.g. RYDC, YDC) or county jails can receive educational services such as the completion of a General Education Diploma (GED). To assist youth in continuing to work towards independence and the completion of the goals outlined in their WTLP, the SSCM will determine the services offered by the county jail or juvenile detention facility. If a youth is incarcerated in a county jail, the SSCM will contact the jail or the county’s sheriff’s office. If a youth is incarcerated in a juvenile detention facility, the SSCM will contact the facility or the Georgia Department of Juvenile Justice. These facilities often have a counselor or case manager assigned to the youth; collaboration with these individuals can assist in developing the appropriate plan for the youth while being detained. The WTLP should be amended to reflect the available services that the youth can participate in and the responsible parties for implementation and monitoring.

REFERENCE
What are My Options?
Georgia Independent Living Program, www.georgiailp.org
Georgia Security and Immigration Compliance Act
United States Citizen and Immigration Services, www.uscis.gov
Service Needs of an Immigrant Child 1011.21
Georgia Department of Corrections, www.dcor.state.ga.us
Georgia Department of Juvenile Justice, www.djj.state.ga.us

SHINES TIPS

POLICY TITLE: Casey Life Skills Assessment (CLSA)
POLICY NUMBER: 1012.2

CODES

REQUIREMENT
The Division of Family and Children Services (DFCS) will utilize the Casey Life Skills Assessment (CLSA) to assess the life skills, strengths and vulnerabilities of youth enrolled in the Independent Living Program (ILP).

DFCS will administer the CLSA to youth enrolled in ILP within 30 days of:
Initial eligibility of youth ages 14-17, and
Youth reaching age 16, and 17.5.

DFCS will utilize the results of the CLSA to assist in the development of goals and steps for the youth’s Written Transitional Living Plan (see policy 1012.3 Written Transitional Living Planning (WTLP).
PROCEDURE
To complete the CLSA, the Social Service Case Manager (SSCM) will:
Conduct a face-to-face meeting with the youth and his or her caregiver to discuss the assessment process;
Access the website
www.caseylifeskills.org/index.htm and review the assessment with the youth and caregiver;
Have the youth complete the assessment online at www.caseylifeskills.org/index.htm or on a hard copy (paper) version;
NOTE: The SSCM should assess the youth’s ability to complete the CLSA with minimal guidance. If the youth can complete this task independently, provide the youth’s caregiver with information to ensure the youth’s completion of the task.
Review the assessment results and determine with the youth, the appropriate steps, goals, and services needed to be included in the WTLP;
Go to the Youth Detail Report page in SHINES and select “yes” for the completion of the CLSA;
Ensure that all ongoing CLSA are completed at the identified timeframes (age 16 and 17.5) or based on the specific needs of the youth.

PRACTICE GUIDANCE
Casey Life Skills Assessment
The Casey Life Skills Assessment (CLSA) tool was developed by the Casey Family Programs (Casey) from 1994-2000 as a tool for child welfare to assess life skills of youth. The CLSA is not an exhaustive list of all the skills one needs to live on one’s own, rather, it provides an indication of skill level and readiness for living on one’s own. The assessments are designed as the first step in preparing youth to live independently. Other steps include goal setting, action planning, instruction, learning, and application, followed again by assessment to measure progress.

The life skills assessments provide instant feedback with customized learning plans; these plans provide a clear outline of next steps.

The Casey Life Skills Assessment must be administered upon the youth’s entry in foster care and at ages 14, 16 and 17½; the assessment will be used as a basis for the goals of the Written Transitional Living Plan (WTLP). The CLSA may be used more frequently as the WTLP is updated or based on the individual needs of the youth. Additionally, the assessment can be used to as a post assessment for when a youth has demonstrated mastery of a skill.

The Casey Life Skills Assessment may be accessed online at www.caseylifeskills.org or by enrolling youth into a regional Independent Living Orientation where the assessment will be administered by the Independent Living Specialist. To administer or complete the assessment, follow directions on the website.

For detailed information on how to complete the CLSA visit www.georgiaiplp.org or www.caseylifeskills.org.

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REFERENCES
John Chafee Foster Care Independence Program (Foster Care Independence Act of 1999, PL 106-169)
List of Independent Living Coordinators by Region, www.georgailp.org
For instructions on completing the CLSA visit www.georgailp.org.

POLICY TITLE: Written Transitional Living Planning

POLICY NUMBER: 1012.3

CODES
Foster Care Independence Act of 1999, P.L. 106-169
Fostering Connections to Success and Increasing Adoptions Act of 2008, (P.L.) 110-351
O.C.G.A. § 15-11-58

REQUIREMENT
The Division of Family and Children Services (DFCS) will develop a Written Transitional Living Plan (WTLP) within 30 days of a:
Youth in foster care 14th birthday; or
Youth age 14-17 entering foster care.
NOTE: For youth (18 and older) requesting to return to care through Extended Youth Support Services (EYSS), a WTLP shall be developed within 30 days of the youth signing the Consent to Receive Extended Youth Support Services.

DFCS will ensure that the WTLP is amended and revised when:
Additional needs are identified;
Goals are achieved;
A Court orders new recommendations;
At the minimum every 6 months;
A youth reaches age 16 and 17 ½ upon completion of the Casey Life Skills Assessment, if new needs are identified;
90 days prior to the youths 18th birthday; and
90 days prior to the youths exit from foster care.

DFCS SSCM will incorporate the WTLP into the case plan, for youth in DFCS temporary or permanent custody, for the purposes of review and approval by the juvenile court.

DFCS will ensure that the results of the Casey Life Skills Assessment are incorporated into the development of the WTLP.

DFCS will utilize the Youth Centered Family Team Meeting (FTM) as a forum to develop and implement the youth’s WTLP, with the exception for those youth with the permanency plan of Another Planned Permanent Living Arrangement (APPLA).
NOTE: The Youth Centered FTM may be incorporated into an existing planned FTM.

17 Fostering Connections Acts requires that youth are assisted in developing a transition plan (WTLP) 90 days prior the date in which the youth will attain 18 years of age and their eventual exit from foster care.
DFCS will utilize the Transition Roundtable (TRT) as a forum to develop and implement the WTLP for all youth with a permanency plan of APPLA; and, to develop and implement the transition plan for youth in care at ages 17, 17.5 and 90 days prior to the youth’s 18th birthday.

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.

PROCEDURE
For youth who are in the temporary or permanent custody of DFCS or are receiving Extended Youth Supportive Services, the Social Service Case Manager (SSCM) will:

Coordinate a Youth Centered Family Team Meeting (FTM) or a Transition Roundtable (TRT) to;
Review the results of the Casey Life Skills Assessment;
To identify services and supports to assist youth in meeting identified goals;
Identify services and supports to assist the youth with transition planning, as appropriate based on the youth’s permanency plan (see Practice Guidance on Transition Planning); and
Develop youth’s Written Transitional Living Plan (WTLP).
Ensure that the youth identifies individuals for support to attend FTM/TRT;
Ensure that the following individuals, at the minimum, are invited to participate in the FTM;
Youth;
Parents/Caregivers;
Resource parents;
SSCM;
Independent Living Specialist;
Service providers;
Family members; and
Other committed individuals.
If a TRT is being held, ensure that the following individuals at a minimum is invited to participate:
Youth;
SSCM;
Youth identified permanent connections or supports
Independent Living Coordinator;
Permanency Expediter (as needed);
Regional Adoption Coordinator (as needed)

NOTE: Participation in the youth centered FTM/TRT is based on who is currently in the youth’s life or individuals who the youth would like to be included in the team.
Ensure that the WTLP;
Provides individualized steps and identifies the parties responsible (e.g. youth, parent/caregiver, placement provider, SSCM, ILC,) who will support the youths transition to independence;
Is documented in SHINES within 72 hours;
Is reviewed and finalized (signature) by the youth and all responsible parties; and

18 Youth Centered Family Team Meetings should be conducted by a trained FTM facilitator.
Is provided to the youth, parent/caregiver, and placement provider. Review the WTLP with the youth;
At least every 6 months and prior to each case review if the youth is in the temporary or permanent custody of DFCS; and
At least every 6 months for youth ages 18-21 who are receiving Extended Youth Supportive Services (see policy 1012.6 Extended Youth Supportive Services.

For youth in the temporary or permanent custody of DFCS, the SSCM will establish juvenile court approval of the WTLP by:
Submitting the WTLP with the case plan to juvenile court:
Within 30 days of entering care
For review at the Adjudication Hearing; documentation of approval decision should be included in the youth’s Final Disposition Order.
At Citizen Panel or Judicial Review.
For review by the Citizen Review Panel or judge at Judicial Review; documentation of approval decision of WTLP goals should be included in the youth’s Supplemental Order.
At any time a goal or step has been amended.

When emerging needs are identified, goals on the WTLP are achieved, or new services are court ordered, the SSCM or ILC will:
Initiate a youth centered FTM following steps 1-3.
Assist in the development of amended WTLP following step 4.
Incorporate recommended changes into the WTLP in SHINES within 72 hours.

The DFCS SSCM will update all case changes (e.g. address, placement, case plan goals, WTLP) in SHINES within 72 hours of change to facilitate the coordination of services between the SSCM and ILC.

PRACTICE GUIDANCE
Adolescence is a time of preparation for the future. Many adolescents leaving foster care have significant difficulty making a successful transition to adulthood. Congressional findings indicate that “children aging out of foster care show high rates of homelessness, non-marital childbearing, poverty, and delinquent or criminal behavior; they are also frequently the target of crime and physical assaults”19. The John H. Chafee Foster Care Independence Program, hereafter referred to as Georgia’s Independent Living Program (ILP), was created to support youth that are vulnerable to these conditions.

Youth Centered Family Team Meeting
A youth centered Family Team Meeting (FTM) is a gathering of family members, friends, members of the youth’s community support system, faith based supports and professionals who join together to develop individualized plans to ensure the youth has permanent connections, and strengthen the youth’s capacity to transition to self sufficiency. The FTM is often the forum in

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19 42 USC 677
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 permanent connections, 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).

Transition Roundtable
A transition roundtable fully engages the youth in the planning process to ensure successful transition planning at ages 17, 17.5, 90 days prior to the youth’s 18th birthday, and 90 days prior to the youth’s exit from care. The TRT jointly develops specific plans to address permanent connections, housing, health insurance/health needs, education, job skills, independent living skills, and designs services and identify supports as defined by the Fostering Connections Act. Prior to the transition roundtable, youth should participate in a Preparation Meeting and should be encouraged to identify significant people in their lives or permanent connections who can participate in their meeting. The location of the TRT should be convenient for the youth and their supportive partners.

http://www.fosteringconnections.org/resources/sections?id=0005

Identifying Youth Centered FTM/TRT 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 the youth, foster parents, relatives, biological parents, teachers, bus drivers, mentors and others. 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, and Nesmith, 2001; Courtney and Barth, 1996; Jones and 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 Children’s Bureau) www.nrcys.ou.edu/.../youthfocus_permacy.doc

Reviewing/Amending the WTLP
The SSCM should review the WTLP with the youth at every visit as required by Every Child Every Month. The youth and other relevant parties should be engaged about their support to complete the identified goals and steps outlined in the WTLP. As goals are completed or needs are identified, the WTLP should be amended.

The following example would require amendment of the WTLP; a youth’s grades decline dramatically and as a result it is recommended that the youth participate in tutoring to improve grades. To amend the WTLP to reflect this identified need the SSCM will:
Engage in a discussion with the youth regarding the identified problem area; and
Engage in a discussion with other relevant individuals regarding the identified area of concern.
Amend the WTLP through convening a FTM or TRT.
Obtain appropriate signatures and submit the WTLP to the juvenile court for approval.

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 Independent Living Specialist 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 and 90 days prior to their exit from foster care. The transition plan, which is the WTLP 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:

Housing;
Health
Physical health, mental health, and dental health needs;
Discuss with the youth the importance of the youth designating another individual to make health care related decisions on his or her behalf if the youth is unable to participate in such decisions and the child does not have, or does not want, a relative who would otherwise be authorized under State law to make such decision. Provide the youth with the option to execute a health care power of attorney, health care proxy, or the Georgia Advanced Health Care Directive (GADHC) (see 11.7 Chafee Independence Program Medicaid).

NOTE: Youth are not authorized to execute or consent to the Georgia Advanced Health Care Directive until they achieve the age of 18.

If at 18 or older the youth executes the GAHCD, the SSCM or ILC shall upload the document in SHINES and instruct the youth to keep the document in a secure location with other important documents.

Health Insurance;
Education;
Life Skill Development
Individuals to support youth (life long connections);
Work force/employment services;
Documents (Social Security Card, Birth Certificate, etc.), and
Other details as requested by the youth.

REFERENCES
FORMS
WTLP
Case Plan Goals and Steps
WTLP Guide

21 Things You Must Do Before You Leave Foster Care
Fostering Connections to Success and Increasing Adoptions Act of 2008
Georgia Advanced Directive for Health Care (GADHC)
Permanency Pact (www.fosterclub.org)
Transition Roundtable (TRT) Forms
ILP Transition Toolkit (www.fosterclub.org)
14-Year Old Checklist
POLICY TITLE: Individual Development Accounts (IDA)

POLICY NUMBER: 1012.4

CODES

REQUIREMENT
The Division of Family and Children Services (DFCS) will provide the opportunity to participate in an Individual Development Account (IDA) program to eligible youth (See policy 1012.1 ILP Eligibility and Enrollment) age 16 to age 2120 who request this service, as funding permits.

The DFCS IDA program assists eligible youth in foster care or transitioning from foster care to accumulate assets. The IDA helps ensure that these youth have the resources needed for independent living.

The IDA is established at a financial institution within the community. The youth may deposit funds into the account and the funds are MATCHED by ILP (Up to $1000). For example, if youth receive a 1:1 match, each time the youth deposits $25, youth will get an additional $25 toward their savings goal. Through Financial Literacy classes the youth learn will learn about financial issues, maintain working budgets and establish relationships with mainstream financial institutions. Additionally, youth will learn how to reduce debt, develop a savings plan and prepare a savings goal. Youth may also learn about credit history, banking and investing and money management.

NOTE: The IDA account is opened in the name of the youth, and earns interest, usually at the bank’s savings rate.

PROCEDURE
The DFCS SSCM and/or ILC shall inform eligible youth of the benefits of the IDA program and encourage their participation.

Orientation
Youth shall be scheduled to attend the IDA Orientation21

NOTE: For youth who cannot attend the orientation, a schedule of upcoming courses is provided to them.

Orientations are held and facilitated by the ILS and/or community partners.

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20 Youth age 21 and above are not eligible for services.

21 Orientation can be done during the first financial literacy session at the discretion of the ILS and/or IDA Program Coordinator.
The basic financial literacy training course facilitated by the ILS and/or community partners takes place immediately following orientation for the group so that a youth can expeditiously begin program enrollment.

At the orientation, the ILS and/or community partner:
Discusses the application process and asks the youth if he/she has a government photo ID card.
Ensures the youth understands the program and how it works.
Ensures the youth understands their commitment to save.
Lay out expectations regarding financial literacy training.
Discuss the CHEX system. For youth who are in the CHEX system for having a negative banking record, this obligation has to be cleared before a youth can enroll. The youth must attend a special class offered by the bank to clear this up.
Explain that ILP will seed the account $100 upon a youth successful completion of the basic financial literacy training to get it started once the youth opens the account and after the youth completes the baseline survey.
Discuss account specifics, such as the amount and frequency of deposits, desired goal amount (maximum), purpose of the account, matching fund ratio, authorized withdrawal purposes, and beneficiary information.
In order to complete the orientation process, the youth must:
Complete the application, including providing a government photo ID card. NOTE: IDAs may be offered for a single goal. (see Practice Guidance regarding IDA Asset Goals)
Agree to attend the basic financial literacy training course (usually occurs immediately following orientation).
Agree to go to the bank within a certain period of time to open the IDA account.
Sign an agreement to participate in the Georgia ILP IDA program.

ENROLLMENT
The youth is officially enrolled once a youth:
Completes basic financial literacy training
Open a IDA account at the bank
Informs the ILS that they have completed requirements and provides the IDA account number to the ILS and the State IDA Coordinator.

The State IDA Coordinator will:
Communicate with the bank to verify IDA account number.
Enter the required information into the Management and Information System.
Assign a Survey ID to the youth so they can participate in the Opportunity Passport Baseline Survey.

EMERGENCY WITHDRAWALS
Youth can make requests to withdraw funds for an emergency from their IDA. NOTE: When withdrawals are made for purposes that aren’t allowable under guidelines, the withdrawals are not matched.
The following procedure is followed for emergency withdrawals.
A youth contacts the ILS to discuss the emergency.
In most cases an emergency withdrawal is completed with the youth over the phone.
Emergency withdrawals can be approved for day to day living expenses that matched withdrawals are not approved for. These could include but are not necessarily limited to: rent, food, bills, prescriptions for youth or youth’s child, clothing for school or work, etc. Efforts are made first to help youth find other resources to meet these needs if possible, to reduce unmatched withdrawals. (The ILS should discourage youth from withdrawals for bills that are not in the youth’s name.) Sometimes youth want to make withdrawals for purchase of entertainment equipment, details for auto and other items that are actual wants and not needs—the ILS discourages these types of withdrawals by reminding the youth of the commitment to saving. However, in the end the money belongs to the youth. The youth needs to identify if they plan to stay in the IDA program or if they wish to completely exit the program. If a youth exits the IDA program, they are not eligible to re-enter the program for a period of at least 1 year. Once the form is complete, approval is given (documented in writing by the ILS) for the youth to withdraw their money.

CLOSING AN ACCOUNT AND EXITING PROGRAM PARTICIPANTS
ILP encourages all enrolled youth to participate to the fullest extent possible in the program. However, some participants are unable to continue or are uninterested in continuing the program for a variety of reasons. In order to allow as many youth as possible to actively participate, ILP will periodically review savings activity and attempt to identify those youth who are no longer actively engaged in the program. Those youth will be removed from the roll and their slots will be opened to new participants, based upon funding availability related to seeding and matching funds. The following guidelines will be used to identify inactive youth:
Accounts with no deposit, excluding seed funds, since the account was opened.
Accounts with a balance of less than $100 and no deposits in the last year.
Accounts with balances of $100 or more with no deposits in a year or more.
Accounts where the ILS is unable to locate the participant.

Steps to close account include:
Mail a letter informing participants of their account status.
Offer participant an opportunity to contact the ILS and/or State IDA Coordinator within a reasonable period of time to discuss the account.
Keep a copy in the participant’s file.
In the event a participant wants to exit the program or does not respond, update the records.
File all correspondence into participant’s file.

REQUIREMENTS TO MATCH OUT
In order for youth to have their saving matched, the following requirements must have been met.
Youth has an IDA for a minimum of 3 months.
The value of the IDA is a minimum of $250
Youth actively saved a minimum of $5/monthly for 3 consecutive months
Youth completed basic financial literacy training
Youth completed asset specific training.
PROCEDURE TO MATCH OUT
When a youth is prepared to close their IDA as a result of meeting their savings goal, the following procedure is followed.
Youth will contact their ILS to let them know they are ready to match out.
The State IDA Coordinator will let the ILS know if the youth has met the minimum requirements to match out.
After it is determined the youth has met the requirements to match out, the ILS will request the match funds (from 582) be deposited into the account.
The State IDA Coordinator will inform the bank that the youth is eligible to match out and provide the bank the appropriate information in order to have a check sent.

MANAGEMENT INFORMATION SYSTEM
The State IDA Coordinator has specific requirements to follow in keeping track of the enrollment information, savings withdrawals, savings deposits, matched withdrawals, updates, etc. These are tracked in a database and used in all reports. It is the State IDA Coordinator’s responsibility to maintain this database with accurate information.

PRACTICE GUIDANCE

FINANCIAL LITERACY TRAINING
Financial literacy will be provided by ILSs and/or community partners. Youth must participate in all financial literacy trainings in order to match out of the IDA program. In the event a youth misses part of financial literacy training, he/she will have the opportunity to make up the session.

IDA ASSET GOALS
IDAs may be offered for a single goal. When determining an acceptable goal for the Georgia ILP IDA program, two general specifications are applied:
Economic self sufficiency: the goal should enable participants to sustain themselves as they transition to independence.
Value appreciation: Investment goals that will likely increase in value over time.
Youth must indicate which asset they wish to purchase first in their application. Georgia ILP has offered the IDA for common goals such as:
Car Insurance
Investments
Homeownership
Education Materials
Limited healthcare
Micro enterprise
Apartment Rental

22 The state IDA coordinator can approve IDAs to be matched out for assets not listed on a case by case basis.
In the event a youth changes the goal identified on the IDA application, he/she must contact the State IDA Coordinator and/or ILS to communicate the reason behind changing their initial goal, and how this impact their savings plan.

REFERENCES

POLICY TITLE: Extended Youth Supportive Services (Remaining In Care or Return to Care)

POLICY NUMBER: 1012.6

CODES

REQUIREMENT
The Division of Family and Children (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 utilize EYSS to provide youth with continued support from the agency and to offer services outlined in policy 1012.8 Post Foster Care Resources.

DFCS will allow youth to request to receive EYSS up to 6 months after the youth’s 18th birthday, utilizing the Request to Receive Extended Youth Supportive Services Form.

DFCS will use the following requirements to determine eligibility for Extended Youth Supportive Services:
Youth23 in care ages 18 - 21,
Youth who met ILP eligibility requirements prior to their 18th birthday, and
Youth desires to accomplish specific goals related to the WTLP.
NOTE: Youth who achieve permanency24 prior to their 18th birthday are not eligible for EYSS.

DFCS will inform youth of the voluntary nature of EYSS; and therefore EYSS placement and permanency services may be terminated by the youth or DFCS at any time. NOTE: DFCS may choose to terminate services on the basis of the youth’s noncompliance with WTLP goals.

DFCS will convene a Transitional Round Table (TRT) within 10 calendar days of the youth or county’s request to discontinue EYSS services. The goal of the TRT is to resolve issues and concerns that led to the decision to discontinue EYSS and to develop a transition plan, should the decision to discontinue services remain in effect. NOTE: The ILC must attend this meeting.

DFCS County Director will submit all decisions to the discontinue EYSS to the State Office ILP Director within five (5) work days of such decision. The State Office ILP Director will conduct a review of the case and make a final decision within 30 days of the receipt the case.

23 Youth must be a United States Citizen or legal resident to be eligible for EYSS.
24 Permanency includes reunification, adoption, guardianship or legal custody with a relative.
DFCS shall ensure that youth receiving EYSS receive monthly purposeful caseworker visits to assess and monitor services being provided and ensure youth success in achieving goals. (Refer to Foster Care Policy 1011.xxxx for Purposeful Visitation policy.)

PROCEDURE
To inform and prepare the youth with options for obtaining independence skills, secondary education, and/or housing services, the Social Services Case Manager (SSCM) will:
Provide the youth, beginning at age 16, with information regarding their ability to request and receive EYSS beyond age 18 up to age 21.
Provide the youth, beginning at age 16, with information regarding the criteria needed to approve the youth to receive EYSS beyond age 18 up to age 21.
Discuss the Independent Living Program (ILP) options with the youth regarding his/her care beyond age 18, including aftercare services, should the youth elect to emancipate.

Youth requesting to receive EYSS must inform their SSCM by signing the Consent to Receive Extended Youth Supportive Services:
Upon turning age 18; or
Up to six months after their 18th birthday.

For youth in care requesting EYSS the SSCM will:
Review the youths request to receive EYSS and staff the request with the county director for approval.
Discuss and explain to the youth the contents of the Consent to Receive Extended Youth Supportive Services form.
Review and discuss issues that may impact the youth’s potential for success. This can include the following:
Interest in pursuing post secondary educational goals;
Stability in placement;
Ongoing (chronic) behavioral issues;
Delinquent behavior; and
Any other relevant factor.
Inform the youth of the voluntary nature of EYSS and requirements to remain in EYSS, including:
Compliance with WTLP goals;
Cooperation/participation in with ongoing monitoring of EYSS through caseworker visits, FTMs, and other casework related activities.
Open a Post Foster Care (PFC) stage in SHINES.
Document in youth’s case record all activities surrounding the youth’s request to receive EYSS, including discussion regarding expectations for continued participation in EYSS and potential for success.
Ensure services considered necessary for the youth to successfully emancipate are arranged and provided.
Develop/update the Written Transitional Living Plan (WTLP) with the youth at the TRT.
Review the goals and steps of the WTLP annually with the youth; updates shall be provided to the Independent Living Specialist (ILS).
For youth who left care at or after 18 and are requesting EYSS (up to 18.5 years old), the ILC will:
Review the youths request to receive EYSS and staff the request with the county director for approval.
Review the youth’s case history, in SHINES or any other available case record.
Discuss and explain to the youth the contents of the Consent to Receive Extended Youth Supportive Services form.
Review and discuss issues that may impact the youth’s potential for success. This can include the following:
Interest in pursuing post secondary educational goals;
Stability in placement;
Ongoing (chronic) behavioral issues;
Delinquent behavior; and
Any other relevant factor.
Inform the youth of the voluntary nature of EYSS and the requirements to remain in EYSS, including:
Compliance with WTLP goals;
Cooperation/participation in with ongoing monitoring of EYSS through caseworker visits, FTM, and other casework related activities.
Open a Post Foster Care (PFC) stage in SHINES.
Document in youth’s case record all activities surrounding the youth’s request to receive EYSS, including discussion regarding expectations for participation in EYSS and potential for success.
Ensure services considered necessary for the youth to successfully emancipate are arranged and provided.
Develop the Written Transitional Living Plan (WTLP) with the youth.
Review the goals and steps of the WTLP annually with the youth; updates shall be provided to the Independent Living Specialist (ILS).

If the county department determines that the youth has not complied with the WTLP goals, and seek to discontinue EYSS, the youth must be provided with:
A letter25 within 15 days of determination to discontinue services which must outline the county’s reason(s) for discontinuation of services; and
Notification of the State Office ILP Director’s review of the decision including:
Notice that EYSS placement and permanency services will continue until a final decision is made by the State Office ILP Director.
The youth may be contacted by the State Office ILP Director for additional information to complete the review.

To initiate the review process, the County Director will:
Submit a written request for a review of the decision to terminate EYSS, to the State Office ILP Director within five (5) days of the decision.

The State Office ILP Director will:

25 Letter should reflect the template, Notice of Determination for Youth to Receive Extended Youth Supportive Services and Right to Administrative Case Review.
Review the youth’s case record in SHINES and any other supporting documentation that was used in making case decision;
Contact the County Director/designee for additional information as needed;
Contact the youth to request any supporting documentation to validate reason for continuing EYSS;
Complete the case review process in 30 days of receiving request from the county; and
Notify the youth in writing along with the County and Region of administrative case decision. 
NOTE: There is no further case review process beyond the State Office ILP Director’s review.

PRACTICE GUIDANCE
All children in foster care deserve to achieve positive permanency and placement with a forever family. Social Service Case Manager (SSCM) should pursue all efforts to find positive permanency for youth up to the day of their 18th birthday. Emancipating from foster care is the last resort for permanency. For youth whom emancipation is their last option, the agency shall pursue adults that will provide the youth with support after age 18.

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 criteria and process to receive EYSS should be reiterated with the youth at the Transition Roundtable (TRT) that is to be held no later than 6 months prior to the youth reaching age 18 and within 90 days prior to the youth turning 18. The youth should be provided with specific guidance to aid in the plan for transitioning to independence and/or out of foster care.

REFERENCES
Individuals with Disabilities Education Act (IDEA) www.idea.ed.gov
Consent to Receive Extended Youth Supportive Services

SHINES TIPS

POLICY TITLE: Chafee Independence Program Medicaid and Georgia Advance Directive for Health Care

POLICY NUMBER: 1012.7

CODES
Foster Care Independence Act of 1999, P.L. 106-169

REQUIREMENT
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:
Aged out of foster care at age 18 or older and received benefits on their 18th birthday;
Is a Georgia resident;
Is a citizen of the United States;
Can verify their identity; and
Has a social security number or has an application for a social security number.

DFCS staff will educate the youth about the importance of designating another individual to make health care related decisions on his or her behalf if the youth is unable to participate in such decisions; and, assist the youth in completing and executing the Georgia Advance Directive for Health Care (GADHC) if they choose this option.

PROCEDURE
The Social Services Case Manager (SSCM) will:
Inform all youth, verbally and in writing, beginning at age 17 of their possible eligibility to receive Chafee Independence Program Medicaid if they age out of care at age 18 or older.
Discuss and provide information to youth and youth’s supports at the Transition Roundtable (TRT) that is to be held six (6) months and 90 days prior to youth turning age 18.
Discuss with the youth the importance of designating another individual to make health care related decisions on his or her behalf if the youth is unable to participate in such decisions.
Provide the youth with the Georgia Advance Directive for Health Care to designate such individual, if the youth elect this option.
If necessary, assist the youth in completing and executing the Georgia Advance Directive for Health Care.
Maintain a copy of the form in SHINES, External Documents.
Instruct the youth to maintain the document in a secure location with other important documents.
If the youth decides not to request to receive extended youth supportive services (EYSS) (not signing themselves back into care), upon discharge the SSCM will:
Provide the youth with a list of DFCS offices in which the youth can apply for Chafee Independence Program Medicaid.
Discuss with the youth the importance of designating another individual to make health care related decisions on his or her behalf if the youth is unable to participate in such decisions.
Provide the youth with the related forms to designate such individual.
If necessary, assist the youth in completing and executing the Georgia Advance Directive for Health Care.
Maintain a copy of the form in SHINES, External Documents.
Instruct the youth to maintain the document in a secure location with other important documents.
Assist the youth in establishing an appointment with the DFCS office.
Provide the youth with the following documentation:
Georgia ID;
Social Security Card; and
Birth Certificate.
If the youth has emancipated from foster care and requests aftercare services, the Independent Living Coordinator (ILC) will:
Provide the youth with a list of DFCS offices in which the youth can apply for Chafee Independence Program Medicaid.
Discuss with the youth the importance of designating another individual to make health care related decisions on his or her behalf if the youth is unable to participate in such decisions.
Provide the youth with the related forms to designate such individual. If necessary, assist the youth in completing and executing the Georgia Advance Directive for Health Care. Maintain a copy of the form in SHINES, External Documents. Instruct the youth to maintain the document in a secure location with other important documents. Assist the youth in finding resources that can provide the youth with the following documentation:
- Georgia ID;
- Social Security Card; and
- Birth Certificate.

The youth must:
- Apply for Chafee Independence Program Medicaid between the ages of 18-20.
- Schedule and attend appointment to apply for Chafee Independence Program Medicaid.

**PRACTICE GUIDANCE**

**John H. Chafee Foster Care Independence Program Medicaid Coverage**

Effective July 1, 2008, the Foster Care Independence Act allows Medicaid coverage to be extended to age 21 for youth who age out of foster care the month of their 18th birthday.

The youth’s Medicaid eligibility will continue unless one of the following occurs:
- The youth dies.
- The youth moves out of state.
- The youth request closure of their Medicaid case.
- DFCS determines another Medicaid program would be more beneficial.
- The youth is incarcerated.
- The youth fails to cooperate with their eligibility re-determination or case review.

Effective October 1, 2010 the Foster Care Independence Act requires that adolescents participating in the program are provided with education about the importance of designating another individual to make health care treatment decisions on behalf of the adolescent if the adolescent becomes unable to participate in such decisions and the adolescent does not have, or does not want, a relative who would otherwise be the authorized under State law to make such decisions, whether a health care power of attorney, health care proxy, or other similar document is recognized under State law, and how to execute such a document if the adolescent wants to do so.

**REFERENCES**

Georgia Department of Community Health
John H. Chafee Foster Care Independence Program Medicaid Coverage
Georgia Department of Family and Children Services- Office of Independence

**Forms**

Georgia Advanced Directive for Health Care

**SHINES TIPS**

**POLICY TITLE:** Post Foster Care Resources
POLICY NUMBER: 1012.8

CODES

REQUIREMENT
The Division of Family and Children Services (DFCS) will provide post foster care resources to youth ages 14-21 previously in the legal custody of DFCS, as requested. (See policy 1012.1 Independent Living Services Eligibility and Enrollment).

DFCS will provide the following post foster care resources to eligible youth as funding permits:

Transitional Living Supportive Services provides eligible youth with Transitional Living Supportive Services to assist in the development of daily living skills and support the youth’s transition from foster care to self-sufficiency.

Emergency Financial Assistance provides eligible youth with Emergency Financial Assistance for 90 days or less to stabilize living conditions and/or personal circumstances.

Post Secondary Education Financial Support provides eligible youth and youth who were adopted from foster care at age 16 or older, with funds to provide financial support toward completion of post secondary education, up to the completion of a bachelor’s degree.

DFCS will discontinue funding for youth who are non-compliant with agreements or who do not maintain continuous enrollment in an educational institution working toward degree completion.

PROCEDURE
The Social Service Case Manager (for youth receiving Extended Youth Supportive Services) or the Independent Living Specialist (for youth not receiving EYSS) will:
Immediately contact the youth requesting services and provide the youth an application for Post Foster Care Resources;
Youth should submit application and supporting documentation to the Independent Living Specialist.
Review the application to ensure that:
The youth completes the application in its entirety.
The youth request the appropriate resource (Transitional Living Supportive Services, Emergency Financial Assistance and/or Post-Secondary Education Financial Support) based on financial need;
For youth not receiving Extended Youth Supportive Services, when appropriate, refer the youth for life coaching services (see Practice Guidance);
Assess the youth’s appropriateness for services (See Practice Guidance) to include;
The youth’s eligibility to receive requested funds.
Youth’s financial contribution and/or ability to meet his or her needs in the absence of funding.
The amount and duration of the financial support.
Once youth is approved for funds, coordinate with the Independent Living Specialist to have youth enter into an agreement (see Practice Guidance), based on the type of service being requested;
Transitional Living Services- Transitional Living Supportive Resources Agreement.
Emergency Financial Assistance- Emergency Assistance Supportive Services Participant Agreement.
Post-Secondary Educational Support- Post Secondary Academic Completion Plan and Agreement
For youth receiving Extended Youth Supportive Services, amend the youth’s WTLP to reflect the agreement as well as any other steps or goals needed to assist youth in being self-sufficient;
To provide financial support payments in SHINES;
Complete a non-incident post foster care (PFC) intake and stage progress the case to a PFC stage.
Complete a Service Authorization Billing Form and submit to the institution or vendor.
Monitor the youth’s compliance with the agreement;
If youth is non-compliant, discuss with the youth a plan to address issues of noncompliance and assist the youth in rectifying the identified issues;
The SSCM and/or Independent Living Specialist will make reasonable efforts to mediate between the youth and the service provider to resolve any conflict or noncompliance issues
Continued noncompliance issues that cannot be rectified will result in the youth’s dismissal from the program.
Complete a quarterly staffing of the youth’s progress toward self sufficiency; and
Staffing participants should include (if applicable):
Youth;
SSCM;
Independent Living Specialist;
Life Coach; and
Any supportive person identified by the youth.
For youth requesting, Post Secondary Education Financial Support:
Obtain the youth’s semester grades within 14 days of posting by the educational institution.
Review the youth’s grades to ensure that the youth has a minimum GPA of 2.0.
NOTE: Youth failing to maintain a 2.0 GPA or higher will be subject to adverse action (see Practice Guidance).
For youth over the age of 20, request and obtain the youth’s timeline for graduation from the youth’s academic advisor. This applies for all youth age 20.5. The youth’s credits and grades must be in line with their academic plan.

PRACTICE GUIDANCE
Transitional Living Supportive Services
Transitional Living Supportive Services (TLSS) 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 support to aid youth in the transition from foster care to adulthood. Financial support for monthly housing cost may be provided for a period of 18 months or until the youth reaches his or her 21st birthday.
Transitional Living Supportive Services for youth who are no longer in care 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, whichever comes first. Funds are monitored and distributed via the IL and may be used for the following based on the youths identified needs:

Transitional Living Assessments to determine youth eligibility and needs.
Targeted Life Skills Training/ Life Coaching.
Short term Counseling and Support Group related expenses
Start-up Cost that include:
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)
Basic furniture items (bed, chest of drawers, table and chairs)
Cooking and cleaning supplies

Emergency Financial Assistance
Chafee Foster Care Independence Act supports DFCS in providing youth with services and financial support to prevent homelessness. Youth applying for emergency assistance will be offered time limited supportive services along with life coaching to assist them in maintaining self-sufficiency.

Emergency Assistance must fall under the following guidelines:
Food: (i.e. perishable and non-perishable food items that total cost does not exceed $75 per request or $225 per FFY)
Clothing: (i.e. wardrobe items or uniforms required for employment, training or educational activities – total cost not to exceed $300 per FFY)
Rent: (up to $600 per month for no more than 3 months or $1,800 per FFY)
Medical: (i.e. funds for prescriptions, and medical, dental, and eye, exams or procedures – cost not to exceed $500 per FFY)
Transportation: (i.e. transit pass, bus, train or airline ticket not to exceed $350 per request or $700 per FFY)

To receive funds, you will be required to enter into an Emergency Assistance Supportive Services Participant Agreement. This agreement will:
Outline steps associated with remedying the underlying issues which caused the need for emergency assistance;
Provide specific and agreeable terms that define how financial concerns will be resolved; and
The duration of payments (not to exceed 90 days).

Emergency financial assistance funds are distributed to the vendor for payment for services. Funds are distributed in the form of a check.

Post-Secondary Education Financial Support

26 The Chafee Foster Care Independence Program funding allows for a maximum of $8,000 to be expended for all services provided through the transitional living support program. DFCS may utilize other housing resources (e.g. Section 8, subsidized housing vouchers) to supplement housing support to eligible youth.
DFCS will provide post secondary financial assistance to assist youth in the completion of secondary education. Based upon the youths educational plan funding may be used to get succession of degrees leading to a bachelor’s degree. The Social Services Case Manager or Independent Living Specialist must meet with the youth assist the youth in assessing their readiness for post secondary education. Youth will have a variety of educational backgrounds and abilities; therefore not all youth will be prepared to begin a four year degree upon receipt of a high school diploma or general equivalency diploma. Assist the youth in assessing where to begin their educational pathway. This may mean the youth needs to begin with a two year degree/certificate prior to beginning a more challenging program. If the youth is ready to immediately begin a four year program, they should be encouraged to do so.

Independent Living Program funds these services through the federal Education and Training Vouchers (ETV) program; the services that can be funded include:
Application fees (waiver of fees should be requested).
Registration fees.
Tuition.
Room and board (On campus housing and meal plans must be used, if available).
Course books and supplies.
Tutoring.
Testing (SAT, ACT, etc).
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).
Transportation assistance.

To be eligible for ETV, youth must meet at least one of the following criteria:
Ages 18 – 21,exited foster care on or after his or her 18th birthday and resides in Georgia; or
NOTE: If the youth meets the eligibility requirements stated above, but has graduated high school between the ages of 20-22, the youth will be assessed for post secondary state funding support
Any youth who was adopted on or after age 14 but prior to their 16th birthday;  or
Any youth who was adopted from foster care after his or her 16th birthday.
NOTE: If a former foster youth requests ILP post secondary funding on the date of their 21st birthday, the youth must provide documentation that supports their previous enrollment in a full-time post secondary educational or training program at least 6 months prior to their 21st birthday.

To asses funding and maintain support, youth must:
Submit acceptance letter. Scholarship, application, award letters, financial aid application and any other documents to validate enrollment in a post-secondary education/training program;
Interested or enrolled in a certification program that is at least 12 months in length or a two-year college;
Youth will develop and maintain the Post Secondary Academic Completion Plan and Agreement;

27 Youth is not eligible for Education and Training Voucher funding.
28 Youth is eligible for Chafee, Education and Training Voucher, and State funding.
Must be enrolled full-time and must provide a post secondary academic completion plan as
document by their institution’s academic advisor and WTLP to receive funding after the age of
21 (for youth age 20.5);
Must be within 2 academic years of completing their post-secondary coursework as documented
by their institution’s academic advisor and WTLP ( youth age 22.5);
Maintain a minimum GPA of 2.0; and
Youth failing to achieve a 2.0 GPA will have the following consequences:
The first transgression; youth will be placed on probation for one semester and will be required
to attend and participate in tutoring. The youth will continue to still receive ILP post
secondary support.
Youth, ages 18 to 21 failing to maintain a 2.0 GPA for two consecutive semesters will be
ineligible for funding for 1 academic year.
Youth, 21 and older who achieve less that a 2.0 GPA for two consecutive semesters will be
ineligible for ILP post secondary financial support and may not reapply.
Submit their grades within 14 days of grades being posted by the educational institution, and
maintain a 2.0 grade point average.
NOTE: If grades are not submitted timely, youth will have to reapply for post secondary support
to receive financial support for the next semester.

If youth decides to enroll in a new educational program, to continue to receive funding youth
must enroll in the next enrollment session offered by the institution.

Life Coaches
Life coaching is a practice aimed at helping youth achieve goals related to successfully
transitioning to adulthood. Youth will be provided life coaching resources when the need is
identified. Life coaches will use various methods to assist youth in meeting his or her individual
needs.

Expectations of life coaches are:
To meet with the youth, face to face, within two (2) days of being assigned;
To participate in the development of agreements and plans with youth;
To monitor and ensure compliance with the agreement;
The life coach must immediately contact the youth to address issues of noncompliance and assist
the youth in rectifying the identified issues.
Continued noncompliance issues that cannot be rectified will result in the youth’s dismissal from
the program.
To conduct a face to face weekly meeting with each youth and provide a monthly report to the
ILS regarding the youth’s progress toward self sufficiency;
E-mail the ILS the monthly summary by the 5th of the following month.

If the youth is not satisfied with services provided by the Life Coach or ILC, they should be
referred to the website, www. georgialp@dhr.state.ga.us. The youth will have the opportunity
to provide and receive feedback from the Independent Living Program Director.

REFERENCES

29 The written transitional living plan should be amended to include the goal and steps associated with tutoring.
POLICY TITLE: National Youth in Transition Database  
POLICY NUMBER: 1012.9  
CODES  
REQUIREMENT  
The Division of Family and Children Services (DFCS) shall ensure compliance with federal requirements regarding data collection of case-level information of youth in foster care, otherwise known as the National Youth in Transition Database (NYTD). Date collection must include the following:  
Services paid for or provided through the state administered Independent Living Program.  
Outcome information on youth who are in or who have aged out of foster care.  

DFCS shall collect data on the following three (3) distinct populations as required by NYTD:  
Served population consists of any youth receiving at least one formal or informal independent living service paid for or provided by either ILP, caseworker, foster parent, group home staff, etc.  
Baseline population consists of all youth in foster care as defined by 45 Code of Federal Regulations (CFR) 1355.20 any time between their 17th birthday and the 45 days following their birthday (see Procedure Section for exclusions); and,  
Follow-up population for Georgia includes all youth who reach their 19th or 21st birthday in a Federal Fiscal Year and who have participated in data collection as part of the baseline Population.  

NOTE: The Administration of Children and Families (ACF) requires states to collect both Baseline Population data and Served Population data beginning October 1, 2010 and must transmit the first report period data no later than May 15, 2011. NYTD requires semi-annual reporting. The six month report periods are from October 1 to March 31, and April 1 to September 30.  

PROCEDURE  
The Served Population  
The DFCS SSCM must ensure the following information is entered in the Youth Report Detail Page in SHINES for services a youth receives and completes:  
The completed service provided
The date of the service provided.
Services are to be documented in one of the following categories:
Independent living needs assessment
Academic support
Post-secondary educational support
Career preparation
Employment programs or vocational training
Housing education and home management training
Budget and Financial management
Health education and risk prevention
Family support and healthy marriage education
Mentoring
Supervised independent living
Room and board financial assistance
Education financial assistance
Other financial assistance

A youth is in the Served Population if during the report period:
The youth is eligible to receive independent living services; and
NOTE: Youth in Georgia are ILP eligible for independent living services beginning at age 14
(Refer to ILP Policy Section 1012.1 Eligibility and Enrollment). The served Population is not
limited on the Federal level by placement type. Tribal youth, youth involved with the juvenile
justice system, youth who receive services through foster care providers and youth no longer in
foster care are a part of the Served Population, if they receive an independent living service paid
for or provided by DFCS during the report period.
The youth receives an independent living service paid for or provided by DFCS during the report
period.
NOTE: An independent living service is provided by DFCS, if it is delivered by a DFCS staff or
an agent of DFCS, including a foster parent, group home staff, child care institution staff or if the
service is provide pursuant to a contract between DFCS and a provider, agency or any other
entity regardless of whether the contract includes funding for the particular service. Services
included are formal and informal services.

The Baseline Population
Effective October 1, 2010 and every FFY three year cycle thereafter DFCS must ensure that
youth identified in the baseline population complete the Foster Club online survey between their
17th birthday and the 45 days following their 17th birthday.
NOTE: The survey cannot be completed prior to a youth’s 17th birthday.

In order for a youth to receive a survey, the DFCS ILS or SSCM (for youth still in foster care)
must assist the youth in:
1. Establishing an e-mail account.
2. If requested by the youth, assistance in completing the online survey.

The Baseline Population consists of all youth in foster care, at any time between their 17th
birthday and the 45 days following their 17th birthday, and who turn 17 within the FFY of each
applicable reporting year. A youth does not have to be in foster care on his/her 17th birthday to be included, but must be in care at some point within the 45 days following his/her birthday. When determining whether a youth should be included in the NYTD Baseline Population, consider the following:
Did the youth’s 17th birthday occur during a FFY in which baseline data are required to be collected (i.e., a youth in the first NYTD Baseline cohort must have a 17th birthday between October 1, 2010 and September 30, 2011); and,
Was the youth in foster care on this or her 17th birthday; or
Did the youth enter foster care between his or her 17th birthday and 45 days after this date?

NOTE: Foster Care settings include, but are not limited to the following:
Non-relative foster homes;
Kinship foster homes (whether or not payments are being made to the caregiver);
Group homes;
Emergency shelter;
Residential facilities;
Child care institutions (public facilities with less than 25 beds or private facilities with any number of beds); and
Pre-adoptive homes.

For the purpose of the baseline survey Foster Care does not include the following:
Youth who are in their own homes under the responsibility of the DFCS, including, for the purpose of the NYTD only, those home on trial visits.
Youth Development Centers/Youth Forestry Camps;
Detention centers (or facilities that are primarily for the detention of children who are adjudicated delinquent);
Secure residential facilities;
Psychiatric Residential Treatment Facilities (accredited-PRTF).
Hospitals (general hospitals or free standing psychiatric hospitals)

The Follow-up Population
DFCS will ensure that youth in the follow up population participate in the outcomes data collection survey.
NOTE: A youth has participated in the outcomes data collection if the youth completes one valid response to any of the survey questions.
The Follow up Population includes:
All youth who reach their 19th or 21st birthday in a FFY and has participated in data collection as part of the Baseline Population at age 17.
A youth who participated in the data collection at age 17, but not at age 19 for a reason other than being deceased.
A youth is in the Follow-up Population as described regardless of the youth’s foster care status at ages 19 or 21 and regardless of whether the youth ever received independent living services.

30 Foster Care is defined as 24-hour substitute care for all youth placed away from their parent(s) or guardian(s) and for whom the Child Welfare Agency has placement and care responsibility.
NOTE: Youth that complete the survey outside of the 45 Day window for survey collection will not be a part of the Follow-up Population.

If a Baseline youth or Follow-up youth does not complete a survey case manager must report the reason the youth did not participate. The following are the only valid reasons that can be provided for a youth who does not complete the Baseline and Follow-up surveys:
Youth Declined. The agency located the youth successfully and invited the youth’s participation, but the youth declined to participate in the data collection.
Parent Declined. The agency invited the youth’s participation, but the youth’s parent/guardian declined to grant permission. This response maybe used only when the youth has not reached the age of majority in State law or policy requires a parent/guardian’s permission for the youth to participate in information collection activities.
Youth Incapacitated. The youth has a permanent or temporary mental or physical condition that prevents him or her from participating in the outcomes data collection.
Youth incarcerated. The youth is unable to participate in the outcomes data collection because of his or her incarceration.
Runaway/Missing. A youth in foster care is known to have run away to be missing from his or her foster care placement.
Unable to locate/Invite. The agency could not locate a youth who is NOT in foster care or otherwise invite such a youth’s participation.
Death. The youth died prior to his participation in the outcomes data collection.
Not in Sample. The 19-year-old youth participated in the outcomes data collection as part of the baseline Population at age 17, but the youth is not in the state Follow-up sample. This response option applies only when the outcomes data collection is required on the Follow-up Population of 19-year-old youth.

PRACTICE GUIDANCE
To ensure all youth are receiving life skills development services the Case manager must ensure that all services and support that youth receiving in the NYTD services categories are documented each reporting period. The Independent Living Specialist must document all services proved directly through the state Independent Living Specialist.

REFERENCES

SHINES TIPS

POLICY TITLE: YOUTH WHO REQUEST SERVICES BEYOND AGE 21 (WAIVER)
POLICY NUMBER: 1012.10

CODES
REQUIREMENT
The Division of Family and Children Services (DFCS) will require a waiver for youth to remain in care or receive aftercare services up to six months beyond their 21st birthday.

DFCS will require youth to make the request to remain in care to the Social Services Case Manager (SSCM) of the legal county, 90 days prior to their 21st birthday.

DFCS will require youth receiving aftercare services, to request continued services to the Independent Living Coordinator (ILC) of the county in which they are receiving services, 90 days prior to their 21st birthday.

DFCS will designate the Division Director/Designee, to make the final decision to grant a youth a waiver to remain in care up to six months beyond their 21st birthday.

DFCS will designate the Independent Living Program Director or his/her designee, to make the final decision to grant a youth a waiver for continued aftercare services up to six months beyond their 21st birthday.

DFCS will grant the waiver based on consideration of the youth’s individual needs, circumstances, available supports, and educational goals. The waiver request must include a discharge plan based on the Written Transitional Living Plan (WTLP).

NOTE: All waiver requests to the Division Director or Designee must be approved by the legal County Director.

PROCEDURE
For youth requesting to remain in care up to six months beyond their 21st birthday:

The youth will:
Submit a written request to the legal county Social Service Case Manager (SSCM), 90 days prior their 21st birthday; and
Assist in identifying key participants, supports and participate actively in the Transition Roundtable.

The SSCM will:
Acknowledge the youth’s request in writing within one (1) week of receipt.
Coordinate a Transition Roundtable within 90 days prior to the youth’s 21st birthday to:
Assess whether the youth needs continued services;
Make a recommendation regarding the appropriateness of the youth to continue to receive services.

NOTE: If the child is placed outside of the legal county, the boarding county staff must be involved in the decision and approval process.

Include in the FTM, at the minimum, the following individuals:
SSCM (boarding and/or legal county)
Independent Living Coordinator (ILC), (boarding and/or legal county);
Social Services Supervisor;

Legal County refers to the county in which the child was placed in foster care.
Written request can be submitted in the form of a letter or email and can be hand delivered or mailed.
Youth’s resource provider; and
Youth identified supports.
Develop or update the Written Transitional Living Plan (WTLP) to outline the following;
Reason(s) that continued foster care placement or services are necessary;
Timeline for the youth’s discontinuation of services; and
Timeline/discharge plan for youth’s exit from foster care.
Submit waiver request to the legal county director or designee for approval prior to submission
to the Division Director/Designee. Include the following:
Documentation supporting the youth’s need for continued services;
FTM Notes; and
WTLP.

For youth requesting to receive aftercare services up to six months beyond their 21st birthday:
The youth will:
Submit a written request to the ILC, 90 days prior to 21st birthday; and
Assist in identifying key participants, supports and participate actively in the Transition Roundtable.

The ILC will:
Acknowledge the youth’s request in writing within one (1) week of receipt.
Coordinate a Transition Roundtable within 90 days prior to the youth’s 21st birthday to:
Assess whether the youth needs continued services;
Make a recommendation regarding the appropriateness of the youth receiving services up to six
month’s beyond their 21st birthday.
Include in the staffing at the minimum, youth identified supports.
Develop or update the WTLP to include at the minimum:
Reason(s) that continued aftercare services are necessary; and
Timeline/discharge plan for the youth to complete services.
Submit waiver request to the ILC Director or designee and include the following:
Documentation supporting the youth’s need for continued services;
FTM Notes; and
WTLP.

NOTE: Funding support is based on financial need and availability of funding.

PRACTICE GUIDANCE
Transition Planning
The federal Fostering Connections to Success and Increasing Adoptions Act of 2008, Public Law (P.L.) 110-351, includes requirements for a transition plan for youth age 18 or older exiting foster care. Transition planning should begin on day one of a child’s placement into foster care and occur over the life of the case. Transition plans will help older adolescents in care make a successful transition to self-sufficiency. Successful transition planning must consider the youth’s age, skills and abilities. It is also important to consider the different needs of older youth versus

33 Legal County refers to the county in which the child was placed in foster care.
34 Written request can be submitted in the form of a letter or email and can be hand delivered or mailed.
their younger adolescent counterparts. Therefore, the youth must be actively involved in
development and implementation of their transition plan to ensure its success.

The transition plan must include specific options on housing, health insurance, education, work
force supports and employment services, local opportunities for mentors, and continuing support
services. The transition plan must be as detailed as the youth elects. All identified needs must be
resolved or near resolution by the 90th day prior to the youth’s eventual exit from care.

Successful transition planning for youth receiving Extended Youth Supportive Services (EYSS)
requires early identification of needs, skills and resources; and, implementation of a plan to
ensure that all areas of need identified are being addressed in a timely manner.

Waivers for youth should only be needed in circumstances that are beyond the control of DFCS
and partner agencies.
REFERENCES

SHINES TIPS

POLICY TITLE: Youth in Care Obtaining a Learners Permit

POLICY NUMBER: 1012.11

CODES
40-5-20 O.C.G.A. State driving law
Georgia Code 50-21-22

REQUIREMENT
The Division of Family and Children Services (DFCS) will permit youth in the temporary or
permanent custody of the County DFCS office to, under specific conditions 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.

DFCS will require that youth make satisfactory progress toward the completion of their Written
Transitional Living Plan (WTLP) and maintain a 2.0 or higher grade point grade point average,
to be considered for approval to obtain an Instructional Permit/Intermediate License.

DFCS will not allow a caregiver to assist the youth in obtaining his/her Instructional
Permit/Intermediate License without the written consent of the Director of the County
Department of Family and Children Services.

DFCS will require the caregiver to provide documentation to support that the youth is fully
covered on their automobile insurance.

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35 Caregiver is defined as a State or Private Agency licensed foster or relative foster parent, County approved
relative or guardian resource, or a group home or child caring institution manager/director.
DFCS will assist the youth in obtaining any required documentation to help the youth in obtaining their Instructional Permit/Intermediate License.

DFCS will adhere to the Teenage and Adult Driver Responsibility Act (TADRA) as it establishes graduated driver licensing for teens ages 15-18.36

PROCEDURE
The youth must submit a written request37, to the Social Services Case Manager (SSCM), permission to obtain an Instructional Permit/Intermediate License.

The SSCM will:
Acknowledge receipt of the youth’s request within one (1) week of receipt;
Determine if youth is making progress on his/her Written Transitional Living Plan; the SSCM may seek input and concurrence from Independent Living Coordinator (ILC) and supervisor;
For youth in temporary custody:
Contact the birth parents to:
Discuss youth’s request to obtain Instructional Permit/Intermediate License; and
Request approval from birth parent;
NOTE: If birth parent approves, obtain birth parent’s signature on the Consent for Youth to Drive a Motorized Vehicle Form.
If birth parent(s) cannot be located, reasonable efforts to contact the parents must be documented in the case record.
Prepare a waiver request, authorizing the Instructional Permit/Intermediate License, to be signed and approved by the County Director.
Contact the current caregiver to:
Discuss the youth’s request to obtain Instructional Permit/Intermediate License;
Discuss the requirement of caregiver to place youth on their automobile insurance for full coverage; and
Obtain the caregiver signature on the Acknowledgement of DFCS Driving Policy for Youth in Care Form.
NOTE: If caregiver approves, obtain caregiver’s signature on the Consent for Youth to Drive a Motorized Vehicle Form.
Obtain written approval from County Director for the youth to obtain his/her Instructional Permit/Intermediate License.
Within 30 days of youth obtaining Instructional Permit/Intermediate License, coordinate with youth’s school counselor to enroll youth in the next available driver’s education course.

NOTE: If driver education courses are not offered at the youth’s school, request the ILC to enroll and pay all applicable fees for the youth to complete a community based driver's education course.

36 For more information on the Georgia Teenager and Adult Driving Responsibility Act, visit Georgia Department of Motor Vehicles website at: www.dds.ga.gov.

37 Written request can be in the form of a letter or email and can be delivered electronically, by mail, or hand delivered.
For youth in permanent custody (parental rights terminated):
Contact the current caregiver to:
Discuss the youth’s request to obtain Instructional Permit/Intermediate License;
Discuss the requirement of caregiver to place youth on their automobile insurance for full coverage; and
Obtain the caregiver signature on the Acknowledgement of DFCS Driving Policy for Youth in Care Form.
NOTE: If caregiver approves, obtain caregiver’s signature on the Consent for Youth to Drive a Motorized Vehicle Form.
Obtain written approval from County Director for the youth to obtain his/her Instructional Permit/Intermediate License.
Submit the county director approval and the Acknowledgement of DFCS Driving Policy for Youth in Care Form to the Regional Director for signature and approval. Final authority for authorization of Instructional Permit/Intermediate Licenses rest with the Regional Director.
Within 30 days of youth obtaining Instructional Permit/Intermediate License, coordinate with youth’s school counselor to enroll youth in the next available driver’s education course.

NOTE: If driver education courses are not offered at the youth’s school, request the ILC to enroll and pay all applicable fees for the youth to complete a community based driver's education course.

PRACTICE GUIDANCE
Consideration by the Social Service Case Manager (SSCM) and caregiver to initiate the process of the youth obtaining an Instructional Permit/Intermediate License should include:
The judgment and maturity of the youth;
Relationship between youth and caregiver;
Completion of a formal driver’s education course or informal instruction;
School performance;
Intended use of the vehicle (needed for school, work, etc.);
Previous driving record;
History of runaway or other status offenses;
History of drug/alcohol use;
Completion of a “Driving Contract” between the youth and caregiver regarding the use of the vehicle (if the caregiver is going to allow youth to drive their vehicle) (See forms for Sample Driving Contract).

A youth centered family team meeting (FTM) can be used as a forum to discuss the appropriateness of the youth obtaining a Instructional Permit/Intermediate License and the considerations noted above.
The Instructional Permit/Intermediate License, or Class C Instructional Permit, is also referred to in the Georgia Driver’s Manual as “CP” and “P.”
The Instructional Permit/Intermediate License allows the youth, with the permit in his/her immediate possession, to drive a Class C vehicle on the public highways for a period of two years. The youth must be accompanied by a person of at least 21 years of age, known and approved by DFCS, who is a licensed driver and must occupy the passenger seat beside the driver.
Youth may obtain a copy of the Georgia Driving Manual from the Georgia Department of Public Safety at a State Patrol office; or may access the manual at: www.georgianet.org/dps

According to state law, to obtain an Instructional Permit/Intermediate License, youth must provide acceptable proof that he/she has received a:
- High school diploma,
- GED,
- Special education diploma,
- Certificate of high school completion,
- Has terminated high school and enrolled in a post-secondary school,
- Has withdrawn from school with permission of parent or guardian,
- Is enrolled in, not suspended from, and attending a public, private school or the youth is being home schooled.

According to state law, an Instructional Permit/Intermediate License will be suspended if any of the following occur:
- Youth drops out of school without graduating and has remained out of school for 10 consecutive days;
- Youth has more than 10 consecutive school days of unexcused absences in any semester or combination of two (2) consecutive quarters; or
- Youth has been suspended from school for:
  - threatening, striking or causing bodily harm to a teacher or other school personnel;
  - possession or sale of drugs or alcohol on school property; or
  - possession or use of a weapon on school property

State driving law is found in 40-5-20 O.C.G.A.

Social Service Case Manager (SSCM) should make efforts to obtain any required documentation that will assist the youth in obtaining their Instructional Permit/Intermediate License.

REFERENCES
Forms
Acknowledgement of DFCS Driving Policy for Youth in Care" (Form 11)
Consent for Youth to Drive a Motorized Vehicle (Form 9)
Georgia Department of Motor Vehicles, www.dds.ga.gov

SHINES TIPS

POLICY TITLE: Youth in Care Obtaining a Driver’s License

POLICY NUMBER: 1012.12

CODES
40-5-20 O.C.G.A. State driving law

REQUIREMENT
The Division of Family and Children Services (DFCS) will permit youth who are receiving extended youth supportive services, (EYSS) (See policy 1012.6 Extended Youth Supportive Services) at ages 18 and over, under specific conditions, to obtain a full license "Class C". 

NOTE: Youth must have held a “Class D” license (See policy 1012.11 Obtaining a Learner’s Permit and had no major traffic convictions in the previous 12 months.

DFCS will require that youth make satisfactory progress toward the completion of their Written Transitional Living Plan (WTLP) and maintain a 2.0 or higher grade point grade point average, to be considered for approval to obtain a learner’s permit.

DFCS will not allow a caregiver38 to assist the youth in obtaining his/her Driver’s License without the written consent of the Director of the County Department of Family and Children Services.

DFCS will assist the youth in obtaining any required documentation to help the youth in obtaining their Driver’s License.

DFCS will require the youth to have been in foster care a minimum of 6 months to request Driver’s License.

DFCS will adhere to the Teenage and Adult Driver Responsibility Act (TADRA) as it establishes graduated driver licensing for teens ages 15-18.39

PROCEDURE
The youth will:
Submit a written request, to the Social Services Case Manager (SSCM), requesting permission to obtain a Driver’s License.
Successfully complete the Georgia Alcohol and Drug Awareness Program (ADAP) in order to receive their Provisional Driver's License.41
Possess a valid Learner's Permit for at least 12 consecutive months and not have been convicted of:
Driving under the influence;
Hit and run;
Leaving the scene of an accident;
Racing on highways and streets;
Eluding a police officer;
Reckless driving; or
Any offense for which four (4) or more points are assessed.

38 Caregiver is defined as a State or Private Agency licensed foster or relative foster parent, County approved relative or guardian resource, or a group home or child caring institution manager/director.
39 For more information on the Georgia Teenager and Adult Driving Responsibility Act, visit Georgia Department of Motor Vehicles website at: www.dds.ga.gov.

40 Written request can be in the form of a letter or email and can be mailed or hand delivered.
41 For information on the Georgia Alcohol and Drug Awareness Program, visit the Georgia Department of Motor Vehicles at: http://www.dds.ga.gov/adap/index.aspx.
The Social Service Case Manager (SSCM) will:
Acknowledges receipt of the youth’s request within one (1) week of receipt;
Determine if youth is making progress on his/her Written Transitional Living Plan; the SSCM may seek input and concurrence from Independent Living Coordinator (ILC) and supervisor;
Contact the current caregiver to:
Discuss the youth’s request to obtain Instructional Permit/Intermediate License;
Discuss the with the caregiver the need for full coverage automobile insurance; and
NOTE: Develop a plan with the foster parent to determine if the youth will obtain and pay for own auto insurance or if the youth will be added to caregiver’s auto insurance.
If caregiver approves, obtain caregiver’s signature on the Consent for Youth to Drive a Motorized Vehicle Form and Acknowledgement of DFCS Driving Policy for Youth in Care Form.
Submit to the Regional Director for approval:
The county director written approval letter;
The Acknowledgement of DFCS Driving Policy for Youth in Care Form;
Verification that the youth has been added to the caregivers insurance;
Documentation of successful completion of a driver’s education course; and Consent to remain in care form.

PRACTICE GUIDANCE
Consideration by the Social Service Case Manager (SSCM) and caregiver to initiate the process of the youth obtaining a Driver’s License should include:
The judgment and maturity of the youth;
Relationship between youth and caregiver;
Completion of a formal driver’s education course or informal instruction;
School performance;
Intended use of the vehicle (needed for school, work, etc.);
Previous driving record;
History of runaway or other status offenses;
History of drug/alcohol use;
Completion of a “Driving Contract” between the youth and caregiver regarding the use of the vehicle (if the caregiver is going to allow youth to drive their vehicle) (See forms for Sample Driving Contract).

A youth centered family team meeting (FTM) or the Transition Roundtable can be used as a forum to discuss the appropriateness of the youth obtaining driver’s license and the considerations noted above.

Social Service Case Manager (SSCM) or Independent Living Coordinator (ILC) should make efforts to obtain any required documentation that will assist the youth in obtaining their Instructional Permit/Intermediate License.

REFERENCES
Forms
Sample Driving Contract
Georgia Department of Motor Vehicles, [www.dds.ga.gov](http://www.dds.ga.gov)

SHINES TIPS

POLICY TITLE: Youth in Care Owning a Motorized Vehicle  
POLICY NUMBER: 1012.13

CODES

REQUIREMENT  
The Division of Family and Children Services (DFCS) will permit youth age 18 and over in who are receiving extended youth supportive services (EYSS), (See policy 1012.6 Extended Youth Supportive Services) to own a motorized vehicle with the written approval of the County Director.

DFCS prohibits youth in care under age 18 from owning a vehicle.

PROCEDURE  
The youth (18 and older) must submit a request to the Social Services Case Manager (SSCM) to purchase or otherwise acquire a motorized vehicle.

The SSCM will:
Conduct a staffing with the youth’s Independent Living Coordinator to determine:
If youth is making progress on his/her Written Transitional Living Plan (WTLP).
The youth’s ability to meet the responsibilities of vehicle ownership (e.g. financial liability and maintenance).
Youth’s maturity level.
Ability to obtain and maintain automobile insurance in the youth’s name
School and/or job performance
Recent behavior
Any other relevant information
Request written approval from the County Director for the youth to obtain a motorized vehicle if:
The results of the staffing determine that the youth is able to meet the responsibilities outlined above.
The County Director will review and approve or deny all requests for youth to obtain a motorized vehicle.

ILP funds may not be used for the purchase or maintenance of a vehicle.
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. (1) appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills, and

2. (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:

The agency is currently involved with the student or family,
The agency could provide needed information to the IDEA Transition Team,
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,
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
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
declared 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.

§ 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 31      Crossover Youth or Dual Jurisdiction Youth

Contribution by Mary Hermann, JD, CWLS

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

§ 15-11-12. Dual Jurisdiction Youth Allowed

(a) Nothing in this chapter shall be construed to prevent a child from being adjudicated both a dependent child and a delinquent child or both a dependent child and a child in need of services if there exists a factual basis for such a finding.
(b) If a child alleged or adjudicated to be a delinquent child or a child in need of services is also alleged or adjudicated to be a dependent child, dependency proceedings may be consolidated with delinquency or child in need of services proceedings to the extent consistent with due process of law as provided in Articles 3, 6, and 7 of this chapter.
(c) The time frames and requirements of Article 3 of this chapter shall apply to cases in which a child alleged or adjudicated to be a child in need of services or a delinquent child is placed in foster care and has also been alleged or adjudicated to be a dependent child.

Crossover youth or dual jurisdiction youth are simultaneously involved with or under the jurisdiction of both child welfare and juvenile justice (DFCS and DJJ). These youth may move or “cross over” 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 overcriminalization 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 non-abused/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” favors 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 history of maltreatment increased the likelihood of
- a juvenile arrest by 59%
- an adult arrest by 28%
- 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 that 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% 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), and “found that 68% of the sample reported some form of childhood victimization and 23% 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 and 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 significantly contribute 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 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 post-traumatic stress disorder (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 offense (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 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 that the relative may have the same maltreating behaviors as the parent, and possible unsupervised or negative contact with the maltreating parent. Also, relatives tend to be “single, older, in 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**

- CHINS
- ASFA compliance – Contrary to the Welfare, RE, Permanency Hearing
- IV-E Eligibility, Medicaid
- 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 (§ 15-11-215)
- Motions to court and court orders, judicial oversight, subpoena power
- Permanent guardianships with relatives, relative resources and subsidies or services to stabilize placement
Coordinated Assessment of Child / Family

Risk Assessment / Delinquency

Mental Health / Substance Abuse Assessment

Education Assessment

Psychosocial Assessment – include family issues

Youth & Parent Voice

Risk Level

Treatment Level Needed

Educational Deficiencies & Needs

Need for other Individual & Family Interventions, include medical needs

Position of Youth & Parent

Coordinated Recommendations for:
1) Supervision
2) Treatment
3) Education
4) Placement
5) Other Behavioral Social Interventions

Resources for further information

Office of Juvenile Justice and Delinquency Prevention (OJJDP), http://ojjdp.ncjrs.org/


Center for Juvenile Justice Reform (CJJR) Georgetown University’s Public Policy Institute, http://cjjr.georgetown.edu/index.html

The Vera Institute of Justice, http://www.vera.org/
## Chapter 32  Child Development

*Contribution by Mary Hermann, JD, CWLS*


<table>
<thead>
<tr>
<th>Birth to 12 Months</th>
<th>Developmental Trend</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Cognitive</strong></td>
<td></td>
</tr>
<tr>
<td>Birth to 2 years</td>
<td>• focus on senses and motor abilities</td>
</tr>
<tr>
<td></td>
<td>• realize that objects exist even when they can't be seen</td>
</tr>
<tr>
<td></td>
<td>• remember and imagine ideas and experiences</td>
</tr>
<tr>
<td><strong>Language Acquisition</strong></td>
<td></td>
</tr>
<tr>
<td>0 to 13 months</td>
<td>• progress from crying to cooing to babbling to patterned speech</td>
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<td></td>
<td>• uses gestures or sounds to communicate</td>
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<td></td>
<td>• speak first meaningful words</td>
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<tr>
<td><strong>Concept of Self</strong></td>
<td></td>
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<tr>
<td>9-12 months</td>
<td>• begin to show self recognition</td>
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<tr>
<td><strong>Moral Judgment</strong></td>
<td></td>
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<tr>
<td><strong>Temporal Concepts</strong></td>
<td></td>
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<tr>
<td><strong>Recognition of Emotion</strong></td>
<td></td>
</tr>
<tr>
<td>7 months</td>
<td>• Distinguish facial expressions</td>
</tr>
<tr>
<td>12 months</td>
<td>• Use expressive information from mother’s face to guide behavior</td>
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<tr>
<td><strong>Person Perception</strong></td>
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<table>
<thead>
<tr>
<th>12 to 24 months</th>
<th>Developmental Trend</th>
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<tbody>
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<td><strong>Cognitive</strong></td>
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<td>• remember and imagine ideas and experiences</td>
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<tr>
<td><strong>Language Acquisition</strong></td>
<td></td>
</tr>
<tr>
<td>13 to 18 months</td>
<td>• increase use of gesturing for communication (pointing, waving)</td>
</tr>
<tr>
<td></td>
<td>• develop vocabulary of approximately 50 words</td>
</tr>
<tr>
<td></td>
<td>• understand that words represent objects that can be acted upon</td>
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<tr>
<td></td>
<td>• overextend word meanings, (e.g., all males called daddy)</td>
</tr>
<tr>
<td></td>
<td>• under extend word meanings, (e.g., call only a red ball a ball)</td>
</tr>
<tr>
<td><strong>Concept of Self</strong></td>
<td></td>
</tr>
<tr>
<td>15-18 months</td>
<td>• differentiate between pictures of oneself and others</td>
</tr>
<tr>
<td>18 – 24 months</td>
<td>• refer to oneself by name</td>
</tr>
<tr>
<td><strong>Moral Judgment</strong></td>
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<tr>
<td>Temporal Concepts</td>
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<tr>
<td><strong>Regulation of Emotion</strong></td>
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<tr>
<td>12 months</td>
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<tr>
<td>• Use expressive information from mother’s face to guide behavior</td>
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<tr>
<td><strong>Person Perception</strong></td>
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<tr>
<td><strong>24 Months to 3 Years</strong></td>
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<tr>
<td><strong>Developmental Trend</strong></td>
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<tr>
<td><strong>Cognitive</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Language Acquisition</strong></td>
<td></td>
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<tr>
<td>18 to 30 months</td>
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<tr>
<td>• increase vocabulary from a few dozen to several hundred words, use imitation</td>
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<tr>
<td>• engage in conversation</td>
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<tr>
<td>• develop syntactical skills needed to create two or three word sentences (e.g., I want milk)</td>
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<tr>
<td><strong>Concept of Self</strong></td>
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<tr>
<td>18 – 24 months</td>
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<tr>
<td>• refer to oneself by name</td>
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<tr>
<td>28 months</td>
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<tr>
<td>• describe physical states thirsty, tired</td>
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<td><strong>Moral Judgment</strong></td>
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<tr>
<td><strong>Temporal Concepts</strong></td>
<td></td>
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<tr>
<td>24 months to 3½ years</td>
<td></td>
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<tr>
<td>• Focus primarily on the present</td>
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<tr>
<td><strong>Recognition of Emotion</strong></td>
<td></td>
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<tr>
<td>3 to 5 years</td>
<td></td>
</tr>
<tr>
<td>• Reliably identify sad, angry and happy</td>
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<tr>
<td>• Communicate about simple emotions in everyday situations</td>
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<tr>
<td>• Deny the presence of simultaneous emotions</td>
<td></td>
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<tr>
<td>• Identify feelings in stories based on situational cues</td>
<td></td>
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<tr>
<td>• Base judgments of affect on facial expressions</td>
<td></td>
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<tr>
<td>• Use idiosyncratic body cues (a smile) or situational cues (birthday party) to identify one’s own emotions</td>
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<tr>
<td>• See feelings as global and “all or none” –either good or bad rather than mixed</td>
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<tr>
<td>• Believe that an event causes the same feelings in all people</td>
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<tr>
<td><strong>Person Perception</strong></td>
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<table>
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<tr>
<th>3 to 5 years</th>
<th><strong>Developmental Trend</strong></th>
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</thead>
<tbody>
<tr>
<td><strong>Cognitive</strong></td>
<td>3 to 6 years</td>
</tr>
<tr>
<td>• think symbolically, using pretend play and language</td>
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<tr>
<td>• focus on one aspect of a problem at a time</td>
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<tr>
<td>• think concretely and deal with specific content</td>
<td></td>
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<tr>
<td>• remember by recalling prior knowledge, rather than specific details of the materials presented</td>
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<tr>
<td><strong>Language Acquisition</strong></td>
<td>30 months to 5 Years</td>
</tr>
<tr>
<td>• use strings of sounds that convey meaning–grammatical morphemes, including plurals, prepositions, irregular verb endings, articles, possessives, auxiliary verbs and verb contractions</td>
<td></td>
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<tr>
<td>• develop vocabulary of 900 words by 3 years</td>
<td></td>
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<tr>
<td>• use language competently in a meaningful context, use simple sentences</td>
<td></td>
</tr>
<tr>
<td><strong>Concept of Self</strong></td>
<td>3 to 6 years</td>
</tr>
<tr>
<td>• conceptualize oneself primarily in physical terms (I have black hair)</td>
<td></td>
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<tr>
<td>• make distinctions between oneself and others primarily on the basis of observable behaviors and characteristics (Bill is tall)</td>
<td></td>
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<tr>
<td>• have overly positive perceptions of own abilities, despite feedback to the contrary</td>
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<tr>
<td>Moral Judgment</td>
<td>3 to 6 years</td>
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<td><strong>Base judgments of right and wrong on good or bad consequences and not on intentions</strong></td>
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<td></td>
<td><strong>Base moral choices on wishes that good things would happen to oneself</strong></td>
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<td><strong>Simply assert choices rather than justify choices</strong></td>
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</tbody>
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<tr>
<th>Temporal Concepts</th>
<th>24 months to 3½ years</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><strong>Focus primarily on the present</strong></td>
</tr>
</tbody>
</table>

|                   | 3½ years to 5 years |
|                   | **Understand time in a rudimentary way but have difficulty distinguishing morning from afternoon and remembering days of the week** |
|                   | **Measure time by special events or identified routines, such as time to get up rather than morning** |

<table>
<thead>
<tr>
<th>Recognition of Emotion</th>
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<tbody>
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<td><strong>Reliably identify sad, angry and happy</strong></td>
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<td><strong>See feelings as global and “all or none” – either good or bad rather than mixed</strong></td>
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<td><strong>Believe that an event causes the same feelings in all people</strong></td>
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</tbody>
</table>

|                        | 5 to 6 years |
|                        | **Believe that one is the cause of other people’s emotions** |

<table>
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<tr>
<th>Person Perception</th>
<th>3 to 6 years</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><strong>Differentiate oneself from others but fail to distinguish between one’s own social perspective, thoughts, and feelings, and those of others</strong></td>
</tr>
<tr>
<td></td>
<td><strong>Label others’ overt feelings but fail to see the cause and effect relationship between reasons and social actions</strong></td>
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<td><strong>Describe others primarily in terms of concrete, observable characteristics such as clothes, possessions, hair color and size</strong></td>
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<td><strong>View others as good or bad – use all or nothing reasoning</strong></td>
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<td></td>
<td><strong>Equate effort with ability regardless of outcome</strong></td>
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<td><strong>Describe others in global, highly evaluative, egocentric, and subjective terms (“He is nice because he gave me a toy”)</strong></td>
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<td><strong>Report one’s own misdeeds honestly because of an inability to deceive, which requires taking another’s perspective</strong></td>
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<td></td>
<td><strong>Exhibit eagerness for adult approval</strong></td>
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</table>

|                   | 4 years |
|                   | **Assume that all acts and outcomes are intended because of an inability to differentiate accidental from intended actions or outcomes** |

|                   | 5 to 6 years |
|                   | **Distinguish accidental from intended acts and outcomes** |
|                   | **Assume that others in similar situations will have perceptions similar to one’s own** |
|                   | **Reflect on thoughts and feelings from another’s perspective** |
|                   | **Understand that another’s perspective is different** |

<table>
<thead>
<tr>
<th>5 to 7 years</th>
<th>Developmental Trend</th>
</tr>
</thead>
<tbody>
<tr>
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</tr>
<tr>
<td>3 to 6 years</td>
<td><strong>Think symbolically, using pretend play and language,</strong></td>
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<td><strong>Think concretely and deal with specific content</strong></td>
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<tr>
<td><strong>Language Acquisition</strong></td>
<td>Remember by recalling prior knowledge, rather than specific details of the materials presented</td>
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</tr>
<tr>
<td><strong>5 to 8 years</strong></td>
<td>Structure language much as adults do, using an awareness of grammar and language structure and meaning</td>
</tr>
<tr>
<td></td>
<td>Continue to increase vocabulary rapidly, from 10k at 6 years to 20k at 8 years</td>
</tr>
<tr>
<td></td>
<td>Use concrete word definitions, referring to functions and appearance</td>
</tr>
<tr>
<td></td>
<td>Improve language awareness</td>
</tr>
<tr>
<td><strong>Concept of Self</strong></td>
<td>Conceptualize oneself primarily in physical terms (I have black hair)</td>
</tr>
<tr>
<td><strong>3 to 6 years</strong></td>
<td>Make distinctions between oneself and others primarily on the basis of observable behaviors and characteristics (Bill is tall)</td>
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<tr>
<td></td>
<td>Have overly positive perceptions of own abilities, despite feedback to the contrary</td>
</tr>
<tr>
<td><strong>7-8 years</strong></td>
<td>Realize that one has better access to one’s own thoughts than others do</td>
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<tr>
<td></td>
<td>Use info about one’s own performance, as well as that of peers, in evaluating oneself</td>
</tr>
<tr>
<td></td>
<td>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)</td>
</tr>
<tr>
<td></td>
<td>Distinguish between mental and physical aspects of self</td>
</tr>
<tr>
<td></td>
<td>Recognize that discrepancies may exist between psychological experiences and physical appearance—one can act one way and feel another</td>
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<tr>
<td></td>
<td>Adjust self perceptions on the basis of feedback and past experiences with success and failure</td>
</tr>
<tr>
<td><strong>Moral Judgment</strong></td>
<td>Base judgments of right and wrong on good or bad consequences and not on intentions</td>
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<td>Understand time in a rudimentary way but have difficulty distinguishing morning from afternoon and remembering days of the week</td>
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<tr>
<td><strong>3½ years to 5 years</strong></td>
<td>Measure time by special events or identified routines, such as time to get up rather than morning</td>
</tr>
<tr>
<td><strong>6 to 8 years</strong></td>
<td>Master clock time, days of the week, and months of the years</td>
</tr>
<tr>
<td></td>
<td>Give temporal information about symptoms and their duration (how long it takes to fall asleep or how long a headache has been present)</td>
</tr>
<tr>
<td><strong>Recognition of Emotion</strong></td>
<td>Believe that one is the cause of other people’s emotions</td>
</tr>
<tr>
<td><strong>5 to 6 years</strong></td>
<td>Identify fear, disgust, and other difficult emotions</td>
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<tr>
<td></td>
<td>Accept the possibility of simultaneous feelings only if they are separated temporarily (happy when eating ice cream and sad when the ice cream falls on the ground)</td>
</tr>
<tr>
<td><strong>6 to 8 years</strong></td>
<td>Use inner experiences and mental cues to identify emotions</td>
</tr>
<tr>
<td></td>
<td>Understand that one can change and hide one’s feelings</td>
</tr>
<tr>
<td></td>
<td>See oneself as the primary cause of parental emotions but at the same time identify causes that are more appropriate</td>
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</tbody>
</table>
- 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

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<thead>
<tr>
<th>3 to 6 years</th>
<th>5 to 6 years</th>
<th>7 to 12 years</th>
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</thead>
<tbody>
<tr>
<td>- Differentiate oneself from others but fail to distinguish between one’s own social perspective thoughts and feelings and those of others</td>
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<td>- Describe others primarily in terms of concrete, observable characteristics such as clothes, possessions, hair color and size</td>
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<tr>
<td>- View others as good or bad use all or nothing reasoning</td>
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<td>- Equate effort with ability regardless of outcome</td>
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</tr>
<tr>
<td>- Exhibit eagerness for adult approval</td>
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### Developmental Trend

<table>
<thead>
<tr>
<th>7 to 9 years</th>
<th>Developmental Trend</th>
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<tbody>
<tr>
<td><strong>Cognitive</strong> 7 to 11 years</td>
<td>- Assume multiple perspectives, take on role of another</td>
</tr>
<tr>
<td>- Reason simultaneously about a subclass and the whole class</td>
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<tr>
<td>- Give relatively more weight to language than to contextual cues</td>
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<tr>
<td>- Think more logically and objectively, continue to tie thinking to concrete experiences</td>
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</tr>
<tr>
<td><strong>Language Acquisition</strong> 8 to 11 years</td>
<td>- Develop vocabulary of 40k by 10 years</td>
</tr>
<tr>
<td>- Use word definitions that emphasize synonyms and categorical relations</td>
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</tr>
<tr>
<td>- Understand complex grammatical forms, refine conversational strategies</td>
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</tr>
<tr>
<td>- Grasp double meanings of words, as in metaphors and humor</td>
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<tr>
<td>- Consider needs of listeners in complex communicative situations</td>
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<tr>
<td><strong>Concept of Self</strong> 7-8 years</td>
<td>- Realize that one has better access to one’s own thoughts than others do</td>
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<tr>
<td>- Use info about one’s own performance, as well as that of peers, in</td>
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<tr>
<td>Evaluating Oneself</td>
<td>Moral Judgment</td>
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<tr>
<td>6 to 8 years</td>
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<tr>
<td>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)</td>
<td>Define morality by resort to authority figures whose rules must be obeyed</td>
</tr>
<tr>
<td>Distinguish between mental and physical aspects of self</td>
<td>Understand that good actions are based on good intentions</td>
</tr>
<tr>
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<thead>
<tr>
<th>Temporal Concepts</th>
</tr>
</thead>
<tbody>
<tr>
<td>6 to 8 years</td>
</tr>
<tr>
<td>Master clock time, days of the week and months of the years</td>
</tr>
<tr>
<td>Give temporal information about symptoms and their duration (how long it takes to fall asleep or how long a headache has been present)</td>
</tr>
<tr>
<td>Understand temporal concepts, temporal order (succession of events) and temporal duration (length of intervals between events)</td>
</tr>
</tbody>
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<table>
<thead>
<tr>
<th>Recognition of Emotion</th>
</tr>
</thead>
<tbody>
<tr>
<td>6 to 8 years</td>
</tr>
<tr>
<td>Identify fear, disgust, and other difficult emotions</td>
</tr>
<tr>
<td>Accept the simultaneous co-occurrence of two emotions (feeling happy and sad at the same time)</td>
</tr>
<tr>
<td>Use content cues in judging a story character’s feelings,</td>
</tr>
<tr>
<td>Base judgments of affect on situational cues</td>
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<td>7 to 12 years</td>
</tr>
<tr>
<td>Describe others in more differentiated, individualized and detailed ways using traits, dispositions and attitudes (“Alice is nice,” “Henry is stubborn”)</td>
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<tr>
<td>Describe others in “all-or-none” fashion—that is possessing either desirable or undesirable traits</td>
</tr>
<tr>
<td>Understand that effort influences outcomes</td>
</tr>
<tr>
<td>Realize that individuals are aware of others’ perspectives and that this awareness influences them and others’ views of them</td>
</tr>
<tr>
<td>9 to 11 years</td>
</tr>
<tr>
<td>---------------</td>
</tr>
</tbody>
</table>
| Cognitive     | • Assume multiple perspectives, take on role of another  
| 7 to 11 years | • 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 | • Develop vocabulary of 40k by 10 years  
| 8 to 11 years | • 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 the needs of listeners in complex communicative situations  
|               | • Refine conversational strategies |
| Concept of Self | • Realize that one can be smart and ignorant in the same area |
| 10 years      |                     |
| Moral Judgment | • Realize that others have a different point of view and that others are aware that one has one’s own particular point of view  
| 8 to 10 years | • 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 | • Comprehend years and dates  
| 9 to 11 years | • Estimate adults’ ages  
|               | • Develop a grasp of historical chronology |
| Recognition of Emotion | • Use content cues in judging a story character’s feelings  
| 8 to 10 years | • Base judgments on affect on situational cues  
|               | • Accept the simultaneous co-occurrence of two emotions (feeling happy and 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 and external affective expressions need not correspond  
|               | • Recognize that the sources of one’s parents’ emotions can include people and events unrelated to oneself  
|               | • Recognize that emotions come from “inner experiences” |
| Person Perception | • Describe others in more differentiated, individualized and detailed ways using traits, dispositions and attitudes (“Alice is nice,” “Henry is stubborn”)  
| 7 to 12 years | • Describe others in “all-or-none” fashion – possessing either desirable or undesirable traits  
|               | • Understand that effort influences outcomes  
|               | • Realize that individuals are aware of others’ perspectives and that this awareness influences them and others’ views of them  
<p>|               | • Put oneself in others’ places as a way of judging others’ intentions, purposes and actions |</p>
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<tr>
<th>11 to 13 years</th>
<th>Developmental Trend</th>
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## Developmental Summary of the Effects of Different Forms of Maltreatment

### INFANCY AND EARLY CHILDHOOD

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<tr>
<th></th>
<th>PHYSICAL ABUSE</th>
<th>NEGLECT</th>
<th>PSYCH. ABUSE</th>
<th>SEXUAL ABUSE</th>
<th>DOM. VIOLENCE</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>COGNITIVE</strong></td>
<td>cognitive delays</td>
<td>most severe cognitive delays and language delays</td>
<td>cognitive delays</td>
<td>cognitive delays</td>
<td>cognitive delays</td>
</tr>
<tr>
<td><strong>EMOTIONAL</strong></td>
<td>avoidant attachment, limited understanding of emotions</td>
<td>ambivalent attachment</td>
<td>anger and avoidance, serious psychopathology</td>
<td>anxiety, withdrawal</td>
<td>anxiety, separation fears</td>
</tr>
<tr>
<td><strong>SOCIAL</strong></td>
<td>fearfulness, aggression</td>
<td>avoidance, dependence</td>
<td>withdrawal, aggression</td>
<td>inappropriate sexual behavior</td>
<td>aggression</td>
</tr>
</tbody>
</table>

### MIDDLE CHILDHOOD

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<tr>
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</tr>
</thead>
<tbody>
<tr>
<td><strong>COGNITIVE</strong></td>
<td>cognitive, language delays, learning disorder</td>
<td>most severe cognitive deficits</td>
<td>low achievement and IQ, poor school performance</td>
<td>school avoidance, learning problems</td>
<td>poor academic performance</td>
</tr>
<tr>
<td><strong>EMOTIONAL</strong></td>
<td>poor affect recognition, externalizing (boys), internalizing (esp girls)</td>
<td>dependence, lowest self esteem</td>
<td>depression most likely, aggression</td>
<td>PTSD, fears, low self-esteem, depression, regression</td>
<td>depression, anxiety, externalizing, PTSD</td>
</tr>
<tr>
<td><strong>SOCIAL</strong></td>
<td>aggression, peer rejection</td>
<td>isolation, passivity</td>
<td>poor social competence, aggression, withdrawal</td>
<td>inappropriate sexual behavior, revictimization</td>
<td>aggression</td>
</tr>
<tr>
<td>ADOLESCENCE</td>
<td>PHYSICAL ABUSE</td>
<td>NEGLECT</td>
<td>PSYCH. ABUSE</td>
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<tr>
<td>COGNITIVE</td>
<td>low academic achievement</td>
<td>lowest grades, most likely to be retained</td>
<td>low achievement</td>
<td>poor academic performance</td>
<td>truancy, poor performance in school</td>
</tr>
<tr>
<td>EMOTIONAL</td>
<td>depression, low self-esteem, conduct disorder, violence</td>
<td>internalizing, externalizing, low initiative</td>
<td>delinquency, depression, poor emotion regulation, eating disorders, personality disorder</td>
<td>depression, suicide, substance abuse, running away</td>
<td>depression, suicidal thoughts, delinquency</td>
</tr>
<tr>
<td>SOCIAL</td>
<td>aggression</td>
<td>poor social skills</td>
<td>pessimism</td>
<td>Revictimization</td>
<td>violence in dating relationships</td>
</tr>
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Chapter 33  Common Childhood Psychiatric Disorders and Psychotropic Medications

Contribution by Mary Hermann, JD, CWLS and Brent Wilson, MD

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-5 and is the fifth revision. This version of the diagnostic manual was published in May 2013 and contains numerous changes affecting diagnosis criteria for children.

DSM-5 no longer uses the multiaxial system for diagnosis. DSM-5 groups diagnoses as either Primary or Additional and uses “V Codes” as part of Additional Diagnoses to further describe the patient.

For comparison:

<table>
<thead>
<tr>
<th>DSM-IV</th>
<th>DSM-5 (released May 2013)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Section 1</strong> – General information, how to use the updated DSM-5, defines mental disorder</td>
<td></td>
</tr>
<tr>
<td><strong>Axis I:</strong> Clinical Disorders, acute or chronic, and conditions that need clinical treatment</td>
<td><strong>Section 2</strong> – Categories of disorder diagnosis and V Codes</td>
</tr>
<tr>
<td>Primary Diagnoses and Additional Diagnoses</td>
<td></td>
</tr>
<tr>
<td><strong>Axis II:</strong> Personality Disorders and Mental Retardation (MR)</td>
<td>MR – changed to Intellectual Disability</td>
</tr>
<tr>
<td>V Code Diagnoses – non-disordered conditions that may also be the target for mental health treatment, contextual or environmental factors, problems in living</td>
<td></td>
</tr>
<tr>
<td><strong>Axis III:</strong> General Medical Conditions</td>
<td>Listed under Additional Diagnoses above when relevant</td>
</tr>
<tr>
<td><strong>Axis IV:</strong> Psychosocial and Environmental Problems</td>
<td>Environmental stressors and problems of living are now listed as V Code Diagnoses as part of the Additional Diagnoses category above. These contextual factors are now elevated to full additional diagnosis status rather than outside factors.</td>
</tr>
<tr>
<td><strong>Axis V:</strong> Global Assessment of Functioning - GAF</td>
<td>World Health organization Disability Assessment Schedule (WHO-DAS), a comprehensive social functioning inventory that focuses on adaptive functioning, or GAF may continue to be used in some settings</td>
</tr>
</tbody>
</table>
The DSM-5 organizes disorders in its sequence of chapters as follows:

- Neurodevelopmental disorders
- Schizophrenia spectrum and other psychotic disorders
- Bipolar and related disorders
- Depressive disorders
- Anxiety disorders
- Obsessive-compulsive and related disorders
- Trauma- and stressor-related disorders
- Dissociative disorders
- Somatic symptom disorders
- Feeding and eating disorders
- Elimination disorders
- Sleep-wake disorders
- Sexual dysfunctions
- Gender dysphoria
- Disruptive, impulse control and conduct disorders
- Substance use and addictive disorders
- Neurocognitive disorders
- Personality disorders
- Paraphilic disorders
- Other disorders

From American Psychiatric Association, found at http://www.psychiatry.org/home/searchresults?k=highlights%20of%20changes

**Neurodevelopmental disorders** – onset in the developmental period, often before starting school, and are characterized by a range of developmental deficits that impair normal functioning

- Intellectual disability
- Deficits in intellectual functioning and everyday adaptive functioning with onset during the developmental period
- Emphasis on assessing both the individual’s cognitive capacity (IQ) and the individual’s adaptive functioning
- Mild, Moderate, Severe, Profound – is determined by the individual’s adaptive functioning not IQ
- Global developmental delay
- Applies to children under 5 years old whose intellectual functioning cannot be systematically assessed
- Unspecified intellectual disability (intellectual developmental disorder)
- For children over 5 years old whose intellectual disability cannot be assessed because of sensory or physical impairments
- Communication disorders
- Deficits in language, speech, or in any behaviors affecting verbal and nonverbal communications
- Language disorder – persistent deficits in comprehension or production of language (e.g. spoken, written, sign language) substantially below age level, beginning in the early developmental period, and not due to other disorders or conditions
- Speech sound disorder – persistent deficits in speech sound production, below that expected of age and developmental level, not due to other impairments such as physical, neurological or hearing disorders or conditions
- Childhood-onset fluency disorder (stuttering) – persistent disturbance in normal speech patterns and fluency that interferes with normal achievement
- Social (pragmatic) communication disorder – persistent deficits in the social use of language, both verbal and nonverbal communication, in normal settings, that functionally impair the individual
- Unspecified communication disorder - clinically significant symptoms of a communication disorder, but fails to meet the full criteria for any of the communication or neurodevelopmental disorders and the reason is not specified
- **Autism spectrum disorder** – Persistent communication and social interaction deficits in multiple situations; restricted, repetitive behaviors, interests and activities (RRBs), originally manifested in the early developmental period and causing significant impairment. Different levels of severity.
- **Attention deficit hyperactivity disorder (ADHD)** – “Persistent pattern of inattention and/or hyperactivity-impulsivity that interferes with functioning or development” beginning in childhood, and present across more than one setting
- **Specific learning disorder** – A neurodevelopmental disorder of biological origin manifested in learning difficulty, and problems in acquiring academic skills markedly below age level, and manifested in the early school years, lasting for at least 6 months; not attributed to intellectual disabilities, developmental disorders, or neurological or motor disorders.
  - With impairment in reading
  - With impairment in written expression
  - With impairment in mathematics
  - Mild, Moderate, Severe
- **Motor disorders** - begins in the “early developmental period”
  - **Developmental coordination disorder** – Motor skill development substantially below age group and interferes with normal activities. Not the result of intellectual disabilities, visual problems, or a neurological condition (cerebral palsy) or a degenerative disorder.
- **Stereotypic movement disorder** – Repetitive, purposeless, often rhythmical motor behavior that interferes with normal activities, with or without self-injurious behavior
• Tic disorders – “A tic is a sudden, rapid, recurrent, nonrhythmic motor movement or vocalization.” Tic disorders are not due to use of a substance or to another medical condition; the diagnosis depends on the lack of any known cause.
  o Tourette’s disorder - Multiple motor tics and at least one vocal tic present for more than one year, though not necessarily at the same time, with onset before age 18, persistent (chronic) motor or vocal.

Schizophrenia spectrum and other psychotic disorders
Key features that define the psychotic disorders in DSM-5 are:
  o Delusions - fixed beliefs not open to change even when contrary to evidence, may be classified as bizarre if implausible
  o Hallucinations - involuntary sensory experiences not related to external environment or stimuli
  o Disorganized thinking or speech – illogical, nonsensical thought patterns,
  o Grossly disorganized or abnormal motor behavior (including catatonia)
  o Negative symptoms - reduced emotional expression (flat affect), avolition (lack of drive or motivation in goal directed behavior), alogia (restricted speech), anhedonia (inability to experience pleasure), asociality (lack of motivation to engage in social interaction)
  o 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.

• Delusional disorder - presence of one or more fixed delusions, but otherwise functioning usually is not noticeably impaired; different types: Erotomanic, Grandiose, Jealous, Persecutory, Somatic, Mixed, Unspecified, with or without bizarre content
• Brief psychotic disorder - sudden onset of at least one positive psychotic symptom, such as delusions, hallucinations, disorganized speech; lasting at least one day but less than one month
• Schizophreniform disorder - Symptoms identical to schizophrenia but lasting less that 6 months
• Schizophrenia - At least two of the following symptoms: 1. (one symptom has to be one of these) delusions, hallucinations or disorganized speech, and 2. grossly disorganized or catatonic behavior, negative symptoms; With or without catatonia
• Schizoaffective disorder - Major depressive or manic mood disorder concurrent with primary symptoms of schizophrenia, may be Bipolar type or Depressive type, with or without catatonia
• Substance/Medication-induced psychotic disorder
• Psychotic disorder due to another medical condition
• Catatonia - psychomotor disturbance including decreased motor activity, or excessive and peculiar motor activity, ranging from unresponsiveness to agitation, associated with other mental disorders, other medical conditions, or can be unspecified.

Bipolar and Related Disorders - 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 being 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 and headaches), sleeping too little or too much, feelings of guilt and worthlessness, eating too little or too much, having little energy and no interest in fun activities, thinking about death or suicide.

- Bipolar I Disorder
- Bipolar II Disorder
- Cyclothymic Disorder (milder form of bipolar disorder)
- Substance/Medication-induced bipolar disorder
- Bipolar disorder due to another medical condition

**Depressive Disorders**

- Disruptive Mood Dysregulation Disorder – new disorder for children between 6 to 18 years old, onset by 10 years old, criteria: temper outbursts average 3 times per week that are inconsistent with developmental level and not proportional to environmental provocation, general irritable mood between outbursts, symptoms occur in more than one setting, no manic episodes and lasts at least a year
  - This “new” diagnosis is in response to the “excessive diagnosis of child bipolar disorder (estimated at between 6 and 40 times more frequently than a few decades ago), and the consequent overtreatment of children with heavy-duty medications such as mood stabilizers and antipsychotics with serious side effects and lack of long-term testing in children” J.C.Wakefield. “DSM-5: An Overview of Changes and Controversies.” *Clin. Soc. Work J.* 41:139-154, 150 (2013).

- Major Depressive Disorder, Single and Recurrent Episodes (MDD)
- Persistent Depressive Disorder (Dysthymia)
- Premenstrual Dysphoric Disorder
- Substance/Medication Induced Depressive Disorder
- Depressive Disorder Due to Another Medical Condition
- Other Specified Depressive Disorder
- Unspecified Depressive Disorder

**Anxiety Disorders** - 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

- Separation Anxiety Disorder
- Selective Mutism
- Specific Phobia
- Social Anxiety Disorder (Social Phobia)
- Panic Disorder
- Panic Attack
- Agoraphobia
- Generalized Anxiety Disorder
- Substance/Medication Induced Anxiety Disorder
- Anxiety Disorder Due to Another Medical Condition
- Other Specified Anxiety Disorder
- Unspecified Anxiety Disorder

**Obsessive Compulsive and Related Disorders** - characterized by intrusive, unwanted thoughts (obsessions) that cause anxiety and behaviors (compulsions) that serve to reduce the level of anxiety caused by these thoughts.

- Obsessive Compulsive Disorder (OCD)
- Body Dysmorphic Disorder
- Hoarding Disorder
- Trichotillomania (Hair-Pulling Disorder)
- Excoriation (Skin-Picking) Disorder
- Substance/Medication-Induced Obsessive-Compulsive and Related Disorder
- Obsessive-Compulsive and Related Disorder Due to Another Medical Condition
- Other Specified Obsessive-Compulsive and Related Disorder
- Unspecified Obsessive-Compulsive and Related Disorder

**Trauma and Stressor-Related Disorders** - a new category for disorders that explicitly list in their criteria exposure to a traumatic or catastrophic event. A dominant characteristic is symptoms of anhedonia (inability to experience pleasure) and dysphoria (generalized discontent and indifference), anger and aggression, or symptoms of dissociation, or some combination of these.

- Reactive Attachment Disorder - (RAD)
  - Characterized by the breakdown of the child’s social ability, 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.
- Disinhibited Social Engagement Disorder
- Posttraumatic 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.
- Acute Stress Disorder
- 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, with depressed mood, with anxiety, with disturbance of conduct, with mixed disturbance of emotions and conduct

- Other Specified Trauma and Stressor-related Disorder
- Unspecified Trauma and Stressor-related Disorder

**Dissociative Disorders** - disruptions or gaps in the normal integration of subjective experience resulting in discontinuities in affect, memory, behavior.

- Dissociative Identify Disorder
- Dissociative Amnesia
- Depersonalization/Derealization Disorder
- Other Specified Dissociative Disorder
- Unspecified Dissociative Disorder

**Somatic Symptom and Related Disorders**

- Somatic Symptom Disorder
- Illness Anxiety Disorder
- Conversion Disorder (Functional Neurological Symptom Disorder)
- Psychological Factors Affecting Other Medical Conditions
- Factitious Disorder
- Other Specified Somatic Symptom and Related Disorder
- Unspecified Somatic Symptom and Related Disorder

**Feeding and Eating Disorders**

- Pica
- Rumination Disorder
- Avoidant/Restrictive Food Intake Disorder
- Anorexia Nervosa
- Bulimia Nervosa
- Binge-Eating Disorder
- Other Specified Feeding or Eating Disorder
- Unspecified Feeding or Eating Disorder

**Elimination Disorders**

- Enuresis
- Encopresis
- Other Specified Elimination Disorder
- Unspecified Elimination Disorder

**Sleep-Wake Disorders**

- Insomnia Disorder
- Hypersomnolence Disorder
- Narcolepsy
Breathing-Related Sleep Disorders
- Obstructive Sleep Apnea Hypopnea
- Central Sleep Apnea
- Sleep-Related Hypoventilation
- Circadian Rhythm Sleep-Wake Disorders

Parasomnias
- Non-Rapid Eye Movement Sleep Arousal Disorders
  - Sleepwalking
  - Sleep Terrors
- Nightmare Disorder
- Rapid Eye Movement Sleep Behavior Disorder
- Restless Legs Syndrome
- Substance/Medication Induced Sleep Disorder
- Other Specified Insomnia Disorder
- Unspecified Insomnia Disorder
- Other Specified Hypersomnia Disorder
- Unspecified Hypersomnia Disorder
- Other Specified Sleep-Wake Disorder
- Unspecified Sleep-Wake Disorder

Sexual Dysfunction
- Delayed Ejaculation
- Erectile Disorder
- Female Orgasmic Disorder
- Female Sexual Interest/Arousal Disorder
- Genito-Pelvic Pain/Penetration Disorder
- Male Hypoactive Sexual Desire Disorder
- Premature (Early) Ejaculation
- Substance/Medication-Induced Sexual Dysfunction
- Other Specified Sexual Dysfunction
- Unspecified Sexual Dysfunction

Gender Dysphoria
- Gender Dysphoria
- Other Specified Gender Dysphoria
- Unspecified Gender Dysphoria

Disruptive, Impulse-Control, and Conduct Disorders - behavioral conditions that violate the rights of others and/or cause significant conflict with society or draw the attention of authority figures
- Oppositional Defiant Disorder
  - Frequent, persistent pattern of angry/irritable mood, argumentative/defiant behavior, or vindictiveness exhibited over the course of at least six months, and
with at least one non-sibling, and should exceed normal behavior for the individual’s age, gender and culture

- Intermittent Explosive Disorder (IED)
  - Rapid onset of recurrent impulsive, verbally or physically aggressive outbursts typically lasting less than 30 minutes, usually in response to minimal provocation by an intimate or associate, and causing marked impairment in functioning or legal consequences, older than 6 years

- Conduct Disorder (CD)
  - Repetitive pattern of behavior that violates the basic rights of others, falling into four categories:
    1. Aggressive behavior causing or threatening harm to people or animals
    2. Non-aggressive behavior causing property damage or loss
    3. Deceitfulness or theft
    4. Serious violations of rules, such as running away from home
  - Childhood-onset type - before age 10, Adolescent-onset type - no symptoms before age 10, Unspecified onset
  - Specify:
    - With limited prosocial emotions:
      - Lack of remorse or guilt
      - Callous - lack of empathy
      - Unconcerned about performance
      - Shallow or deficient affect
  - Specify current severity:
    - Mild - causes relatively minor harm to others, such as lying, staying out late, etc.
    - Moderate - intermediate harm such as stealing without confrontation, vandalism
    - Severe - cause considerable harm to others (e.g. forced sex, physical cruelty, use of a weapon, breaking and entering, stealing while confronting victim)

- Antisocial Personality Disorder
- Pyromania
- Kleptomania
- Other Specified Disruptive, Impulse-Control, and Conduct Disorder
- Unspecified Disruptive, Impulse-Control, and Conduct Disorder

**Substance-Related and Addictive Disorders**

- Substance-Related Disorders
  - Substance Use Disorders – no longer “dependence or abuse” as separate diagnosis, merged into “use” with levels of severity, requires 2 of 11 criteria symptoms
    1. Taking the substance in larger amounts or for longer than you meant to
    2. Wanting to cut down or stop using the substance but not managing to
    3. Spending a lot of time getting, using, or recovering from use of the substance
    4. Cravings and urges to use the substance
    5. Not managing to do what you should at work, home or school, because of substance use
6. Continuing to use, even when it causes problems in relationships
7. Giving up important social, occupational or recreational activities because of substance use
8. Using substances again and again, even when it puts the you in danger
9. Continuing to use, even when you know you have a physical or psychological problem that could have been caused or made worse by the substance
10. Needing more of the substance to get the effect you want (tolerance)
11. Development of withdrawal symptoms, which can be relieved by taking more of the substance.

- Substance-Induced Disorders
  - Substance Use, Intoxication and Withdrawal
  - Substance/Medication-Induced Mental Disorders
- Alcohol Related Disorders
  - Alcohol Use, Intoxication and Withdrawal
  - Other Alcohol-Induced Disorders
  - Unspecified Alcohol-Related Disorder
- Caffeine-Related Disorders
- Cannabis-Related Disorders
  - Cannabis Use or Intoxication or Withdrawal
  - Other Cannabis-Induced Disorders
  - Unspecified Cannabis-Related Disorder
- Hallucinogen-Related Disorders
- Inhalant-Related Disorders
- Opioid-Related Disorders
- Sedative-, Hypnotic-, or Anxiolytic-Related Disorders
- Stimulant-Related Disorders
- Tobacco-Related Disorders
- Other (or Unknown) Substance-Related Disorders

- Non-Substance-Related Disorders
  - Gambling Disorder

**Neurocognitive Disorders**

- Delirium, Other Specified Delirium, Unspecified Delirium
- Major and Mild Neurocognitive Disorders
  - Major Neurocognitive Disorder
  - Mild Neurocognitive Disorder
  - Major or Mild Neurocognitive Disorder Due to Alzheimer’s Disease
  - Major or Mild Frontotemporal Neurocognitive Disorder
  - Major or Mild Neurocognitive Disorder with Lewy Bodies

**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 patient’s overall level of psychological, social, and occupational functioning on a hypothetical continuum.

- **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.
<table>
<thead>
<tr>
<th>Brand</th>
<th>Generic</th>
<th>Class</th>
<th>Typically Used to Treat</th>
</tr>
</thead>
<tbody>
<tr>
<td>Abilify</td>
<td>aripiprazole</td>
<td>Atypical antipsychotic</td>
<td>bipolar, schizophrenia, depression, autism (irritability)</td>
</tr>
<tr>
<td>Adderall (XR)</td>
<td>amphetamine salts</td>
<td>Stimulant</td>
<td>ADHD</td>
</tr>
<tr>
<td>Ativan</td>
<td>lorazepam</td>
<td>Benzodiazepine</td>
<td>anxiety</td>
</tr>
<tr>
<td>Catapres</td>
<td>clonidine</td>
<td>ADHD/Other</td>
<td>ADHD</td>
</tr>
<tr>
<td>Celexa</td>
<td>citalopram</td>
<td>SSRI</td>
<td>anxiety/depression</td>
</tr>
<tr>
<td>Concerta</td>
<td>methylphenidate</td>
<td>Stimulant</td>
<td>ADHD</td>
</tr>
<tr>
<td>Cymbalta</td>
<td>duloxetine</td>
<td>SNRI</td>
<td>anxiety/depression</td>
</tr>
<tr>
<td>Depakote (ER)</td>
<td>valproic acid</td>
<td>Mood stabilizer</td>
<td>bipolar/seizures</td>
</tr>
<tr>
<td>Desyrel</td>
<td>trazodone</td>
<td>Antidepressant/Other</td>
<td>depression/sleep aid</td>
</tr>
<tr>
<td>Effexor (XR)</td>
<td>venlafaxine</td>
<td>SNRI</td>
<td>anxiety/depression</td>
</tr>
<tr>
<td>Focalin (XR)</td>
<td>dexamethesphenidate</td>
<td>Stimulant</td>
<td>ADHD</td>
</tr>
<tr>
<td>Geodon</td>
<td>ziprasidone</td>
<td>Atypical antipsychotic</td>
<td>bipolar, schizophrenia</td>
</tr>
<tr>
<td>Haldol</td>
<td>haloperidol</td>
<td>Typical antipsychotic</td>
<td>schizophrenia/tourette’s</td>
</tr>
<tr>
<td>Lamictal</td>
<td>lamotrigine</td>
<td>Mood stabilizer</td>
<td>bipolar/seizures</td>
</tr>
<tr>
<td>Lexapro</td>
<td>escitalopram</td>
<td>SSRI</td>
<td>anxiety/depression</td>
</tr>
<tr>
<td>Lithium</td>
<td>lithium carbonate</td>
<td>Mood stabilizer</td>
<td>bipolar</td>
</tr>
<tr>
<td>Paxil</td>
<td>paroxetine</td>
<td>SSRI</td>
<td>anxiety/depression</td>
</tr>
<tr>
<td>Prozac</td>
<td>fluoxetine</td>
<td>SSRI</td>
<td>anxiety, depression, OCD</td>
</tr>
<tr>
<td>Remeron</td>
<td>mirtazapine</td>
<td>Antidepressant/Other</td>
<td>depression/sleep aid</td>
</tr>
<tr>
<td>Risperdal</td>
<td>risperidone</td>
<td>Atypical antipsychotic</td>
<td>bipolar, schizophrenia, autism (irritability)</td>
</tr>
<tr>
<td>Ritalin (LA, SR)</td>
<td>methylphenidate</td>
<td>Stimulant</td>
<td>ADHD</td>
</tr>
<tr>
<td>Seroquel</td>
<td>quetiapine</td>
<td>Atypical antipsychotic</td>
<td>bipolar, schizophrenia</td>
</tr>
<tr>
<td>Strattera</td>
<td>atomoxetine</td>
<td>ADHD/Other</td>
<td>ADHD</td>
</tr>
<tr>
<td>Tenex</td>
<td>guanfacine</td>
<td>ADHD/Other</td>
<td>ADHD</td>
</tr>
<tr>
<td>Trileptal</td>
<td>oxcarbazepine</td>
<td>Mood stabilizer</td>
<td>seizures/bipolar</td>
</tr>
<tr>
<td>Vistaril</td>
<td>hydroxyzine</td>
<td>Antihistamine/Other</td>
<td>anxiety/sleep aid</td>
</tr>
<tr>
<td>Vyvanse</td>
<td>lisdexamfetamine dimesylate</td>
<td>Stimulant</td>
<td>ADHD</td>
</tr>
<tr>
<td>Wellbutrin (SR, XL)</td>
<td>bupropion</td>
<td>Antidepressant/Other</td>
<td>depression</td>
</tr>
<tr>
<td>Zoloft</td>
<td>sertraline</td>
<td>SSRI</td>
<td>anxiety, depression, OCD</td>
</tr>
<tr>
<td>Zyprexa</td>
<td>olanzapine</td>
<td>Atypical antipsychotic</td>
<td>bipolar, schizophrenia</td>
</tr>
</tbody>
</table>
# Side Effects of Commonly Prescribed Psychotropic Medications

<table>
<thead>
<tr>
<th>Class of Medication</th>
<th>Common Side Effect</th>
<th>Rare or Severe Side Effect</th>
</tr>
</thead>
<tbody>
<tr>
<td>Antidepressants</td>
<td>nausea, headache, diarrhea, difficulty sleeping, sexual dysfunction</td>
<td>Increased risk of suicidal thinking, serotonin syndrome, activation of mania, low sodium levels, abnormal bleeding</td>
</tr>
<tr>
<td>Mood stabilizers</td>
<td>Lithium nausea, increased thirst/urination, headache, metallic taste</td>
<td>Lithium kidney/thyroid dysfunction, blurred vision, diarrhea, vomiting, muscle weakness, lack of coordination, hair thinning, cardiac arrhythmia</td>
</tr>
<tr>
<td></td>
<td>Depakote weight gain, sedation, nausea, weakness, tremors, hair loss</td>
<td>Depakote pancreatitis, hepatotoxicity, fetal abnormalities, thrombocytopenia, polycystic ovary syndrome</td>
</tr>
<tr>
<td></td>
<td>Trileptal sedation, double vision, headache, nausea</td>
<td>Trileptal gait disturbance, cognitive difficulties, low sodium levels, suicidal thinking, life-threatening serious rashes</td>
</tr>
<tr>
<td>Antipsychotics</td>
<td>sedation, weight gain, lightheadedness</td>
<td>diabetes mellitus, elevated cholesterol, lower seizure threshold, involuntary muscle movements</td>
</tr>
<tr>
<td>(typical and atypical)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>ADHD medications</td>
<td>diminished appetite, weight loss, difficulty sleeping, increased blood pressure</td>
<td>hallucinations, tics, cardiac complications</td>
</tr>
</tbody>
</table>

**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

<table>
<thead>
<tr>
<th>Disorder</th>
<th>Chief Symptoms</th>
<th>Commonly Used Medication</th>
</tr>
</thead>
<tbody>
<tr>
<td>Generalized Anxiety Disorder</td>
<td>Worry or tension, difficulty concentrating, fatigue, irritability, problems sleeping, restlessness</td>
<td>SSRIs* (e.g., Celexa, Zoloft, Prozac), SNRIs** (e.g., Cymbalta, Effexor), Benzodiazepines (e.g., Klonopin, Ativan)</td>
</tr>
<tr>
<td>Obsessive Compulsive Disorder</td>
<td>Intrusive, unwanted thoughts that cause anxiety, relieved by compulsive behaviors</td>
<td></td>
</tr>
<tr>
<td>Posttraumatic Stress Disorder</td>
<td>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</td>
<td></td>
</tr>
</tbody>
</table>

### MOOD DISORDERS

<table>
<thead>
<tr>
<th>Disorder</th>
<th>Chief Symptoms</th>
<th>Commonly Used Medication</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bipolar Disorder</td>
<td>Alternating between episodes of mania (hyperactivity, agitation, racing thoughts, reckless behaviors) and episodes of depression (see MDD below)</td>
<td>Mood stabilizers, antipsychotics, antidepressants (less common)</td>
</tr>
<tr>
<td>Dysthymic Disorder</td>
<td>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</td>
<td>SSRIs*, SNRIs**, other antidepressants</td>
</tr>
<tr>
<td>Major Depressive Disorder</td>
<td>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</td>
<td></td>
</tr>
</tbody>
</table>

*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

<table>
<thead>
<tr>
<th>Disorder</th>
<th>Chief Symptoms</th>
<th>Commonly Used Medication</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Attention-Deficit Hyperactivity Disorder</strong></td>
<td>Inattentiveness, hyperactivity, impulsivity, or a combination of these out of the normal range for a child’s age and development</td>
<td>Psychostimulants (e.g., Adderall, Ritalin, Concerta, Focalin, Vyvanse), Clonidine, Guanfacine</td>
</tr>
<tr>
<td><strong>Conduct Disorder</strong></td>
<td>Bullying, fighting, breaking rules with no apparent reason, cruel or aggressive behavior, destruction of property, alcohol/drug use, lying, running away, truancy, vandalism</td>
<td></td>
</tr>
<tr>
<td><strong>Oppositional Defiant Disorder</strong></td>
<td>Does not follow adults’ requests, angry and resentful, argues with adults, blames others for mistakes, loses temper, spiteful or seeks revenge, easily annoyed</td>
<td></td>
</tr>
</tbody>
</table>

### PSYCHOTIC DISORDERS

<table>
<thead>
<tr>
<th>Disorder</th>
<th>Chief Symptoms</th>
<th>Commonly Used Medication</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Psychotic Disorder NOS</strong></td>
<td>Delusions, hallucinations, or other psychotic symptoms that cannot be fixed to any specific psychotic disorder</td>
<td>Antipsychotics (typicals: Haldol, Prolixin, Thorazine or atypicals: Abilify, Geodon, Risperdal, Seroquel, Zyprexa)</td>
</tr>
<tr>
<td><strong>Schizophrenia</strong></td>
<td>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)</td>
<td></td>
</tr>
<tr>
<td><strong>Schizoaffective Disorder</strong></td>
<td>Delusions or hallucinations accompanied by a mood episode (mania, depression, or mixed)</td>
<td></td>
</tr>
</tbody>
</table>

### OTHER CHILDHOOD DISORDERS

<table>
<thead>
<tr>
<th>Disorder</th>
<th>Chief Symptoms</th>
<th>Commonly Used Medications</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Adjustment Disorders</strong></td>
<td>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).</td>
<td>Antidepressants (SSRIs, SNRIs, or others) may help alleviate</td>
</tr>
</tbody>
</table>
### Internet Resources

<table>
<thead>
<tr>
<th>Resource</th>
<th>Website</th>
</tr>
</thead>
<tbody>
<tr>
<td>The National Institute of Mental Health (NIMH)</td>
<td><a href="http://www.nimh.nih.gov">www.nimh.nih.gov</a></td>
</tr>
<tr>
<td>National Alliance on Mental Illness (NAMI)</td>
<td><a href="http://www.nami.org">www.nami.org</a></td>
</tr>
<tr>
<td>The American Academy of Child and Adolescent Psychiatry (AACAP)</td>
<td><a href="http://www.aacap.org">www.aacap.org</a></td>
</tr>
<tr>
<td>The National Child Traumatic Stress Network (NCTSN)</td>
<td><a href="http://www.nctsn.org">www.nctsn.org</a></td>
</tr>
<tr>
<td>Monthly Prescribing Reference (medication information)</td>
<td><a href="http://www.empr.org">www.empr.org</a></td>
</tr>
</tbody>
</table>

**http://bartoncenter.net/work/childwelfare/Mental-Health.html**

### Youth Advocacy Toolkit

The initial collaboration between the Barton Center and Casey Family Programs led to a second effort designed to empower youth in foster care to advocate for their own mental health care, particularly regarding psychotropic medications. The Barton Center, in partnership with the Georgia Division of Family and Children Services and Georgia EmpowerMEnt, developed a written guide to help youth with decision-making about medications. Additionally, the Barton Center worked with VOX Teen Communications and Georgia EmpowerMEnt to videotape testimonials of young adults speaking about their experiences with psychotropic medications while in foster care.

Access the guide "Making the Healthy Choice."

**http://bartoncenter.net/uploads/PsychMedsProject/YouthGuide_FINAL.pdf**
### Chapter 34 Child Welfare Case Law

*Contribution by Pat Buonodono, JD, CWLS and Mary Hermann, JD, CWLS*

<table>
<thead>
<tr>
<th>FEDERAL CONSTITUTIONAL LAW</th>
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<tbody>
<tr>
<td><strong>Parent’s Rights</strong></td>
</tr>
<tr>
<td>These cases establish basic parameters of relationship between parent and state.</td>
</tr>
<tr>
<td>Meyer, Pierce, and Prince: parents have fundamental liberty interest in directing the upbringing of their children.</td>
</tr>
<tr>
<td><strong>Yoder</strong> Parent’s right to freedom of religion prevailed over the state’s compulsory education law.</td>
</tr>
<tr>
<td>There is a presumption that fit parents can make</td>
</tr>
<tr>
<td><strong>Wisconsin v. Yoder</strong>, 406 U.S. 205 (1972)</td>
</tr>
<tr>
<td>Court held that the parents had the protection of the religious clause and their right to freedom of religion prevailed over the state’s interests. Compulsory education law violated parents’ first amendment rights. Note, however, that the dissent of William O. Douglas mentioned that the wishes of the teenage students were not considered.</td>
</tr>
<tr>
<td><strong>Troxel</strong> There is a presumption that fit parents can make</td>
</tr>
</tbody>
</table>
decisions that are in the best interest of their child. could grant, visitation rights whenever visitation may serve the best interest of the child. Plurality opinion, statute violated mother’s due process liberty interest in the care, custody and control of her children.

### Constitutional Rights of Children and Youth

<table>
<thead>
<tr>
<th><strong>Gault</strong></th>
<th>Due process of the 14th amendment applies to youth in delinquency proceedings.</th>
</tr>
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<tbody>
<tr>
<td><strong>Mathews</strong></td>
<td>Establishes 3-prong test for determining whether constitutional rights have been violated.</td>
</tr>
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</table>

**In re Gault,** 387 U.S. 1 (1967)

Due process of the 14th amendment applies to youth in delinquency proceedings:

- notice of charges
- right to confrontation
- right to cross-exam
- prohibition against self-incrimination
- right to counsel

Did not address representation of children in dependency cases. CAPTA requires “representative” in dependency cases, but it may be a CASA, lay GAL, or other volunteer.


Outlines factors court must consider in determining whether due process rights have been violated. Not a juvenile case. Establishes a three-prong test in determining whether rights have been violated:

1. Whether there is a private interest that will be affected
2. The risk of an erroneous deprivation of the private individual’s interest “through the procedures used”
3. The government’s interest, including burdens that might result from additional procedural requirements.


In June 2002, Children’s Rights, Incorporated of New York filed a class action lawsuit against the state of Georgia on behalf of children in the state’s legal custody. The lawsuit alleged violations of constitutional and statutory rights arising out of the operation of the state’s foster care systems in Fulton and DeKalb counties. In October 2005, the plaintiffs and defendants settled the lawsuit under the Kenny A. v. Sonny Perdue Consent Decree.

In an opinion published prior to the settlement, the Court applied the three-part *Mathews* test to the question of whether a child has a due process right to legal counsel in neglect proceedings. The Court held that yes, a child does have this right under the due process clause of the Georgia constitution, when the state seeks to remove the child from parental custody. That analysis occurred in the context of defendant counties’ motion for summary judgment, which was denied.

From the National Center for Youth Law:
Students in and out of school are “persons” under the Constitution, and a student’s right to freedom of speech is protected.


Pregnant girls cannot be required to obtain parental consent for an abortion without providing them a hearing as to their maturity to make the decision without anyone else’s consent. Statute requiring parental consent placed an undue burden on minor’s right to access abortion.


Parents do not have absolute discretion to commit child to mental hospital; child has protectable liberty interest in not being erroneously labeled mentally ill. Must be initial and periodic review by neutral fact-finder, but need not be a judicial hearing. Parents have a high duty to recognize symptoms of illness, seek and follow medical advice. Class action brought by Georgia children who had been voluntarily committed to state mental health institutions.

US District Court held that the state statutory scheme was unconstitutional because it did not protect the children’s due process rights. Statute required commitment application from child’s parent or guardian. US Supreme Court overruled, stating “Components of the settlement include: caseload limits, increasing payments to foster parents, guaranteeing ongoing planning processes to meet foster children’s needs, finding new homes and other places for foster children to live, preventing overcrowding and warehousing of children, and reducing the amount of time children spend in foster care. Defendants must also meet 31 outcome measures in areas such as timely and thorough investigations of reports of abuse, ensuring frequent visits of foster children by their case workers, ensuring that children are kept in safe and stable foster homes, and ensuring that children are either returned safely to their parents or moved quickly into another permanent home. Under the parties’ agreement, two independent joint monitors will provide public reports on defendants’ performance every six months.

Two additional settlements were reached with Fulton and DeKalb counties guaranteeing every child the right to effective legal representation throughout any involvement with the child welfare system.”
that applications of parents were reviewed by medical fact-finders and had authority to refuse to admit, and also periodically reviewed commitments.

<table>
<thead>
<tr>
<th>Children Born Out of Wedlock/Rights of Putative Fathers</th>
</tr>
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<tbody>
<tr>
<td><strong>Stanley</strong></td>
</tr>
<tr>
<td>All parents, including putative fathers, are constitutionally entitled to a hearing on fitness before their children are removed from their custody in dependency proceedings.</td>
</tr>
<tr>
<td><strong>Stanley v. Illinois</strong>, 405 U.S. 645 (1972)</td>
</tr>
<tr>
<td>Struck down irrebuttable presumption of unfitness. Court held that fathers of children born out of wedlock have due process and equal protection rights to a hearing prior to removal of their children from their custody.</td>
</tr>
<tr>
<td>IL statute provided that children of unmarried fathers were declared dependent without any hearing on parental fitness and without proof of neglect, upon the death of the mother. Supreme Court found that parental unfitness must be established on the basis of individualized proof. State’s practice violated Equal Protection Clause because parents are entitled to a hearing on their fitness before removal. Held: All parents, including putative fathers, are constitutionally entitled to a hearing on fitness before their children are removed from their custody in dependency proceedings.</td>
</tr>
<tr>
<td><strong>Quilloin</strong></td>
</tr>
<tr>
<td>Limited constitutional rights of putative fathers to those who had evidenced a substantial interest in their children’s welfare.</td>
</tr>
<tr>
<td>Limited the constitutional rights of putative fathers to those who had evidenced a substantial interest in their children’s welfare. An uninvolved father’s consent to stepparent adoption is not necessary if the adoption is otherwise in the child’s best interest.</td>
</tr>
<tr>
<td>Considered whether the state of Georgia could constitutionally deny an unwed father the authority to object to adoption of his child. Statute provided that only mother’s consent required for adoption of illegitimate child.</td>
</tr>
<tr>
<td>Biological father had filed petition to legitimate. Supreme Court held that under the circumstances of the case, the biological father’s substantive rights were not violated by application of a “best interest of the child” standard. He had never sought custody. Court found that rights of a father who was never married to mother are distinguishable from those of a separated or divorced father.</td>
</tr>
<tr>
<td><strong>Caban</strong></td>
</tr>
<tr>
<td>Unwed fathers have the same rights to their children as unwed mothers.</td>
</tr>
<tr>
<td><strong>Caban v. Mohammed</strong>, 441 U.S. 380 (1979)</td>
</tr>
<tr>
<td>Struck down as violative of equal protection a statute requiring consent to adoption by mother, but not father, of child born out of wedlock. Held: unwed fathers have the same rights to their children as unwed mothers.</td>
</tr>
<tr>
<td>In this case, biological father was involved in the life of the child. NY statute required mother’s consent for adoption, but not biological father’s, even when parental relationship was</td>
</tr>
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**Lehr**

Putative Father Registry:

Equal protection does not prevent a state from according parents separate legal rights when one parent had a continuous relationship with the child and the other parent had never established a relationship with the child.


Upheld constitutionality of statute treating fathers and mothers of children born out of wedlock differently concerning necessity for consent to adoption when it provides a putative father’s registry, by which a father could obtain rights equivalent to those of the mother.

Father was at hospital when baby born, but name not on birth certificate, he did not live with mother and child, never offered to marry mother, never registered on putative father registry, never provided financial support, did not receive notice because not registered and only learned about adoption pending because he filed for paternity and visitation.


Upheld constitutionality of conclusive presumption against putative father who sought to establish paternity in the face of desire of mother and her husband, the “presumed father,” to raise the child as their own. Legal father v. biological father; legal father wins all. A man may be denied standing to establish paternity for a child born to a married mother. “Casual inseminators.”

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**Termination of Parental Rights**

**Lassiter**

There may be TPR cases that would give rise to a due process right to appointment of counsel. Court encouraged states to appoint counsel in termination cases as “wise public policy.”


Addressed whether states were constitutionally required to provide appointed counsel for indigent parents in TPR cases. Mom was incarcerated, had to represent herself at TPR hearing. Court held that it did not appear that the presence of counsel would have made a determinative difference. No allegations of criminal abuse or neglect, no expert witnesses called, no substantively or procedurally difficult points of law. Mom never mentioned juvenile hearing to her criminal attorney and had not evidenced much interest in the child after removal. Court held that mother
**Santosky**  
Establishes “clear and convincing” standard of evidence necessary to protect a parent’s due process rights in TPR cases.

TPR grounds must be proven by clear and convincing evidence.  
Establishes “clear and convincing” standard of evidence necessary to protect a parent’s due process rights in TPR cases.  
In some states TPR can be based upon adjudication of deprivation. Make sure judge states standard of proof on record, e.g. “court is convinced by clear and convincing evidence.”

When an indigent parent appeals TPR, the Fourteenth Amendment’s Due Process Clause requires that he be provided “a record of sufficient completeness to permit proper appellate consideration of his claims” at public expense. State is require to provide indigent parent “enough of the record” to permit appellate consideration.

**Foster Parent Relationships**

Challenged procedures for removal of foster children from foster homes. Foster parents were given ten days’ notice of removal and could request an administrative hearing. Supreme Court held that was sufficient.

**State Agency Duties**

**DeShaney** and  
**Youngberg**:  
State has no duty to protect a child not in state custody from conduct by private parties; however, when person is institutionalized and dependent upon the state, the state must provide safe conditions.

State did not have a duty to act to protect a child that was not in the state’s custody. Civil rights action under 42 USC 1983 filed on behalf of a severely abused child against social workers and local officials who had received complaints, removed child for evaluation, and returned him to father. Despite repeated complaints Department did not remove child. Child ended up with brain damage from severe beatings, required lifetime institutionalization. State was not required to protect the child from private actors.

Court held that a mentally retarded man who was involuntarily confined in a state institution had constitutionally protected liberty interests under the due process clause of 14th amendment to reasonably safe conditions of confinement, freedom from unreasonable bodily restraints, and minimally adequate training of caregivers.

**Practice Note:** Taken together, *DeShaney* and *Youngberg* suggest a rule that while the state has no duty to intervene to protect a child from parental maltreatment, once it does intervene, federal law requires that the child be not be placed in a home the state knows or suspects may be abusive.


Respondents sought to enforce state’s duty under AACWA to provide reasonable efforts to maintain child in his home or return child home from foster care. AACWA only provides for financial penalties to states and no such remedy was intended under AACWA. No private cause of action existed.

**Access to Child Protective Service Records**


The Supreme Court held that denying the defendant access to CPS records violated the confrontation and compulsory process clauses and the 6th amendment. Accused is entitled to ask trial court to review CPS file and determine whether it has material information that should be disclosed.

**Social Security Benefits for Children in Foster Care**


Class action on behalf of children in foster care who were receiving Social Security benefits that were being paid to the state as representative payee. Court held it was permissible for the agency to reimburse itself for the current costs of maintaining the children in foster care.


Court overturned voluntary adoption three years after the adoption because notice not given of TPR under ICWA. Federal definition of “domicile” applied to ICWA cases. Federal definition of domicile in ICWA case is that child of persons domiciled on an Indian reservation is also domiciled on the reservation, despite having been born off the reservation and
having been placed for adoption without ever being on the reservation. If the parents were domiciled on the reservation, their children were also domiciled there by operation of law, even if the children had never been present on the reservation.

### Children’s Statements and Testimony

**Crawford**

Confrontation clause bars admission of testimonial statements of a witness who does not appear at criminal trial unless unavailable to testify and the defendant had a prior opportunity for cross-examination.


Court overruled the precedent that hearsay statements of unavailable witness could be admitted if there were sufficient indicia of reliability. In order to admit hearsay that is testimony, the Sixth Amendment requires that the witness is unavailable and that the defendant had the prior opportunity to cross-examine the witness.

**Coy v. Iowa**, 478 U.S. 1012 (1988)

Affirmed a defendant’s right to confront witnesses against him in child sexual abuse cases. Supreme Court held that putting a screen between the defendant and the alleged victims was an unconstitutional denial of defendant’s 6th amendment right to confront witnesses against him. Statute did not require individualized findings that the practice shielded the child from additional trauma.

**Maryland v. Craig**, 497 U.S. 836 (1990)

Upheld practice of permitting child witnesses to testify via closed circuit television. Court held that right to confrontation is not absolute, but subject to state’s legitimate interest. Public policy interest in protecting children is sufficiently important to justify the use of one-way closed circuit television as long as the state shows that testifying would cause child serious emotional distress.


Supreme Court held that prosecution was not required to produce a four-year-old victim at trial of defendant. Statements of victim admitted under traditional hearsay exceptions. Court held that confrontation clause did not require that declarant be produced at trial or found unavailable before out of court statement could be admitted as spontaneous declarations.


Residual hearsay exception requires that child witness be unavailable to testify in the criminal trial and that there be particularized guarantees of the trustworthiness of the statement.

### Parent's Right Against Self-Incrimination in Child Protection Cases

Involved juvenile court order for mother to produce child, who was the subject of a child welfare proceeding. Child was removed and then placed back with mom with intensive services and court supervision. Mother didn’t comply with case plan so court ordered child removed again. Mom refused to testify, taking the 5th because keeping the child would amount to an admission of her physical control over the child and she was jailed for contempt.

Supreme Court held that a mother who is custodian of a child pursuant to a court order may not invoke 5th Amendment to resist an order of the juvenile court to produce the child.


Statements made in the course of police interrogation are nontestimonial when circumstances objectively indicate that the questioner’s primary purpose is to enable police to meet an ongoing emergency; they are testimonial when the primary purpose is to establish or prove past events potentially relevant to later prosecution.

### GEORGIA CASE LAW

<table>
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<tr>
<td>Was the juvenile court’s order, which denied father’s petition to modify order terminating reunification services, subject to direct appeal? Yes.</td>
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<tr>
<td>The Court of Appeals first assessed whether § 5-6-34(a)(11), which categorizes “child custody cases” as directly appealable, encompassed deprivation proceedings. Relying heavily on case law that labels child custody matters as distinct from deprivation matters, the court concluded that § 5-6-34(a)(11) did not encompass deprivation proceedings; therefore, a direct appeal was not authorized under the provision. <em>See e.g., In re J.P.</em>, 267 Ga. 492 (1997); <em>In re M.C.J.</em>, 271 Ga. 546 (1999).</td>
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<tr>
<td>The court, however, ultimately found an order denying a § 15-11-40(b) modification to be directly appealable under §§ 5-6-34(1) and 15-11-3.</td>
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<tr>
<td>The court relied on <em>Rossi v. Price</em>, 237 Ga. 651 (1976). There, the Georgia Supreme Court held that a mandamus action was an inappropriate mechanism of redress for a juvenile court order denying an § 15-11-40(b) motion to vacate due to newly found evidence and fraud. The Supreme Court reasoned that because such an order was directly appealable and subject to judicial review under § 15-11-3, mandamus was inappropriate.</td>
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<tr>
<td>Accordingly, the Court of Appeals in J.N. used this reasoning in finding that father had a direct appeal under §§ 5-6-34(1) and 15-11-3. In so holding, the Court of Appeals expressly overruled <em>In re B.S.H.</em>, 236 Ga.App. 879 (1999).</td>
<td></td>
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<tr>
<td>Did the juvenile court apply the correct standard of proof</td>
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<tr>
<td>Standard of Proof in Modification Filed By Parent in Dependency Case</td>
<td>when it required the father to prove a § 15-11-40(b) modification by clear and convincing evidence? No. The Court of Appeals discussed the fundamental due process rights surrounding the parent-child relationship and how the state is required to prove deprivation by clear and convincing evidence. Referring to <em>Santosky v. Kramer</em>, 455 U.S. 745, 754-755 (1982); § 15-11-54. With that foundation, the Court of Appeals reasoned that because the juvenile court did not proceed to TPR, but instead terminated reunification services, father retained a specific interest in his children under § 15-11-58(i)(1) so as to move for modification under § 15-11-40(b). Because he retained this interest in his children and because of the constitutional rights surrounding the parent-child relationship, the Court of Appeals concluded that a preponderance of the evidence standard appropriately recognized the interests at play in relation to the shifted burden.</td>
</tr>
<tr>
<td>Deprivation</td>
<td><em>In re K.B.</em>, 690 S.E.2d 627 (Ga. Ct. App. 2010) (A09A2299) Is the testimony of a single witness sufficient to establish the facts in a deprivation proceeding? Yes. The testimony of a single witness is generally sufficient to establish a fact. Only in cases of treason, perjury, and felonies where the only witness is an accomplice is the testimony of a single witness insufficient. § 24-4-8. (citing <em>Coleman v. State</em>, 227 Ga. 769, 771 (1971)) (accomplice requirement is to safeguard against one person falsely maintaining that he and the defendant committed the crime). These considerations do not apply in this deprivation case; the testimony of the doctor, detective, and caseworker was sufficient.</td>
</tr>
<tr>
<td>Single Witness OK</td>
<td><strong>Deprivation</strong></td>
</tr>
<tr>
<td>Evidence Issues</td>
<td><em>In re C.A.</em>, -- Ga. App. --, 2012 WL 21258561(2012) (A12A0431) TPR Reversed. Trial court relied entirely on hearsay of third parties not available for cross-examination to support the conclusion that the mother suffered from schizophrenia. The mother testified that her mental health issues resulted from overmedication and were resolved. Her testimony was unrefuted.</td>
</tr>
<tr>
<td>Hearsay</td>
<td><em>In re A.R.</em>, -- Ga. App. --, 2012 WL 331610 (2012) Deprivation Order Reversed. Trial court admitted into evidence a facsimile copy of a letter from the Department of Homeland Security stating that an immigration detainer had been placed against the Father. No witness testified to its authenticity or otherwise laid a foundation for its admission into evidence. Additionally, father was not properly served with process.</td>
</tr>
</tbody>
</table>
Incarceration of Parent

S.E.2d 594 (2008)

The father appealed only the juvenile court’s finding that the deprivation is likely to continue or will not be remedied. While incarceration does not automatically warrant termination, the juvenile court should consider aggravating factors, such as: failure to comply with the case plan goals, failure to establish/maintain relationship with the child, violation of the work release program, failure to pay child support, no evidence of parenting class. The court should commend the father for obtaining his GED and making college plans, but the court weighs “sudden parental fitness when compared to other evidence.”

The child was stable and had made progress in the pre-adoptive placement. The juvenile court did not err “in assigning little weight to appellant’s (the father) assertion of sudden parental fitness and determining deprivation was likely to continue. However, courts are authorized to consider the past conduct of a parent in determining whether the deprivation is likely to continue” and “may place more weight on negative past facts than promises of future conduct.”

Although the juvenile court should take recent improvements into account, it, not the appellate court, ultimately must determine whether those improvements warrant hope of rehabilitation. And it may “assign much less weight to such assertions of sudden parental fitness when compared to the other evidence[,]” as it did in this case. Citing In the Interest of R.D.B., 282 Ga. App. 628, 631 (1) (b) (639 SE2d 565) (2006); In the Interest of A.C., 280 Ga. App. 212, 217 (1) (c) (633 SE2d 609) (2006); In the Interest of D.D.B., 282 Ga. App. 416, 419 (1) & 418 (1) (638 SE2d 843) (2006).

“Although appellant was going to be released from jail three months after his parental rights were terminated, this court is not required to gamble M.D.N.’s future on the promise that appellant will emerge from prison rehabilitated and drug free and take the steps necessary to provide for his son when he has done nothing other than taken the steps to legitimate the child to evidence his future intent.”

Jurisdiction


Juvenile court granted permanent custody (to age 18) to grandmother; aunt and uncle filed for custody in superior court, which it granted. Pursuant to § 15–11–28(a)(1)(C), the juvenile court had original jurisdiction over the deprivation proceeding. Moreover, under § 15–11–58(i), the juvenile court had the authority to grant the maternal grandmother long-term custody of A.L. This order was already in effect at the time the superior court entered its order granting permanent custody to the aunt and uncle. Thus, although the superior court had original jurisdiction over the
permanent child custody proceeding between the parties, it should have declined to exercise its jurisdiction in light of the pre-existing and pending juvenile court deprivation order.

<table>
<thead>
<tr>
<th>Legitimation</th>
<th><strong>Did the father abandon his opportunity interest?</strong></th>
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<tr>
<td><strong>In re J.S., 694 S.E.2d 375 (Ga. Ct. App. 2010)</strong></td>
<td>Did the juvenile court err in denying father’s petition to legitimate? No. The Court of Appeals focused on the relevant issue: whether the father abandoned his opportunity interest to develop a relationship with the child. (citing In re J.L.E., 281 Ga. App. 805, 806 (2006)). Here, testimony from the hearing on the petition showed that father had spent virtually no time with the child, failed to write letters from prison, and failed to provide any financial support to the child. This evidence was sufficient to show abandonment.</td>
</tr>
<tr>
<td><strong>In re V.B.L., 306 Ga. App. 709 (2010)</strong></td>
<td>Was the father wrongfully denied an attorney during the termination proceeding? No. The Court of Appeals found father’s contention to be moot because the juvenile court specifically deferred hearing any evidence on the petition to terminate the father's rights until it heard evidence on the petition to legitimate (citing Alexander v. Guthrie, 216 Ga. App. 460 (1995) (no right to an attorney regarding a hearing on a petition to legitimate)). The juvenile court denied father’s petition to legitimate. Therefore, father lacked standing to challenge the termination and his contention that he did not have an attorney was moot.</td>
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<thead>
<tr>
<th>When does the father’s opportunity interest begin?</th>
<th><strong>In re V.B.L., 306 Ga. App. 709 (2010)</strong></th>
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<tbody>
<tr>
<td><strong>In determining whether a biological father has abandoned his interest in developing a relationship with his child, the juvenile court shall consider: (1) the biological father’s actions during the period since he learned of his parentage and (2) his actions since the time he engaged in a non-marital sexual relationship.</strong></td>
<td>The child’s biological mother and father met in 1999. In 2000, V.B.L. was born and the mother, married at the time to another man, identified a third man as the child’s father. In 2003, the juvenile court found V.B.L. deprived and granted temporary custody to the maternal grandmother. In 2005, the juvenile court extended custody of V.B.L. for another two years and again extended custody in 2009. On August 31, 2009, the maternal grandmother and legal guardian filed a motion to terminate parental rights of the biological mother, her husband, and the named father. Around the same time, the mother contacted the child’s biological father, told him she was losing her parental rights, and required his assistance. In November 2009, the biological father filed a motion to intervene in the grandmother’s termination action and determine V.B.L.’s paternity. Testing confirmed V.B.L.’s paternity. The biological father filed a petition to legitimate, which the court granted.</td>
</tr>
</tbody>
</table>
Did the juvenile court apply the proper standard in determining whether the biological father abandoned his interest in developing a relationship with V.B.L.? No. In determining that the biological father had not abandoned his opportunity interests, the juvenile court erred in failing to consider the biological father’s actions before he discovered he was V.B.L.’s father. Under *LaBrec v. Davis*, the biological father’s opportunity interest commences at the time he engages in a non-marital sexual relationship and extends through the period he learns of his parentage.

Denial of Legitimation and TPR affirmed by a split court.

1) Does a father abandon his opportunity interest to legitimate his child where he fails to give support to the mother during pregnancy and after birth, files a legitimation petition only after the child is taken into DFCS custody even though paternity had previously been determined, and fails to maintain meaningful contact with the child over a two year period? YES

2) Does a father lack standing to challenge an order terminating his parental rights where he failed to legitimize the child? YES

---

**Termination Analysis**


Standard Two Step TPR Analysis:

Before terminating parental rights, the juvenile court must conduct a two-step analysis:

The first step requires a finding of parental misconduct or inability, which requires clear and convincing evidence that:

1) the child is deprived;
2) lack of proper parental care or control is the cause of the deprivation;
3) such cause of deprivation is likely to continue; and
4) the continued deprivation will cause or is likely to cause serious physical, mental, emotional, or moral harm to the child.

If these four factors are satisfied, the court must then determine whether TPR is in the child’s best interest, considering physical, mental, emotional, and moral conditions and needs, including the need for a secure and stable home.


Courts apply a two-part analysis in considering whether to terminate parental rights:

First, there must be a finding of parental misconduct or inability, which requires clear and convincing evidence that: (1) the child is deprived; (2) the lack of proper parental care or control
is the cause of the deprivation; (3) the cause of the deprivation is likely to continue; and (4) continued deprivation is likely to cause serious physical, mental, emotional, or moral harm to the child. If these four factors exist, then the court must determine whether TPR is in the best interest of the child, considering the child’s physical, mental, emotional, and moral condition and needs, including the need for a secure, stable home. (Footnotes omitted.)


1. Parental Misconduct or Inability—After reviewing the record and considering the statutory factors, we conclude, for the reasons set forth below, that there was clear and convincing evidence to support the juvenile court’s finding of parental misconduct or inability.

(a) Deprivation—The juvenile court issued orders in 2004 and 2006 finding the children to be deprived, and neither parent appealed these orders. Accordingly, they are bound by the finding of deprivation for purposes of their termination proceedings. _In the Interest of A.B._, 283 Ga. App. 131, 136(1)(a), 640 S.E.2d 702 (2006).

(b) Deprivation Caused by Lack of Proper Parental Control or Misconduct—Similarly, “[t]he failure to appeal the deprivation order[s] renders the juvenile court’s determination on this second factor binding as well.” (Citation and punctuation omitted.) _In the Interest of M.C._, 287 Ga. App. 766, 768(b), 653 S.E.2d 120 (2007). In any event, the evidence presented at the hearing clearly supports the trial court’s finding in the termination order that the deprivation was caused by lack of proper parental control or misconduct. The trial court based that conclusion upon a finding of (1) a medically verifiable deficiency of the parents’ physical, mental or emotional health of such duration or nature as to render the parent unable to provide adequately for their children, § 15-11-94(b)(4)(B)(i), as well as a finding that (2) the parents had failed, without justifiable cause, for a period of one year to communicate with the children in a meaningful, supportive or parental manner, to provide care and support to the children or to comply with the case plan for a period of one year. § 15-11-94(b)(4)(C). In addition, the juvenile court found physical, mental, and emotional neglect of the children on the part of the father. § 15-11-94(b)(4)(B)(v).

Dr. Hark’s testimony clearly supported the juvenile court’s conclusion that a medically verifiable deficiency existed in the parents’ physical, mental or emotional health, which impacted
their ability to care for their children. Clear and convincing evidence also supported the trial court’s findings that the father had neglected the children and that both parents had failed to meaningfully communicate with the children. The parents’ record of visitation with their children was inconsistent, as they both missed a number of scheduled visits without excuse. Consequently, Dr. Azar-Dickens concluded that the children had only an ambivalent or anxious attachment to their parents.

Moreover, neither the mother nor the father had met their child support obligations. The mother made only one voluntary payment of $70 over a three-year period, and the father paid at most three and one-half months of his child support obligation. “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.” (Citation omitted.) In the Interest of A.R.A.S., 278 Ga. App. 608, 613(2)(c), 629 S.E.2d 822 (2006).

Further, the evidence clearly showed that the parents had failed to comply with their case plan. The mother failed for more than three years to complete the recommended treatment. Moreover, Dr. Hark testified that the mother had a propensity to use drugs and alcohol and would be likely to relapse if she did not acknowledge her problem and get the proper treatment. The father also failed to attend AA meetings, and did not complete the requisite anger management and domestic violence courses. Both the mother and the father also failed to meet their goals of maintaining consistent employment and a stable home environment.

(c) Deprivation Likely to Continue—Although the parents had made some recent strides in completing their case plan goals, those accomplishments followed almost three years of inconsistent performance. “The decision as to a child’s future must rest on more than positive promises which are contrary to negative past fact.” (Citation and punctuation omitted.) In the Interest of J.D., 280 Ga. App. 861, 865(1)(c), 635 S.E.2d 226 (2006).

In considering the evidence presented at the hearing, we note that [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, 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. 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. (Citation and punctuation omitted; emphasis in original.)
In the Interest of M.C., 287 Ga. App. at 768-769(c), 653 S.E.2d 120. “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.” (Citation and punctuation omitted.) In the Interest of M.N.R., 282 Ga. App. 46, 47, 637 S.E.2d 777 (2006). And we find that clear and convincing evidence supports the juvenile court’s conclusion that the deprivation is likely to continue.

(d) Continued Deprivation Likely To Cause Harm—“The same evidence demonstrating that the children’s deprivation is likely to continue also supports a finding that continued deprivation would cause serious physical, mental, or moral harm to the children.” (Citation omitted.) In the Interest of R.S.H., 269 Ga. App. 292, 298(a), 603 S.E.2d 675 (2004). The parents demonstrated inability to provide a stable home for the children or to provide for their needs could clearly result in harm. “[I]t is well established that children need permanence of home and emotional stability or they are likely to suffer serious emotional problems.” (Footnote omitted.) In the Interest of B.I.F., 264 Ga. App. 777, 781(1), 592 S.E.2d 441 (2003). The evidence, therefore, clearly supported the trial court’s finding on this factor.


2. Best Interests of Children—Having found clear and convincing evidence to support the juvenile court’s finding of parental misconduct or inability, we now consider the best interests of the children. “To determine whether termination of parental rights is in the best interest of the child, the court shall consider the physical, mental, emotional, and moral condition and needs of the child, including his or her need for a secure and stable home.” (Footnote omitted.) In the Interest of K.A.C., 290 Ga. App. 310, 314(5), 659 S.E.2d 703 (2008).

Thus “[t]he juvenile court was authorized to consider the children’s need for a stable home situation and the detrimental effects of prolonged foster care.” (Citation and punctuation omitted.) In the Interest of T.J., 281 Ga. App. 673, 676(1), 637 S.E.2d 75 (2006). The children have been in the Department’s custody since April 2004. In the interim, the parents have been unable to provide the permanency, stability, and support needed by the children. The children have bonded with their foster parents, who wish to adopt them, who have given them a stable home, and who have provided for the children’s specialized medical needs. Dr. Azar-Dickens opined that breaking the children’s attachment to their foster parents could prove emotionally harmful to them. Accordingly, the juvenile court’s determination that termination was in the children’s best interests was also supported by clear and
### Termination/Deprivation Likely to Continue


Court of Appeals overturned TPR. While the mother had not met all the goals of her case plan, she had only been released from prison approximately three months prior to the termination hearing. Since her release, her drug screens were negative, she was not required by her probation officer to obtain any further drug treatment, and she had not been recommended for further treatment for a substance abuse problem following her release from prison. Also, although the caseworker testified that the Department had not attempted to conduct a home evaluation or visit the home to see if it was adequate for the child to live there, the court allowed testimony that her current living situation had been deemed adequate by a child advocate worker. And she met her case plan goal of completing a parenting course while in prison. The mother was visiting with the child, and the caseworker testified they appeared to be bonded. The child informed the court that he wanted to live with his mother, that he likes to visit with her, and that he wants to continue to see her. The main component of her case plan that seemed to be missing at the time of her hearing was stable employment, and the mother testified she had submitted an application for a job the previous day.

Moreover, even if there were sufficient evidence before us to support a finding of continued deprivation, termination of the parental rights of the mother would not be warranted here because there is no evidence in the record that any continued deprivation is likely to cause physical, mental, emotional, or moral harm to the child.

### Termination/Sufficiency of Evidence


Did the court properly deny DFCS’ petition to terminate mother’s rights due to insufficient evidence? Yes. The Court of Appeals laid out the two-prong test (found in § 15-11-94) that a juvenile court must apply when terminating parental rights. The trial court had found that DFCS failed to show that deprivation was likely to continue. This was based on the mother’s continued efforts on her case plan, her successful visitation, and specifically that the mother and children showed strong connection during visitation.

Appellants claimed that mother failed to show her housing, failed to visit for 9 months, and that mother struck her children (which mother adamantly denied). The question before the juvenile court was not whether or not the mother showed fault, it was whether clear and convincing evidence supported the termination.

TPR vacated and case remanded because trial court failed to include sufficient findings of fact and conclusions of law in its order to support its decision.

Possibility of future deprivation is not the standard; state must prove present deprivation. No authority for presumption that a child is deprived simply because the child’s mother is in the custody of DFCS.

**In the Interest of R.S.T.,** -- Ga. App. -- (Sept, 2013) (A13A1587)
A finding of deprivation cannot be based solely upon the fact that another child of the parent has been previously found deprived. The State must provide evidence of present deprivation.

See also **In re D.J.,** -- Ga. App. -- 2013 (A12A2176) (2013)

Deprivation Reversed. The Court of Appeals cited *In re C.H.*, 305 Ga. App. 549 (2010), for the proposition that when children are already in DFCS custody, the key question is “whether the children would be deprived if returned to the parent’s care and control.” The court found that under the juvenile court’s factual findings this case involved only “a single, albeit highly inappropriate incident in which two children observed the boyfriend pull a gun on the mother and believed that they heard a gunshot.” In the absence of any evidence of physical or emotional harm to the children or any abuse of the children, this incident was insufficient to find the children deprived.

**Vacation of Termination Order**

TPR vacated. Can a mother’s parental rights to her children be restored and the TPR order be set aside where the juvenile court is presented with newly discovered evidence—evidence of fraud in obtaining the surrender from the mother and changed circumstances in the best interest of the children even though the mother signed the voluntary surrender and the 10-day revocation period has expired? YES. Pursuant to § 15-11-40, there is no time limit on the juvenile court’s jurisdiction to set aside, modify or vacate its orders based on newly discovered evidence and changed circumstances in the best interest of the children.

Quotes from Georgia Deprivation and Termination Cases
| **Appeal/Transcript** | “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.”
| **Case Plan/Recent Improvements** | “[W]hat 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.”
|  | “Likewise, the mother’s continued failure to comply with her reunification plan supported the juvenile court’s finding that deprivation was likely to continue.”
|  | “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.”
|  | “The decision as to a child’s future must rest on more than positive promises which are contrary to negative past fact.”
|  | “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.’”
| **Case Plan is required** | In the following case, TPR was reversed. The court ordered DFCS to create a case plan but DFCS did not create one:
“If DFACS had complied with the Court’s order to establish a visitation schedule, then perhaps the Father would have had a better opportunity to form a more meaningful relationship with BNA.”
and
“Had DFACS established a case plan, the Father would have had a clear description of the specific actions to be taken by him and the specific services to be provided by DFACS to bring about the changes needed to return the child home.” |
Other cases where TPR was reversed based on case plan issues:

Reversed in part because (1) “As to this last factor, we note that a reunification plan was never implemented for Hall. We also note that the termination petition was filed within several months of Hall being notified that he was the biological father of the child.” and (2) no visitation plan was implemented.


Father in jail for two years during the case. At termination, he had been out of jail for two weeks, lived in a homeless shelter, had a job as a welder, had written to the children while in prison, had no visitation with children. Father had no realistic opportunity to work his case plan.


“After the children became deprived when the father was arrested, the Department adopted a reunification case plan for the father which included goals it knew he could not achieve while incarcerated. Further, the juvenile court repeatedly told the father to contact a caseworker after the incarceration ended to begin work on the case plan. Yet the Department filed a petition to terminate the father’s rights while he was still incarcerated, before he had any realistic opportunity to fulfill his reunification plan goals. Then, the juvenile court severed the parent-child relationship, which requires clear and convincing evidence of parental unfitness, based on the father’s previous incarceration and his failure to achieve his reunification case plan goals in his first 45 days of freedom. Under these circumstances, we conclude that the juvenile court’s finding that the children’s deprivation arising from the father’s misconduct or inability is likely to continue is not supported by clear and convincing evidence.”


The court held that even though Mother’s past was far from exemplary, she was working her case plan.


Mother’s compliance with case plan was exemplary.


Parent secured employment, enrolled in counseling, completed drug classes, paid child support, and this was substantial compliance with case plan.

In Re T.B., 249 Ga. App. 283 (2001)
Parent made significant progress on case plan.  

“A parent’s failure to live up to societal norms for productivity, morality, cleanliness and responsibility does not mandate the termination of parental rights.” The father had completed all of his case plan goals, except paid child support and the father had attended all visits except those when he was working.  

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<th><strong>Children Need Permanence</strong></th>
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| “[I]t is well settled that children need permanence of home and emotional stability or they are likely to suffer serious emotional problems.”  

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<th><strong>Deprivation Now Dependency</strong></th>
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| “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.’”  

|  |
| "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.”  

|  |
| "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.”  

|  |
| "Unexplained injuries may constitute evidence of deprivation."  

|  |
| “....deprivation must be shown to have resulted from the unfitness on the part of the parent, that is, either intentional or unintentional misconduct resulting in abuse or neglect of the child.”  

|  |
| “In any event, the fact that a parent may be in debt or have financial difficulties, without more, does not support a finding that a parent is unfit. See *In the Interest of E.M.*, 264 Ga. App. 277, 280-281, 590 |
Present deprivation
Required NOT
temporary future deprivation

S.E.2d 241 (2003). A juvenile court is not authorized to remove a child from parental custody simply ‘because it has determined that the child might have better financial, educational, or even moral advantages elsewhere.’ (Citation omitted.) In the Interest of S.E.L., 251 Ga.App. 728, 729-730(2), 555 S.E.2d 115 (2001). Rather, ‘the primary factor in determining whether the child[is] deprived is not the parents’ circumstances, but the child[‘s] need.’ In the Interest of R.M., 276 Ga.App. 707, 715, 624 S.E.2d 182 (2005).”

“And, in the instant case, there was no testimonial or documentary evidence whatsoever showing that the mother’s current financial situation is adversely affecting the needs of G.S.”

“To authorize even a loss of temporary custody by a child’s parents, . . . the deprivation must be shown to have resulted from unfitness on the part of the parent, that is, 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. (Citation omitted.) In the Interest of K.S., 271 Ga. App. 891, 892-893, 611 S.E.2d 150 (2005); In re D.H., 178 Ga. App. 119, 124, 342 S.E.2d 367 (1986). Significantly, “[a]n order temporarily transferring custody of a child based on alleged deprivation must be grounded upon a finding that the child is at the present time a deprived child, and a finding of parental unfitness is essential to support an adjudication of present deprivation.” (Citations and punctuation omitted; emphasis in original.) In the Interest of K.S., 271 Ga. App. at 893, 611 S.E.2d 150. See also In the Interest of M.L.C., 249 Ga. App. at 438-439(2), 548 S.E.2d 137.

“Moreover, the record shows that the petition did not contain valid allegations of deprivation under OCGA § 15-11-2. A deprived child is defined by OCGA § 15-11-2(8)(A), in pertinent part, as a child who ‘[i]s 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.’ And deprivation sufficient to authorize a parent’s temporary loss of custody of a child must have ‘resulted from unfitness on the part of the parent, that is, 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.’ The petition must allege present deprivation, not past deprivation or potential future deprivation.
The deprivation petition filed here focused largely upon
allegations of past deprivation and potential future deprivation, specifically the mother’s history of drug use and her previous disappearances related to that drug use. The petition’s allegation of present deprivation, which was contested, centered on the assertion that the mother still had an unrehabilitated drug problem. A parent’s history of chronic, unrehabilitated abuse of drugs, with the effect of rendering the parent incapable of providing adequately for the physical, mental, emotional, or moral condition and needs of the child, can support a finding of present deprivation. But nothing in the record demonstrated that present drug use by C.L.C.’s mother had a negative effect on him rising to the level of present deprivation.”

In re C.L.C., 683 S.E.2d 690, 294-295 (Ga. Ct. App. 2009)

“In determining whether a child is deprived, the court focuses on the
needs of the child rather than parental fault. And a temporary loss of custody is not authorized unless the deprivation resulted from unfitness on the part of the parent, that is, 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. On appeal from a finding of deprivation, we review the evidence in the light most favorable to the juvenile court’s judgment and determine whether any rational trier of fact could have found by clear and convincing evidence that the child was deprived and whether, under the circumstances, the court properly awarded temporary custody of the child.”


“The clear and convincing standard ‘safeguards the high value society places on the integrity of the family unit and helps eliminate the risk that a factfinder might base his determination on a few isolated instances of unusual conduct or idiosyncratic behavior.’”


“Only under compelling circumstances found to exist by clear and convincing proof may a court sever the parent-child custodial relationship.”


“A finding that a child is deprived does not necessarily result in a loss of custody by the parent. There must be clear and convincing evidence of parental unfitness.”


**Present Unfitness Of parent required**

“The mother is correct 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. However, this does not mean that the juvenile court is prohibited from considering past evidence of unfitness in determining if deprivation is likely to continue. The court is entitled to infer from the evidence that, despite the best efforts of the Department, the same pattern of deprivation would continue each time the child was reunited with her mother. The juvenile court is not required to reunite a child with a parent in order to obtain current evidence of deprivation or neglect.”

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<th><strong>Parent required to pay child support</strong></th>
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<td>Although the case plan did not specifically require the mother to pay child support, “[v]iewed in a light most favorable to the juvenile court’s determination that the children’s deprivation resulted from the lack of proper parental care or control, the record shows that S.J. did not pay any child support for her five children during the two years preceding the termination hearing. S.J. attempts to justify her failure to support her children by noting that no child support order was ever entered against her. ‘A parent, however, has a statutory duty to support her children, with or without a court order. OCGA § 19-7-2.’ (citations omitted). S.J. has inexcusably failed to live up to this duty, leaving the Department to support her children for two years.”</td>
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<th><strong>Parental Capacity to Parent</strong></th>
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<td>DFACS is not required to provide around-the-clock assistance to enable a mentally disabled parent to care for a child in the home. <strong>In re M.W.</strong>, 275 Ga. App. 849, 622 SE2d 68 (2005)</td>
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> “Courts are clearly authorized to consider the special needs of a child and the parent’s inability to provide for those needs. See **In the Interest of J.C.J.**, 207 Ga. App. 599, 602, 428 S.E.2d 643 (1993). This father, unfortunately, remains mentally handicapped and continues to need assistance with the management of his own life. As we previously noted in J.W.’s case, ‘[a]lthough the father is capable, with significant assistance, of providing for himself, and even though he has worked diligently to fulfill his case plan, the record shows by clear and convincing evidence that he simply lacks the mental capacity to master the skills necessary to care for [these children].’ **In the Interest of J.W.**, 271 Ga. App. at 521, 610 S.E.2d 144. DFACS is not ‘required to provide around-the-clock assistance to enable a mentally disabled parent to care for a child in the home.’ **Id.** at 521, 610 S.E.2d 144. After review, we find sufficient clear and convincing evidence to support the juvenile court’s determination that terminating the father’s parental rights was in the best interest of D.W. See **In the Interest of T.B.**, 274 Ga. App. at 153, 616 S.E.2d 896.” |

> “[T]ermination [was] warranted even though case plan mostly completed because mother lacked the mental ability to care for child without around-the-clock support; she could not independently fulfill her parenting responsibilities and had no real support; child had developmental problems, and foster parents wished to adopt the child.” |
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.  

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<td>“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….”</td>
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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.”


TPR reversed where 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.


“[A] parent's failure to comply with the requirements of court-mandated mental health counseling. . . is a factor [to] be considered to determine the likelihood of whether the deprivation is likely to continue or will not likely be remedied.”


**Disposition Following Termination**

“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.”


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.”


**Disposition Following Termination**

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*In the Interest of S.V.*, 281 Ga. App. 331, 333 (2), 636 S.E.2d 80
| **Effect of Deprivation Orders** | “Because the mother did not appeal the juvenile court’s orders finding that the children were deprived, she is bound by that determination.”  
“The parent’s failure to appeal the deprivation order renders the juvenile court’s determination on the second TPR factor binding as well.”  
| **Incarceration Of Parent** | “…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.”  
“[T]ermination 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.”  
| **Legitimation/Failure to Legitimate** | “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 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.”


The Labrec Court explained the decision in In Re: Baby Girl Eason, 257 Ga 292 (1987) as follows:

“Eason, however, does not stand for the proposition that the fitness test is the substantive standard applicable to every legitimation petition but recognized a continuum of rights, specific to the facts of each case, to which varying standards could be applied. In Eason, an unwed biological father sought to legitimate his infant child who had been placed with an adoptive family by the State. The adoptive family had developed a relationship with the infant and were providing normal parental care and maintenance. We held that the parental fitness standard must be used to determine the father’s right to legitimate the child because it was the State’s action which interfered with the father’s rights with respect to the child and which allowed for the development of the parent/child relationship between the child and the adopting parents. Eason, supra at 297, 358 S.E.2d 459. We made clear, however, that absent the State’s involvement and under other circumstances, the best interests of the child standard would be adequate.”


“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.”


“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 this matter, the juvenile court heard testimony relating to the father’s petition to legitimate J.S., but the court specifically decided that it would not hear evidence relating to the termination of the father’s parental rights based on the fact that the father did not have
legal representation at the hearing. Despite his request, the father “was not entitled to have an attorney appointed to represent him at public expense in the legitimation proceedings.” *Alexander v. Guthrie*, 216 Ga. App. 460, 461-462(1), 454 S.E.2d 805 (1995); *In re J.S.*, 691 S.E.2d 250, 252 (Ga. Ct. App. 2010)

“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 S.E.2d 354 (2007)

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.


### Parental Fitness

“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 S.E.2d 68, (2005)

“[T]ermination 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…”
### Parental Capacity To Parent


“The fact that a parent 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.”


“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.’”


“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 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 the Int. of C.L.Z.,** 283 Ga. App. 247, 249 (2007)

### Poverty

“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.’”


“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...
| **Termination of Parental Rights** | “[T]here is no judicial ruling that has greater significance than one severing the parental bond.”  
“Termination of parental rights is a ‘remedy of last resort’ that cannot be sustained where there is no clear and convincing evidence that the cause of the deprivation is likely to continue.”  
“[W]e proceed in a termination case with the knowledge that there is no judicial determination which has more drastic significance than that of permanently severing a natural parent-child relationship. It must be scrutinized deliberately and exercised cautiously. The right to raise one’s children is a fiercely guarded right in our society and law, and a right that should be infringed upon only under the most compelling circumstances.  

| **Continued Deprivation is Likely to Cause Serious Harm** | “[A]lthough a caseworker gave general testimony in response to leading questions that the Department was concerned about the detrimental effects of foster care on the child, there was no evidence that KDE was experiencing difficulties, such as behavioral or social issues, from being in foster care or that he would experience difficulties if a permanent placement was not put into place; and there was no testimony that a continued relationship with his mother would result in any potential or actual harm to the child.”  
Reversed, no harm. The court stated that “none of these witnesses testified to any potential or actual serious physical, mental, emotional, or moral harm to the children. No one testified that the children were not thriving in foster care, that the children had been or would be seriously affected by the Mother continuing to have a parental relationship with the children, or that the children were experiencing any harm caused by ‘foster care drift.’”  

that the children's deprivation is likely to continue. Accordingly, we reverse the juvenile court’s order terminating the mother’s parental rights.”  
| | No testimony that children suffered harm in foster care, no expert testimony that children needed stable and permanent environment, lack of harm has repeatedly caused the COA to reverse lower court decisions.  
<p>| | No expert testimony as to harm, no testimony that relationship with mother was harmful, no evidence that the children were suffering in foster care. <em>In Re D.F.</em>, 251 Ga. App. 859, 555 S.E.2d 225 (2001) |
| | No facts that would support harm. Father was incarcerated. No one testified that Father’s relationship with child was detrimental. <em>In Re K.J.</em>, 226 Ga. App. 303, 486 S.E.2d 899, (1997) |</p>
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<th><strong>Right to counsel and Opportunity to be Heard</strong></th>
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| “‘The fundamental idea of due process is notice and an opportunity to be heard.’” [Cits.].” *In the Interest of T.N.T.*, 258 Ga. App. 396, 398, 574 S.E.2d 444 (2002). ‘The Code recognizes that the parent is a ‘party’ to proceedings involving his child. See *D.C.A. v. State of Ga.*, 135 Ga. App. 234, 217 S.E.2d 470 (1975).’ *Sanchez v. Walker County Dept. of Family &c. Svcs.*, 237 Ga. 406, 410-411, 229 S.E.2d 66 (1976). As parties to a deprivation hearing, parents are entitled to notice and an adequate opportunity to be heard. *In the Interest of T.N.T.*, supra at 398, 574 S.E.2d 444. We have also held that due process is not offended by the failure to secure the presence of an in-state prisoner at a deprivation hearing where the prisoner nonetheless was represented by counsel. *In the Interest of B.L.H.*, 259 Ga. App. 482, 486, 578 S.E.2d 143 (2003); accord *In the Interest of T.N.T.*, supra at 396, 574 S.E.2d 444; *In the Interest of C.T.*, 247 Ga. App. 522, 525(2), 544 S.E.2d 203 (2001); *In the Interest of F.L.S.*, 232 Ga. App. 100, 101, 502 S.E.2d 256 (1998) (party-prisoner held out-of-state). However, a due process violation is unavoidable where, as here, there has been no opportunity to be heard. See *In the Interest of B.L.H.*, supra; *In the Interest of T.N.T.*, supra; see also OCGA § 15-11-6(b) (‘[A] party is entitled to representation by legal counsel at all stages of any proceedings alleging delinquency, unruliness, incorrigibility, or deprivation and if, as an indigent person, a party is unable to employ counsel, he or she is entitled to have the court provide counsel for him or her.’) (emphasis supplied). Moreover, because a parent’s right to counsel in such proceedings is threatened by the failure to follow the notice and hearing requirements in the Juvenile Code, our Supreme Court has held them mandatory, subject to waiver. *Sanchez v. Walker County Dept. of Family &c. Svcs.*, supra at 411, 229 S.E.2d 66; *In the Interest of C.S.*, 236 Ga. App. 312, 315(2), 511 S.E.2d 895 (1999).” *In Re A.J.*, Ga. App.580, 581, 604 S.E.2d 635, 269 (2004).
Chapter 35  Office of the Child Advocate for the Protection of Children

Letter of Introduction from Ashley Willcott, Director OCA

I want to take this opportunity to introduce myself to you as the newly appointed Director of the Office of the Child Advocate (“OCA”).

First, a little bit about myself. I have served as an attorney for parents in juvenile court dependency (abuse and neglect) and delinquency proceedings, a Guardian Ad Litem representing children, a Judge Pro Tem in Dekalb County Juvenile Court, and now and for years, as a Special Assistant Attorney General representing the Department of Human Services/Department of Family and Children Services. I love what I do and am honored to be appointed to this position. Together, we have an amazing opportunity to serve our children who have some of the greatest needs.

One of the legislative mandates of the OCA is to provide independent oversight of agencies responsible for providing services to abused and neglected children, or those whose domestic situation requires intervention by the State. This includes investigating and seeking the resolution of complaints by or on behalf of children concerning agency actions and providing periodic reports to the Governor and General Assembly.

I believe that a major responsibility of the Office of the Child Advocate is to raise the bar and work together on higher expectations for our child-serving agencies. This includes questioning practices in cases investigated by the OCA; analyzing the current practice and policies of state agencies whose work impacts the lives of children and families; using data to design deliberate measures to make the child welfare and juvenile justice systems better; ensuring that parents are held responsible for their actions or lack of care of children; and engaging all stakeholders to ensure that everything that can be done to protect children at risk is done. I look forward to working on all of these issues together.

To this end, OCA can provide research and information regarding child welfare in our State, as well as investigate complaints and reports.

Warmest regards, Ashley Willcott, Director OCA
Georgia Child Advocate for the Protection of Children Act

ARTICLE 11

15-11-740.
(a) This article shall be known and may be cited as the 'Georgia Child Advocate for the Protection of Children Act.' (b) In keeping with this article's purpose of assisting, protecting, and restoring the security of children whose well-being is threatened, it is the intent of the General Assembly that the mission of protection of the children of this state should have the greatest legislative and executive priority. Recognizing that the needs of children must be attended to in a timely manner and that more aggressive action should be taken to protect children from abuse and neglect, the General Assembly creates the Office of the Child Advocate for the Protection of Children to provide independent oversight of persons, organizations, and agencies responsible for providing services to or caring for children who are victims of child abuse and neglect or whose domestic situation requires intervention by the state. The Office of the Child Advocate for the Protection of Children will provide children with an avenue through which to seek relief when their rights are violated by state officials and agents entrusted with their protection and care.

15-11-741.
As used in this article, the term: (1) 'Advocate' or 'child advocate' means the Child Advocate for the Protection of Children established under Code Section 15-11-742. (2) 'Agency' shall have the same meaning and application as provided for in paragraph (1) of subsection (a) of Code Section 50-14-1. (3) 'Child' or 'children' means an individual receiving protective services from DFCS, for whom DFCS has an open case file, or who has been, or whose siblings, parents, or other caretakers have been, the subject of a report to DFCS within the previous five years.

15-11-742.
(a) There is created the Office of the Child Advocate for the Protection of Children. The Governor, by executive order, shall create a nominating committee which shall consider nominees for the position of the advocate and shall make a recommendation to the Governor. Such person shall have knowledge of the child welfare system, the juvenile justice system, and the legal system and shall be qualified by training and experience to perform the duties of the office as set forth in this article. (b) The advocate shall be appointed by the Governor from a list of at least three names submitted by the nominating committee for a term of three years and until his or her successor is appointed and qualified and may be reappointed. The salary of the advocate shall not be less than $60,000.00 per year, shall be fixed by the Governor, and shall come from funds appropriated for the purposes of the advocate. (c) The Office of the Child
Advocate for the Protection of Children shall be assigned to the Office of Planning and Budget for administrative purposes only, as described in Code Section 50-4-3. (d) The advocate may appoint such staff as may be deemed necessary to effectively fulfill the purposes of this article, within the limitations of the funds available for the purposes of the advocate. The duties of the staff may include the duties and powers of the advocate if performed under the direction of the advocate. The advocate and his or her staff shall receive such reimbursement for travel and other expenses as is normally allowed to state employees from funds appropriated for the purposes of the advocate. (e) The advocate shall have the authority to contract with experts in fields including but not limited to medicine, psychology, education, child development, juvenile justice, mental health, and child welfare as needed to support the work of the advocate, utilizing funds appropriated for the purposes of the advocate. (f) Notwithstanding any other provision of state law, the advocate shall act independently of any state official, department, or agency in the performance of his or her duties. (g) The advocate or his or her designee shall be a member of the Georgia Child Fatality Review Panel.

15-11-743.
The advocate shall perform the following duties: (1) Identify, receive, investigate, and seek the resolution or referral of complaints made by or on behalf of children concerning any act, omission to act, practice, policy, or procedure of an agency or any contractor or agent thereof that may adversely affect the health, safety, or welfare of the children; (2) Refer complaints involving abused children to appropriate regulatory and law enforcement agencies; (3) Coordinate and supervise the work of the Georgia Child Fatality Review Panel created by Code Section 19-15-4 and provide such staffing and administrative support to the panel as may be necessary to enable the panel to carry out its statutory duties; (4) Report the death of any child to the chairperson of the child fatality review subcommittee of the county in which such child resided at the time of death, unless the advocate has knowledge that such death has been reported by the county medical examiner or coroner, pursuant to Code Section 19-15-3, and to provide such subcommittee access to any records of the advocate relating to such child; (5) Provide periodic reports on the work of the Office of the Child Advocate for the Protection of Children, including but not limited to an annual written report for the Governor and the General Assembly and other persons, agencies, and organizations deemed appropriate. Such reports shall include recommendations for changes in policies and procedures to improve the health, safety, and welfare of children and shall be made expeditiously in order to timely influence public policy; (6) Establish policies and procedures necessary for the Office of the Child Advocate for the Protection of Children to accomplish the purposes of this article, including without limitation providing DFCS with a form of notice of availability of the Office of the Child Advocate for the Protection of Children. Such notice shall be posted prominently, by DFCS, in DFCS
offices and in facilities receiving public moneys for the care and placement of children and shall include information describing the Office of the Child Advocate for the Protection of Children and procedures for contacting that office; and (7) Convene quarterly meetings with organizations, agencies, and individuals who work in the area of child protection to seek opportunities to collaborate and improve the status of children in Georgia.

15-11-744.
(a) The advocate shall have the following rights and powers: (1) To communicate privately, by mail or orally, with any child and with each child's parent, guardian, or legal custodian; (2) To have access to all records and files of DFCS concerning or relating to a child, and to have access, including the right to inspect, copy, and subpoena records held by clerks of the various courts, law enforcement agencies, service providers, including medical and mental health, and institutions, public or private, with whom a particular child has been either voluntarily or otherwise placed for care or from whom the child has received treatment within this state. To the extent any such information provides the names and addresses of individuals who are the subject of any confidential proceeding or statutory confidentiality provisions, such names and addresses or related information that has the effect of identifying such individuals shall not be released to the public without the consent of such individuals. The Office of the Child Advocate for the Protection of Children shall be bound by all confidentiality safeguards provided in Code Sections 49-5-40 and 49-5-44. Anyone wishing to obtain records held by the Office of the Child Advocate shall petition the original agency of record where such records exist; (3) To enter and inspect any and all institutions, facilities, and residences, public and private, where a child has been placed by a court or DFCS and is currently residing. Upon entering such a place, the advocate shall notify the administrator or, in the absence of the administrator, the person in charge of the facility, before speaking to any children. After notifying the administrator or the person in charge of the facility, the advocate may communicate privately and confidentially with children in the facility, individually or in groups, or the advocate may inspect the physical plant. To the extent possible, entry and investigation provided by this Code section shall be conducted in a manner which will not significantly disrupt the provision of services to children; (4) To apply to the Governor to bring legal action in the nature of a writ of mandamus or application for injunction pursuant to Code Section 45-15-18 to require an agency to take or refrain from taking any action required or prohibited by law involving the protection of children; (5) To apply for and accept grants, gifts, and bequests of funds from other states, federal and interstate agencies, independent authorities, private firms, individuals, and foundations for the purpose of carrying out the lawful responsibilities of the Office of the Child Advocate for the Protection of Children; (6) When less formal means of resolution do not achieve appropriate results, to pursue remedies provided by
this article on behalf of children for the purpose of effectively carrying out the provisions of this article; and (7) To engage in programs of public education and legislative advocacy concerning the needs of children requiring the intervention, protection, and supervision of courts and state and county agencies. (b)(1) Upon issuance by the advocate of a subpoena in accordance with this article for law enforcement investigative records concerning an ongoing investigation, the subpoenaed party may move a court with appropriate jurisdiction to quash such subpoena. (2) The court shall order a hearing on the motion to quash within five days of the filing of the motion to quash, and the hearing may be continued for good cause shown by any party or by the court on its own motion. Subject to any right to an open hearing in contempt proceedings, such hearing shall be closed to the extent necessary to prevent disclosure of the identity of a confidential source; disclosure of confidential investigative or prosecution material which would endanger the life or physical safety of any person or persons; or disclosure of the existence of confidential surveillance, investigation, or grand jury materials or testimony in an ongoing criminal investigation or prosecution. Records, motions, and orders relating to a motion to quash shall be kept sealed by the court to the extent and for the time necessary to prevent public disclosure of such matters, materials, evidence, or testimony. (c) The court shall, at or before the time specified in the subpoena for compliance therewith, enter an order: (1) Enforcing the subpoena as issued; (2) Quashing or modifying the subpoena if it is unreasonable and oppressive; or (3) Conditioning enforcement of the subpoena on the advocate maintaining confidential any evidence, testimony, or other information obtained from law enforcement or prosecution sources pursuant to the subpoena until the time the criminal investigation and prosecution are concluded. Unless otherwise ordered by the court, an investigation or prosecution shall be deemed to be concluded when the information becomes subject to public inspection pursuant to Code Section 50-18-72. The court shall include in its order written findings of fact and conclusions of law.

15-11-745. (a) No person shall discriminate or retaliate in any manner against any child, parent, guardian, or legal custodian of a child, employee of a facility, agency, institution or other type of provider, or any other person because of the making of a complaint or providing of information in good faith to the advocate or willfully interfere with the advocate in the performance of his or her official duties. (b) Any person violating subsection (a) of this Code section shall be guilty of a misdemeanor.

15-11-746. The advocate shall be authorized to request an investigation by the Georgia Bureau of Investigation of any complaint of criminal misconduct involving a child.
15-11-747.
(a) There is established a Child Advocate Advisory Committee. The advisory committee shall consist of: (1) One representative of a not for profit children's agency appointed by the Governor; (2) One representative of a for profit children's agency appointed by the Lieutenant Governor; (3) One pediatrician appointed by the Speaker of the House of Representatives; (4) One social worker with experience and knowledge of child protective services who is not employed by the state appointed by the Governor; (5) One psychologist appointed by the Lieutenant Governor; (6) One attorney from the Children and the Courts Committee of the State Bar of Georgia appointed by the Speaker of the House of Representatives; and (7) One juvenile court judge appointed by the Chief Justice of the Supreme Court. Each member of the advisory committee shall serve a two-year term and until the appointment and qualification of such member's successor. Appointments to fill vacancies in such offices shall be filled in the same manner as the original appointment. (b) The advisory committee shall meet a minimum of three times a year with the advocate and his or her staff to review and assess the following: (1) Patterns of treatment and service for children; (2) Policy implications; and (3) Necessary systemic improvements. The advisory committee shall also provide for an annual evaluation of the effectiveness of the Office of the Child Advocate for the Protection of Children."
Chapter 36  Foster Parent Bill of Rights

49-5-280. Foster Parent Bill of Rights
This article shall be known and may be cited as the “Foster Parents Bill of Rights.”

49-5-281. (a) The General Assembly finds that foster parents who are volunteers providing care for children who are in the custody of the Department of Human Resources play an integral, indispensable, and vital role in the state’s effort to care for dependent children displaced from their homes. The General Assembly further finds that it is in the best interest of Georgia’s child welfare system to acknowledge foster parents as active and participating members of this system and to support them through the following bill of rights:
1. The right to be treated by the Division of Family and Children Services of the Department of Human Resources and other partners in the care of abused children with dignity, respect, and trust as a primary provider of foster care and a member of the professional team caring for foster children;
2. The right not to be discriminated against on the basis of religion, race, color, creed, gender, marital status, national origin, age, or physical handicap;
3. The right to continue with his or her own family values and beliefs, so long as the values and beliefs of the foster child and the birth family are not infringed upon and consideration is given to the special needs of children who have experienced trauma and separation from their families. This shall include the right to exercise parental authority within the limits of policies, procedures, and other directions of the Division of Family and Children Services and within the limits of the laws of the State of Georgia;
4. The right to receive both standardized pre-service training, including training in Division of Family and Children Services policies and procedures and appropriate ongoing training, by the Division of Family and Children Services or the placing agency at appropriate intervals to meet mutually assessed needs of the child and to improve foster parents’ skills and to apprise foster parents of any changes in policies and procedures of the Division of Family and Children Services and any changes in applicable law;
5. The right to be apprised of information, laws, and guidelines on the obligations, responsibilities, and opportunities of foster parenting and to be kept informed of any changes in laws, policies, and procedures regarding foster parenting by the Division of Family and Children Services in a timely manner and at least annually;
6. The right to receive timely financial reimbursement according to the agreement between the foster parents and the Department of Human Resources from funds appropriated by the General Assembly and to be notified of any costs or expenses for which the foster parent may be eligible for reimbursement;
7. The right to receive information from the Division of Family and Children Services on how to receive services and reach personnel 24 hours per day, seven days per week;
8. The right prior to the placement of a child to be notified of any issues relative to the child that may jeopardize the health and safety of the foster family or the child or alter the manner in which foster care should be administered;
9. The right to discuss information regarding the child prior to placement. The Division of Family and Children Services will provide such information as it becomes available as allowable under state and federal laws;
10. The right to refuse placement of a child in the foster home or to request, upon reasonable notice, the removal of a child from the foster home without fear of reprisal or any adverse affect on being assigned any future foster or adoptive placements;
11. The right to receive any information through the Division of Family and Children Services regarding the number of times a foster child has been moved and the reasons therefor; and to receive the names and phone numbers of the previous foster parents if the previous foster parents have authorized such release and as allowable under state and federal law;
(12) The right, at any time during which a child is placed with the foster parent, to receive from the Division of Family and Children Services any and all additional pertinent information relevant to the care of the child;
(13) The right to be provided with a written copy of the individual treatment and service plan concerning the child in the foster parent’s home and to discuss such plan with the case manager, as well as reasonable notification of any changes to that plan;
(14) The right to participate in the planning of visitation with the child and the child’s biological family with the foster parents recognizing that visitation with his or her biological family is important to the child;
(15) The right to participate in the case planning and decision-making process with the Division of Family and Children Services regarding the child as provided in Code Section 15-11-58;
(16) The right to provide input concerning the plan of services for the child and to have that input considered by the department;
(17) The right to communicate for the purpose of participating in the case of the foster child with other professionals who work with such child within the context of the professional team, including, but not limited to, therapists, physicians, and teachers, as allowable under state and federal law;
(18) The right to be notified in advance, in writing, by the Division of Family and Children Services or the court of any hearing or review where the case plan or permanency of the child is an issue, including periodic reviews held by the court or by the Judicial Citizen Review Panel, hearings following revocation of the license of an agency which has permanent custody of a child, permanency hearings, and motions to extend custody, in accordance with Code Section 15-11-58;
(19) The right to be considered, where appropriate, as a preferential placement option when a child who was formerly placed with the foster parents has reentered the foster care system;
(20) The right to be considered, where appropriate, as the first choice as a permanent parent or parents for a child who, after 12 months of placement in the foster home, is released for adoption or permanent foster care;
(21) The right to be provided a fair and timely investigation of complaints concerning the operation of a foster home;
(22) The right to an explanation of a corrective action plan or policy violation relating to foster parents; and
(23) The right, to the extent allowed under state and federal law, to have an advocate present at all portions of investigations of abuse and neglect at which an accused foster parent is present. Child abuse and neglect investigations shall be investigated pursuant to Division of Family and Children Services policies and procedures, and any removal of a foster child shall be conducted pursuant to those policies and procedures. The Division of Family and Children Services will permit volunteers with the Adoptive and Foster Parent Association of Georgia to be educated concerning the procedures relevant to investigations of alleged abuse and neglect and the rights of accused foster parents. After such training, a volunteer will be permitted to serve as an advocate for an accused foster parent. All communication received by the advocate in this capacity shall be strictly confidential.
(b) This bill of rights shall be given full consideration when Division of Family and Children Services policies regarding foster care and adoptive placement are developed.
(c) Foster parents shall have the right to file a grievance in response to any violation of this article, which shall be such foster parents’ exclusive remedy for any violation of this article. The Division of Family and Children Services and the Office of the Child Advocate for the Protection of Children, along with an advisory committee comprised in part of representatives from the Adoptive and Foster Parent Association of Georgia, will develop a grievance procedure, including a mediation procedure, to be published in departmental policy manuals and the Foster Parent Handbook within one year of the effective date of the article."
Chapter 37  DFCS Policy Excerpts

Editor’s Note: These policy excerpts are based on DFCS Policy as of 2013 and do not incorporate the 2014 Juvenile Court Code.

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
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 spokesperson

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 litem 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-compliant 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 38  Subsidies and TANF Chart

Relative and Non-Relative Subsidies

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<th>Type Of Subsidy</th>
<th>UAS Code</th>
<th>Applicable Population of Children</th>
<th>Availability after 1/1/14</th>
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<td>UAS 542</td>
<td>Children in DFCS custody placed with relatives who meet the TANF degree of relationship</td>
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<td>(State $)</td>
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TANF Degree of Relationship

The following relationships meet the relationship requirement:

- parent (either by birth, legal adoption, or step relationship)
- grandparent (up to great-great-great)
- sibling (half, whole, step)
- aunt/uncle (up to great-great)
- niece/nephew (including child and grandchild of niece/nephew)
- first cousin
- first cousin once removed (the child of a first cousin)
- spouse of any person named in the above group even after the marriage is terminated by death or divorce, unless the child is born after termination of the marriage.  
  EXCEPTION: The spouse of a stepparent or the spouse of a stepsibling is not within the specified degree of relationship.
- To establish a child's relationship to a paternal relative, paternity must first be established.
# Chapter 39  
## Table of Comparative Juvenile Code Provisions

*Contribution by Anne M. Kirkhope, J.D.*

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## Article 6: Emancipation of Minors

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**Article 3: Dependency**

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### Article 5: Children in Need of Services

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### Article 6: Delinquency

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| 15-11-425 | new | 15-11-503(a) | 15-11-46.1 |

**Part 6**

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| 15-11-441 | new | 15-11-503(f)-(g) | new |
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**NEW CODE**

**FORMER CODE**

**ARTICLE 6: DELINQUENCY, CONTINUED**

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**Part 8**

<p>| 15-11-540 | 15-11-64 last sent. | 15-11-602(e) | 15-11-63(d) |</p>
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**Article 8: Parental Notification**

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Chapter 40    Senate Bill 364

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Senate Bill 364
By: Senators Stone of the 23rd, Bethel of the 54th, Jackson of the 24th, Miller of the 49th,
Crosby of the 13th and others

AS PASSED SENATE
A BILL TO BE ENTITLED
AN ACT
1 To amend Chapter 11 of Title 15 and Part 1 of Article 2 of Chapter 13 of Title 16 of the
2 Official Code of Georgia Annotated, relating to the Juvenile Code and schedules, offenses,
3 and penalties, respectively, so as to revise and correct errors or omissions in furtherance of
4 the work of the Georgia Council on Criminal Justice Reform to recommend legislation; to
5 repeal portions of the Juvenile Code which conflict with other provisions of the Code; to
6 revise definitions; to provide conformity within the Juvenile Code and with federal law; to
7 correct cross-references; to change time frames for certain proceedings; to change provisions
8 relating to the duties and responsibilities of a CASA; to amend Code Section 19-7-1 of the
9 Official Code of Georgia Annotated, relating to in whom parental power lies and how such
10 power may be lost, so as to correct a cross-reference; to revise a definition relating to
11 purchase, possession, or having control of controlled substances or marijuana; to clarify
12 provisions relating to earned time and parole for persons convicted of trafficking in certain
13 drugs; to provide for related matters; to provide for effective dates; to repeal conflicting
14 laws;
15 and for other purposes.
16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:
17 PART I
18 SECTION 1-1.
19 Chapter 11 of Title 15 of the Official Code of Georgia Annotated, relating to the Juvenile
20 Code, is amended by revising paragraphs (5), (10), (39), subparagraph (F) of paragraph
21 (43),
22 (52), and (71) of Code Section 15-11-2, relating to definitions, as follows:
23 "(5) 'Aggravated circumstances' means the parent has:
24 (A) Abandoned an infant a child;
25 (B) Aided or abetted, attempted, conspired, or solicited to commit murder or voluntary
26 manslaughter of another child of such parent Attempted, conspired to attempt, or has
27 subjected a child or his or her sibling to death or great bodily harm;
28 (C) Committed the murder or voluntary manslaughter of his or her child's other parent
29 or has been convicted of aiding or abetting, attempting, conspiring, or soliciting the
30 murder or voluntary manslaughter of his or her child's other parent;
31 (E) Committed the murder or voluntary manslaughter of another child of such parent;
32 or
33 (F) Committed an assault that resulted in serious bodily injury to his or her child or
34 another child of such parent."
35 "(10) 'Child' means any individual who is:
36 (A) Under the age of 18 years;
37 (B) Under the age of 17 years when alleged to have committed a delinquent act;
38 (C) Under the age of 22 years and in the care of DFCS as a result of being adjudicated
39 dependent before reaching 18 years of age;
40 (D) Under the age of 23 years and eligible for and receiving independent living
41 services through DFCS as a result of being adjudicated dependent before reaching 18
42 years of age; or
43 (E) Under the age of 21 years who committed an act of delinquency before reaching
44 the age of 17 years and who has been placed under the supervision of the court or on
45 probation to the court for the purpose of enforcing orders of the court."
46 "(39) 'Informal adjustment' means the disposition of a case other than by formal
47 adjudication and disposition."
48 "(F) Has legitimated a child pursuant to Code Section 19-7-22.1 19-7-21.1."
49 "(52) 'Party' means the state, a child, parent, guardian, legal custodian, or other person
50 subject to any judicial proceeding under this chapter; provided, however, that for
51 purposes of Article Articles 5 and 6 of this chapter, only a child and the state shall be a
52 party."
53 "(71) 'Sibling' means a person with whom a child shares a biological father or one or both
54 parents in common by blood, adoption, or marriage, even if the marriage was terminated
55 by death or dissolution."
56 SECTION 1-2.
57 Said chapter is further amended by revising subsection (a) of Code Section 15-11-5, relating
58 to computation of time, as follows:
59 "(a) When a period of time measured in days, weeks, months, years, or other
60 measurements of time except hours is prescribed for the exercise of any privilege or the
61 discharge of any duty, the first day shall not be counted but the last day shall be counted;
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62 and, if the last day falls on a weekend, the party having such privilege or duty shall have
63 through the following business day to exercise such privilege or discharge such duty."
64 SECTION 1-3.
65 Said chapter is further amended by revising subparagraph (F) of paragraph (1) and
66 subparagraph (D) of paragraph (2) of Code Section 15-11-10, relating to exclusive original
67 jurisdiction, as follows:
68 "(F) Has been placed under the supervision of the court or on probation to the court;
69 provided, however, that such jurisdiction shall be for the purpose of completing,
70 effectuating, and enforcing such supervision or a probation begun either prior to such
71 child's seventeenth birthday if the order is entered as a disposition for an adjudication
72 for delinquency or prior to such child's eighteenth birthday if the order is entered for an
73 adjudication for a child in need of services;"
74 "(D) For the termination of the legal parent-child relationship and the rights of the
75 biological father who is not the legal father of the child in accordance with Article 2 4
76 of this chapter; provided, however, that such jurisdiction shall not affect the superior
77 court's exclusive jurisdiction to terminate the legal parent-child relationship and the
78 rights of a biological father who is not the legal father of the child as set forth in
79 Chapters 6 through 9 of Title 19;"
80 SECTION 1-4.
81 Said chapter is further amended by revising paragraph (3) of subsection (a) of Code Section
82 15-11-16, relating to commencement of proceedings, as follows:
83 "(3) By the filing of a petition for legitimation under Code Section 15-11-11, or in other
84 cases by the filing of a complaint or a petition as provided in Articles 3, 4, 6, 7, 9 8, and
85 11 10 of this chapter."
86 SECTION 1-5.
87 Said chapter is further amended by adding a new subsection to Code Section 15-11-32,
88 relating to modification or vacation of orders, as follows:
89 "(g) This Code section is intended to be retroactive and shall apply to any child who is
90 under the jurisdiction of the court at the time of a hearing, regardless of the date of the
91 original delinquency order."
92 SECTION 1-6.
93 Said chapter is further amended by revising subsection (c) of Code Section 15-11-38,
94 relating to community based risk reduction programs, as follows:
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95 "(c) As part of an early intervention program, the court may enter into protocol agreements
96 with school systems within the court's jurisdiction, the county department division of
97 family and children services, the county department of health, DJJ, any state or local
98 department or agency, any mental health agency or institution, local physicians or health
99 care providers, licensed counselors and social workers, and any other social service,
100 charitable, or other entity or any other agency or individual providing educational or
101 treatment services to families and children within the jurisdiction of the court. Such
102 protocol agreements shall authorize the exchange of confidential information in the same
103 manner and subject to the same restrictions, conditions, and penalties as provided in Code
104 Section 15-11-40."
105 SECTION 1-7.
106 Said chapter is further amended by revising paragraph (14) of subsection (c) of Code Section
107 15-11-105, relating to powers and duties of guardian ad litem, as follows:
108 "(14) Attend judicial citizen panel review hearings concerning such child and if unable
109 to attend the hearings, forward to the panel a letter setting forth such child's status during
110 the period since the last judicial citizen panel review and include an assessment of the
111 DFCS permanency and treatment plans;"

112 **SECTION 1-8.**

113 Said chapter is further amended by revising subsection (c) of Code Section 15-11-110,
114 relating to continuance of hearing in dependency proceedings, as follows:
115 "(c) A stipulation between attorneys or the convenience of the parties shall not constitute
116 good cause. Except as otherwise provided by judicial rules governing attorney conflict
117 resolution, a pending criminal prosecution or family law matter shall not constitute good
118 cause. The need for discovery shall not constitute good cause unless the court finds that
119 a person or entity has failed to comply with an order for discovery."

120 **SECTION 1-9.**

121 Said chapter is further amended by revising subsections (c) and (e) of Code Section
122 15-11-135, relating to placement in eligible foster care, as follows:
123 "(c) An alleged dependent child may be placed in foster care only in:
124 (1) A licensed or approved foster home or a home approved by the court which may be
125 a public or private home or the;
126 (2) The home of the child's noncustodial parent or;
127 (3) The home of a relative;
128 (4) The home of fictive kin;
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129 (2)(5) A facility operated by a licensed child welfare agency; or
130 (3)(6) A licensed shelter care facility approved by the court.".
131 "(e) In any case in which a child is taken into protective custody of DFCS, such child shall
132 be placed together with his or her siblings who are also in protective custody or DFCS
133 shall include a statement in its report and case plan of continuing efforts to place the siblings
134 together or why such efforts are not appropriate document why such joint placement
135 would be contrary to the safety or well-being of any of the siblings. If siblings are not placed
136 together, DFCS shall provide for frequent visitation or other ongoing interaction between
137 siblings, unless DFCS documents that such frequent visitation or other ongoing interaction
138 would be contrary to the safety or well-being of any of the siblings."

139 **SECTION 1-10.**

140 Said chapter is further amended by revising Code Section 15-11-150, relating to the
141 authority
142 to file a petition for dependency, as follows:
143 "15-11-150.
144 A DFCS employee, a law enforcement officer, or any person who has actual knowledge
145 of the abuse, neglect, or abandonment of a child or is informed of the abuse, neglect, or
146 abandonment of a child that he or she believes to be truthful may make a petition alleging
147 dependency. Such petition shall not be accepted for filing unless the court or a person
147 authorized by the court has determined and endorsed on the petition that the filing of the 148 petition is in the best interests of the public and such child."

149 SECTION 1-11.
150 Said chapter is further amended by revising paragraph (14) of subsection (b) of Code Section 151 15-11-201, relating to DFCS case plan, as follows:
152 "(14) A recommendation for a permanency plan for such child. If, after considering 153 reunification, adoptive placement, or permanent guardianship, DFCS recommends 154 placement in another planned permanent living arrangement, the case plan shall include 155 documentation of a compelling reason or reasons why reunification, termination of 156 parental rights, adoptive placement, or permanent guardianship are is not in the child's 157 best interests. For purposes of this paragraph, a 'compelling reason' shall have the same 158 meaning as in paragraph (2) of subsection (b) of Code Section 15-11-233;"

159 SECTION 1-12.
160 Said chapter is further amended by revising paragraph (1) of subsection (c) of Code Section 161 15-11-210, relating to disposition hearings, as follows:
162 "(1) The social study report as provided for in Code Section 15-11-191, if applicable, 163 made by DFCS and the child adjudicated as a dependent child's proposed written case 164 plan. The social study report and case plan shall be filed with the court not less than 48 165 hours before the disposition hearing;"

166 SECTION 1-13.
167 Said chapter is further amended by revising subsections (c) through (e) of Code Section 168 15-11-211, relating to relative search by DFCS, as follows:
169 "(c) A diligent search shall be completed by DFCS before final disposition. 170 (d)(c) All adult relatives of the alleged dependent child identified in a diligent search 171 required by this Code section, subject to exceptions due to family or domestic violence, 172 shall be provided with notice:
173 (1) Specifying that an alleged dependent child has been or is being removed from his or 174 her parental custody;
175 (2) Explaining the options a relative has to participate in the care and placement of the 176 alleged dependent child and any options that may be lost by failing to respond to the 177 notice;
178 (3) Describing the process for becoming an approved foster family home and the 179 additional services and supports available for children placed in approved foster homes; 180 and 181 (4) Describing any financial assistance for which a relative may be eligible.
182 (e)(d) The diligent search required by this Code section and the notification required by 183 subsection (d)(c) of this Code section shall be completed, documented in writing, and filed 184 with the court within 30 days from the date on which the alleged dependent child was
185 removed from his or her home.
186 (f)(e) After the completion of the diligent search required by this Code section, DFCS shall
187 have a continuing duty to search for relatives or other persons who have demonstrated an
188 ongoing commitment to a child and with whom it may be appropriate to place the alleged
189 dependent child until such relatives or persons are found or until such child is placed for
190 adoption unless the court excuses DFCS from conducting a diligent search."
191 SECTION 1-14.
192 Said chapter is further amended by revising subparagraph (a)(2)(C) of Code Section
193 15-11-212, relating to disposition of dependent children, as follows:
194 "(C) Any public agency authorized by law to receive and provide care for such child;
195 provided, however, that for the purpose of this Code section, the term 'public agency' 
196 shall not include DJJ or DBHDD; or"
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197 SECTION 1-15.
198 Said chapter is further amended by revising the introductory language of subsection (c) of
199 Code Section 15-11-216, relating to periodic review hearings, as follows:
200 "(c) At the initial 75 day periodic review, the court shall approve the completion of the
201 relative search, schedule the subsequent four-month review to be conducted by the court
202 or a citizen judicial citizen review panel, and shall determine:" 
203 SECTION 1-16.
204 Said chapter is further amended in Code Section 15-11-262, relating to right to attorney 
and
205 appointment of guardian ad litem in termination of parental rights proceedings, by revising
206 subsections (d) through (f) and by redesignating subsections (g) through (i) as subsections
207 (h) through (j), respectively, as follows:
208 "(d) The court may shall appoint a guardian ad litem for a child in a termination
209 proceeding at the request of such child's attorney or upon the court's own motion if it
210 determines that a guardian ad litem is necessary to assist the court in determining the best
211 interests of such child; provided, however, that such guardian ad litem may be the same
212 person as the child's attorney unless or until there is a conflict of interest between the
213 attorney's duty to such child as such child's attorney and the attorney's considered opinion
214 of such child's best interests as guardian ad litem.
215 (e) The court shall appoint a CASA to serve as guardian ad litem whenever possible, and
216 a CASA may be appointed in addition to an attorney who is serving as a guardian ad litem.
217 (e)(f) The role of a guardian ad litem in a termination of parental rights proceeding shall
218 be the same role as provided for in all dependency proceedings under Article 3 of this
219 chapter.
220 (f)(g) If an attorney or guardian ad litem has been appointed to represent a child in a prior
221 proceeding under this chapter, the court, when possible, shall appoint the same attorney to
222 represent such child in any subsequent proceeding." 
223 SECTION 1-17.
224 Said chapter is further amended by revising Code Section 15-11-265, relating to suspension of right of voluntary surrender of parental rights, as follows:
226 "15-11-265.
227 Once a petition to terminate parental rights has been filed, the parent of a child adjudicated as a dependent child shall thereafter be without authority to execute an act of surrender or otherwise to affect the custody of his or her child except such parent may:
230 (1) Execute an act of surrender in favor of the department; and
231 (2)(1) Consent to a judgment terminating his or her parental rights; and
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232 (2) Execute an act of surrender in favor of:
233 (A) A third party if all of the parties to the petition to terminate parental rights agree;
234 or
235 (B) The department."

236 SECTION 1-18.
237 Said chapter is further amended by revising subsection (a) of Code Section 15-11-270, relating to venue for petition to terminate parental rights, as follows:
239 "(a) A proceeding under this article shall be commenced in:
240 (1) In the county that has jurisdiction over the related dependency proceedings;
241 (2) In the county in which a child legally resides;
242 (3) In the county in which a child is present when the termination proceeding is commenced if such child is present without his or her parent, guardian, or legal custodian;
244 or
245 (4) In the county where the acts underlying the petition to terminate parental rights are alleged to have occurred."

247 SECTION 1-19.
248 Said chapter is further amended by revising subsection (d) of Code Section 15-11-280, relating to the petition for termination of parental rights and putative fathers, as follows:
250 "(d) When a petition to terminate parental rights seeks termination of the rights of a biological father who is not the legal father and who has not surrendered his rights to his child, the petition shall include a certificate from the putative father registry disclosing the name, address, and social security number of any registrant acknowledging paternity of the child named in the petition or indicating the possibility of paternity of a child of the child's mother for a period beginning no more than two years immediately preceding such child's date of birth. The certificate shall document a search of the registry on or after before 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."

260 SECTION 1-20.
261 Said chapter is further amended by revising subsection (e) of Code Section 15-11-282, relating to service of summons, as follows:
263 "(e)(1) Service by publication shall be made once a week for four consecutive weeks in
the legal organ of the county where the petition to terminate parental rights has been filed
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264 and of the county of the biological father's last known address. Service shall be deemed
265 complete upon the date of the last publication.
266 (2) When served by publication, the notice shall contain the names of the parties, except
267 that the anonymity of a child shall be preserved by the use of appropriate initials, and the
268 date the petition to terminate parental rights was filed. The notice shall indicate the
269 general nature of the allegations and where a copy of the petition to terminate parental
270 rights can be obtained and require the party to be served by publication to appear before
271 the court at the time fixed to answer the allegations of the petition to terminate parental
272 rights.
273 (3) The petition to terminate parental rights shall be available to the parent party whose
274 rights are sought to be terminated free of charge from the court during business hours or,
275 upon request, shall be mailed to such parent party.
276 (4) Within 15 days after the filing of the order of service by publication, the clerk of
277 court shall mail a copy of the notice, a copy of the order of service by publication, and
278 a copy of the petition to terminate parental rights to the absent parent’s party's last known
279 address."
280 SECTION 1-21.
281 Said chapter is further amended by revising Code Section 15-11-283, relating to notice to
282 fathers, as follows:
283 "15-11-283.
285 (a) Unless he has surrendered all parental rights to his child, a summons shall be served
286 on the legal father of a child named in the petition brought pursuant to this article or in the
287 same manner as set forth in Code Section 15-11-282 on the biological father:
288 (1) Whose paternity has been previously established in a judicial proceeding to which
289 the father was a party;
290 (2) Whose identity is known to the petitioner or the petitioner's attorney;
291 (3) Who is a registrant on the putative father registry and has acknowledged paternity of
292 the child named in the petition brought pursuant to this article;
293 (4) Who is a registrant on the putative father registry who has indicated possible
294 paternity of the child named in the petition brought pursuant to this article that was born
295 to such child's mother during a period beginning no more than two years immediately
296 preceding such child's date of birth; or
297 (5) Who, if the court finds from the evidence including but not limited to the affidavit
298 of the mother of a child named in the petition brought pursuant to this article, has
299 performed any of the following acts:
300 (A) Lived with such child;
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301 (B) Contributed to such child's support;
302 (C) Made any attempt to legitimate such child; or
303 (D) Provided support or medical care for such mother either during her pregnancy or
304 during her hospitalization for the birth of such child.
305 (b) Notice shall be given to the biological father or legal father by the following methods:
306 (1) If the biological father or legal father is within this state and can be found, the
307 summons shall be served upon him personally as soon as possible and least 30 days
308 before the termination of parental rights hearing;
309 (2) If the biological father or legal father is outside this state but his address is known or
310 can be ascertained with due diligence, service of summons shall be made at least 30 days
311 before the termination of parental rights hearing either by delivering a copy to him
312 personally or by mailing a copy to him by registered or certified mail or statutory
313 overnight delivery, return receipt requested; or
314 (3) If, after due diligence, the biological father or legal father to be served with summons
315 cannot be found and his address cannot be ascertained, whether he is within or outside
316 this state, the court may order service of summons upon him by publication. The
317 termination of parental rights hearing shall not be earlier than 31 days after the date of the
318 last publication. Service by publication shall be as follows:
319 (A) Service by publication shall be made once a week for four consecutive weeks in
320 the legal organ of the county where the petition to terminate parental rights has been
321 filed and of the county of the biological father's last known address. Service shall be
322 deemed complete upon the date of the last publication;
323 (B) When served by publication, the notice shall contain the names of the parties,
324 except that the anonymity of a child shall be preserved by the use of appropriate initials,
325 and the date the petition to terminate parental rights was filed. The notice shall indicate
326 the general nature of the allegations and where a copy of the petition to terminate
327 parental rights can be obtained and require the biological father or legal father to appear
328 before the court at the time fixed to answer the allegations of the petition to terminate
329 parental rights;
330 (C) The petition to terminate parental rights shall be available to the biological father
331 or legal father whose rights are sought to be terminated free of charge from the court
332 during business hours or, upon request, shall be mailed to the biological father or legal
333 father; and
334 (D) Within 15 days after the filing of the order of service by publication, the clerk of
335 court shall mail a copy of the notice, a copy of the order of service by publication, and
336 a copy of the petition to terminate parental rights to the biological father's or legal
337 father's last known address.
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338 (c)(b) The notice shall advise the biological father who is not the legal father that he may
339 lose all rights to the child named in a petition brought pursuant to this article and will not
340 be entitled to object to the termination of his rights to such child unless, within 30 days of
341 receipt of notice, he files:
342 (1) A petition to legitimate such child; and
343 (2) Notice of the filing of the petition to legitimate with the court in which the
344 termination of parental rights proceeding is pending.
345 (d)(c) If the identity of the biological father whose rights are sought to be terminated is not
346 known to the petitioner or the petitioner's attorney and the biological father would not be
347 entitled to notice in accordance with subsection (a) of this Code section, then it shall be
348 rebuttably presumed that he is not entitled to notice of the proceedings. The court shall be
349 authorized to require the mother to execute an affidavit supporting the presumption or show
350 cause before the court if she refuses. Absent evidence rebutting the presumption, no
351 further inquiry or notice shall be required by the court, and the court may enter an order
352 terminating the rights of the biological father.
353 (e)(d) The court may enter an order terminating all the parental rights of a biological
354 father, including any right to object thereafter to such proceedings:
355 (1) Who fails to file a timely petition to legitimate the child named in a petition brought
356 pursuant to this article and notice in accordance with subsection (c) (b) of this Code
357 section;
358 (2) Whose petition to legitimate is subsequently dismissed for failure to prosecute; or
359 (3) Whose petition to legitimate does not result in a court order finding that he is the
360 legal father of the child named in a petition brought pursuant to this article."

361 SECTION 1-22.

362 Said chapter is further amended by revising Part 4 of Article 4, relating to hearings in
363 termination of parental rights cases, by adding a new Code section to read as follows:
364 "15-11-304.
365 Except as provided in this Code section, hearings to terminate parental rights shall be
366 conducted in accordance with Title 24. Testimony or other evidence relevant to
367 determining whether a statutory ground for termination of parental rights exists may not
368 be excluded on any ground of privilege, except in the case of:
369 (1) Communications between a party and his or her attorney; and
370 (2) Confessions or communications between a priest, rabbi, or duly ordained minister or
371 similar functionary and his or her confidential communicant."

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372 SECTION 1-23.

373 Said chapter is further amended by revising Code Section 15-11-322, relating to
374 continuing
375 court review when a child is not adopted, as follows:
376 "15-11-322.
377 (a) If a petition seeking the adoption of a child whose parents have had their parental rights
378 terminated or surrendered is not filed within six months after the date of the disposition
379 order, the court shall then, and at least every six months thereafter so long as such child
380 remains unadopted, review the circumstances of such child to determine what efforts have
381 been made to assure that such child will be adopted. The court shall:
382 (1) Make written findings regarding whether reasonable efforts have been made to move
(2) Evaluate whether, in light of any change in circumstances, the permanency plan for such child remains appropriate; and
(3) Enter such orders as it deems necessary to further adoption or if appropriate, other permanency options, including, but not limited to, another placement.
(b) In those cases in which a child whose parents have had their parental rights terminated or surrendered was placed with a guardian, within 60 days after such appointment and within 60 days after each anniversary date of such appointment, the guardian shall file with the court a personal status report of such child which shall include:
(1) A description of such child's general condition, changes since the last report, and such child's needs;
(2) All addresses of such child during the reporting period and the living arrangements of such child for all addresses; and
(3) Recommendations for any modification of the guardianship order."

SECTION 1-24.
Said chapter is further amended by revising subsections (a) and (b) of Code Section 15-11-390, relating to filing of a complaint for a child in need of services, as follows:
"(a) A complaint alleging a child is a child in need of services may be filed by a parent, guardian, or legal custodian, DFCS, a school official, made by any person, including a law enforcement officer, a guardian ad litem, or an attorney who has knowledge of the facts alleged or is informed and believes that such facts are true.
(b) The complaint shall set forth plainly and with particularity:
(1) The name, date of birth, and residence address of the child alleged to be a child in need of services;
(2) The facts alleging why the court has jurisdiction of the complaint;
(3) The reasons why the complaint is in the best interests of the child and the public;
(4) The names and residence addresses of the parent, guardian, or legal custodian, any other family members, or any other individuals living within such child's home;
(5) The name of any public institution or agency having the responsibility or ability to supply services alleged to be needed by such child; and
(6) Whether any of the matters required by this subsection are unknown."

SECTION 1-25.
Said chapter is further amended by revising subsection (a) of Code Section 15-11-400, relating to child in need of services and time limitations for continued custody, as follows:
"(a) The continued custody hearing for a child alleged to be a child in need of services shall be held promptly and no later than:
(1) Twenty-four hours, excluding weekends and holidays, Seventy-two hours after such child is taken into temporary custody if he or she is being held in a secure residential facility or nonsecure residential facility; or
(2) Seventy-two hours, excluding weekends and holidays, Five days after such child is
placed in foster care, provided that, if the five-day time frame expires on a weekend or legal holiday, the hearing shall be held on the next day which is not a weekend or legal holiday."

SECTION 1-26.

Said chapter is further amended by revising subsections (b) through (g) of Code Section 15-11-402, relating to the right to an attorney and appointment of a guardian ad litem, as follows:

"(b) The court shall appoint a CASA to act as a guardian ad litem whenever possible, and a CASA may be appointed in addition to an attorney who is serving as a guardian ad litem.

(c) The court may appoint a guardian ad litem for a child alleged to be a child in need of services at the request of such child's attorney or upon the court's own motion if it determines that a guardian ad litem is necessary to assist the court in determining the best interests of such child; provided, however, that such guardian ad litem may be the same person as the child's attorney unless or until there is a conflict of interest between the attorney's duty to such child as such child's attorney and the attorney's considered opinion of such child's best interests as guardian ad litem.

(d) The role of a guardian ad litem in a proceeding for a child in need of services shall be the same role as provided for in all dependency proceedings under Article 3 of this chapter.

(e) If an attorney or a guardian ad litem has previously been appointed for a child in a dependency or delinquency proceeding, the court, when possible, shall appoint the same attorney or guardian ad litem for a child alleged to be a child in need of services.

(f) An attorney appointed to represent a child in a proceeding for a child in need of services shall continue representation in any subsequent appeals unless excused by the court.

(g) A child alleged to be a child in need of services shall be informed of his or her right to an attorney at or prior to the first court proceeding for a child in need of services. A child alleged to be a child in need of services shall be given an opportunity to:

(1) Obtain and employ an attorney of his or her own choice; or

(2) To obtain a court appointed attorney if the court determines that such child is an indigent person."

SECTION 1-27.

Said chapter is further amended by revising subsection (c) of Code Section 15-11-410, relating to taking a child into temporary custody, and adding a new subsection to read as follows:

"(c) A person taking a child into temporary custody shall deliver such child, with all reasonable speed and without first taking such child elsewhere, to a medical facility if he or she 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 such child into custody, the

d) As soon as a juvenile court intake officer is notified that a child has been taken into
463 temporary custody, such juvenile court intake officer shall administer a detention
464 assessment and determine if such child should be released, remain in temporary custody,
465 or be brought before the court."

**SECTION 1-28.**

467 Said chapter is further amended by revising subsection (c) of Code Section 15-11-411,
468 relating to taking a child into temporary custody, as follows:
469 "(c) If a parent, guardian, or legal custodian has not assumed custody of his or her child
470 at the end of the 12 hour period described in subsection (a) of this Code section, the court
471 shall be notified and shall place such child in the least restrictive placement consistent with
472 such child's needs for protection or control. In making its determination of placement,
473 the court should consider the following placement options:

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474 (1) In the custody of such child's parents, guardian, or legal custodian upon such person's
475 promise to bring such child before the court when requested by the court; provided,
476 however, that if such placement is not available, such child shall be placed in
477 (2) In the custody of DFCS which shall promptly arrange for foster care of such child;
478 (3) In a secure residential facility or nonsecure residential facility in accordance with
479 Code Section 15-11-412; or
480 (4) In any other court-approved placement that is not a secure residential facility or
481 nonsecure residential facility."

**SECTION 1-29.**

482 Said chapter is further amended by revising Code Section 15-11-413, relating to continued
483 custody hearings, as follows:
484 "15-11-413.
485 (a) If a child alleged to be a child in need of services is being held in a secure residential
486 facility or nonsecure residential facility, a continued custody hearing shall be held within
487 72 24 hours, excluding weekends and holidays. If such hearing is not held within the time
488 specified, such child shall be released from temporary detention in accordance with
489 subsection (c) of Code Section 15-11-411 and with authorization of the detaining
490 authority.
491 (b) If a child alleged to be a child in need of services is not being held in a secure
492 residential facility or nonsecure residential facility and has not been released to the custody
493 of such child's parent, guardian, or legal custodian, a hearing shall be held promptly and
494 not later than five days within 72 hours, excluding weekends and holidays, after such child
495 is placed in foster care, provided that, if the five-day time frame expires on a weekend or
496 legal holiday, the hearing shall be held on the next day which is not a weekend or legal
497 holiday.
498 (c) At the commencement of a continued custody hearing, the court shall inform the
499 parties of:
500 (1) The nature of the allegations;
501 (2) The nature of the proceedings;
502 (3) The possible consequences or dispositions that may apply to such child's case
503 following adjudication; and
504 (4) Their due process rights, including the right to an attorney and to an appointed
505 attorney; the privilege against self-incrimination; that he or she may remain silent and
506 that anything said may be used against him or her; the right to confront anyone who
507 testifies against him or her and to cross-examine any persons who appear to testify
508 against him or her; the right to testify and to compel other witnesses to attend and testify
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509 in his or her own behalf; the right to a speedy adjudication hearing; and the right to
510 appeal and be provided with a transcript for such purpose."
511 SECTION 1-30.
512 Said chapter is further amended by revising Code Section 15-11-414, relating to continued
513 custody hearing and findings, as follows:
514 "15-11-414.
515 (a) At the commencement of a continued custody hearing, the court shall inform the
516 parties of:
517 (1) The nature of the allegations;
518 (2) The nature of the proceedings;
519 (3) The possible consequences or dispositions that may apply to such child's case
520 following adjudication; and
521 (4) Their due process rights, including the right to an attorney and to an appointed
522 attorney; the privilege against self-incrimination; that he or she may remain silent and
523 that anything said may be used against him or her; the right to confront anyone who
524 testifies against him or her and to cross-examine any persons who appear to testify
525 against him or her; the right to testify and to compel other witnesses to attend and testify
526 in his or her own behalf; the right to a speedy adjudication hearing; and the right to
527 appeal and be provided with a transcript for such purpose.
528 (a)(b) At a continued custody hearing, the court shall determine whether there is probable
529 cause to believe that a child has committed a status offense or is otherwise a child in need
530 of services and that continued custody is necessary.
531 (b)(c) If the court determines there is probable cause to believe that a child has committed
532 a status offense or is otherwise in need of services, the court may order that such child:
533 (1) Be released to the custody of his or her parent, guardian, or legal custodian; or
534 (2) Be placed in the least restrictive placement consistent with such child's need for
535 protection and control as authorized by Code Section 15-11-411 and in accordance with
536 Code Section 15-11-415.
537 (c)(d) If the court determines there is probable cause to believe that such child has
538 committed a status offense or is otherwise in need of services, the court shall:
539 (1) Refer such child and his or her family for a community based risk reduction program;
540 or
541 (2) Order that a petition for a child in need of services be filed and set a date for an
542 adjudication hearing.
543 (d)(e) Following a continued custody hearing, the court may detain a child alleged to be
a child in need of services in a secure residential facility or nonsecure residential facility
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for up to 72 hours, excluding weekends and legal holidays, only for the purpose of
providing adequate time to arrange for an appropriate alternative placement pending the
adjudication hearing.
(e)(f) All orders shall contain written findings as to the form or conditions of a child's
release. If a child alleged to be a child in need of services cannot be returned to the custody
of his or her parent, guardian, or legal custodian at the continued custody hearing, the
court shall state the facts upon which the continued custody is based. The court shall make the
following findings of fact referencing any and all evidence relied upon to make its
determinations:
(1) Whether continuation in the home of such child's parent, guardian, or legal custodian
is contrary to such child's welfare; and
(2) Whether reasonable efforts have been made to safely maintain such child in the home
of his or her parent, guardian, or legal custodian and to prevent or eliminate the need for
removal from such home. Such finding shall be made at the continued custody hearing
if possible but in no case later than 60 days following such child's removal from his or
her home."

SECTION 1-31.
Said chapter is further amended by revising subsections (a), (e), and (f) of Code Section
15-11-415, relating to detention decisions and findings, as follows:
"(a) Restraints on the freedom of a child prior to adjudication shall be imposed only when
there is probable cause to believe that a child committed the act of which he or she is
accused, there is clear and convincing evidence that such child's freedom should be
restrained, that no less restrictive alternatives will suffice, and:
(1) Such child's detention or care is required to reduce the likelihood that he or she may
inflict serious bodily harm on others during the interim period; or
(2) Such child's detention is necessary to secure his or her presence in court to protect
the jurisdiction and processes of the court; or
(3) An order for such child's detention has been made by the court."
"(e) Before entering an order authorizing detention, the court shall determine whether a
child's continuation in his or her home is contrary to his or her welfare and whether there
are available services that would prevent or eliminate the need for detention. The court
shall make such determination on a case-by-case basis and shall make written findings of
fact referencing any and all evidence relied upon in reaching its decision.
(f) If a child alleged to be a child in need of services can remain in the custody of his or
her parent, guardian, or legal custodian through the provision of services to prevent the
need for removal, the court shall order that such services shall be provided."
581 SECTION 1-32.
582 Said chapter is further amended by revising Code Section 15-11-420, relating to the authority
to file a petition for a child in need of services, as follows:
584 "15-11-420.
585 A petition alleging that a child is a child in need of services may be made by any person,
including filed by a parent, a guardian, a legal custodian, a law enforcement officer, a
587 guardian ad litem, or an attorney who has knowledge of the facts alleged or is informed and
588 believes that such facts are true. Such petition shall not be filed accepted for filing unless
589 the court or a person authorized by the court has determined and endorsed on the petition
590 that the filing of the petition is in the best interests of the public and such child."  
591 SECTION 1-33.
592 Said chapter is further amended by revising subsection (a) of Code Section 15-11-441,
relating to an adjudication hearing for a child in need of services, as follows:
594 "(a) If a child alleged to be a child in need of services is in continued custody but not in
a secure residential facility or nonsecure residential facility, the adjudication hearing shall
be scheduled to be held no later than ten days after the filing of the petition seeking an
adjudication that such child is a child in need of services. If such child is not in continued
custody, the adjudication hearing shall be scheduled to be held no later than 60 days after
the filing of such petition."  
599 SECTION 1-34.
590 Said chapter is further amended by revising subsection (a) of Code Section 15-11-442,
relating to disposition hearings for a child in need of services, as follows:
592 "(a) If the court finds that a child is a child in need of services, a final disposition hearing
shall be held and completed within 60 30 days of the conclusion of the adjudication
hearing
593 if the final disposition hearing is not held in conjunction with such adjudication hearing."  
596 SECTION 1-35.
597 Said chapter is further amended by revising paragraph (1) of subsection (a) of Code
Section
598 15-11-443, relating to the duration of disposition orders, as follows:
599 "(1) A hearing is held prior to the expiration of the order upon motion of DFCS, DJJ, the
prosecuting attorney petitioner, or on the court's own motion;"
600 SECTION 1-36.
601 Said chapter is further amended by revising Code Section 15-11-476, relating to
appointment
602 of a guardian ad litem in delinquency cases, as follows:
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614 "15-11-476.
615 (a) The court shall appoint a CASA to act as a guardian ad litem whenever possible, and
616 a CASA may be appointed in addition to an attorney who is serving as a guardian ad litem.
617 (b) The court shall appoint a separate guardian ad litem whenever:
618 (1) An alleged delinquent child appears before the court without his or her parent,
619 guardian, or legal custodian;
620 (2) It appears to the court that a parent, guardian, or legal custodian of an alleged
621 delinquent child is incapable or unwilling to make decisions in the best interests of such
622 child with respect to proceedings under this article such that there may be a conflict of
623 interest between such child and his or her parent, guardian, or legal custodian; or
624 (3) The court finds that it is otherwise in a child's best interests to do so.
625 (c) The role of a guardian ad litem in a delinquency proceeding shall be the same role
626 as provided for in all dependency proceedings under Article 3 of this chapter.
627 (d) In a child's attorney in a delinquency proceeding, nor his or her a child's
628 parent, guardian, or legal custodian, or attorney shall not prohibit or impede the child's
629 guardian ad litem's access to such child by the guardian ad litem."

630 SECTION 1-37.
631 Said chapter is further amended by revising paragraph (3) of subsection (e) of Code
632 Section 15-11-450, relating to comprehensive services plan for child found unrestorably
633 incompetent
634 to proceed, as follows:
635 "(3) If such child's evaluation recommends inpatient treatment, certification by such plan
636 manager that such child is mentally ill or developmentally disabled and meets the
637 requirements for civil commitment pursuant to Chapters 3 and 4 of Title 37 and that all
638 other appropriate community based treatment options have been exhausted; and"

639 SECTION 1-38.
640 Said chapter is further amended by revising subsection (d) of Code Section 15-11-451,
641 relating to hearing on a mental health plan, as follows:
642 "(d) If, during the comprehensive services plan hearing or any subsequent review hearing,
643 the court determines that a child meets criteria is mentally ill or developmentally disabled
644 and meets the requirements for civil commitment pursuant to Chapters 3 and 4 of Title 37,
645 such child may be committed to an appropriate treatment setting."

646 SECTION 1-39.
647 Said chapter is further amended by revising subsection (b) of Code Section 15-11-511,
648 relating to arraignment and admissions at arraignment, as follows:
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649 "(b) The court may accept an admission at arraignment and may proceed immediately to
650 disposition if a child is represented by counsel at arraignment or if. If a child's liberty is
651 not in jeopardy, he or she may waive the right to counsel at arraignment. A child
652 represented by counsel or whose liberty is not in jeopardy may make a preliminary
653 statement indicating whether he or she plans to admit or deny the allegations of the
654 complaint at the adjudication hearing, but the. The court shall not accept an admission
655 from a child whose liberty is in jeopardy and who is unrepresented by counsel."
656 Said chapter is further amended by revising subsection (a) of Code Section 15-11-531, 657 relating to service of summons for adjudication hearings, as follows:
658 "(a) If a party to be served with a summons is within this state and can be found, the 659 summons shall be served upon him or her personally as soon as possible and at least 24 72 660 hours before the adjudication hearing."
661 SECTION 1-41.
662 Said chapter is further amended by revising subsection (d) of Code Section 15-11-532, 663 relating to sanctions for failure to obey a summons, as follows:
664 "(d) If there is sworn testimony that a child 14 years of age but not yet less than 16 years 665 of age willfully refuses to appear at a hearing on a petition alleging delinquency after being 666 ordered to so appear, the court may issue a bench warrant requiring that such child be 667 brought before the court and the court may enter any order authorized by the provisions of 668 Code Section 15-11-31."
669 SECTION 1-42.
670 Said chapter is further amended by revising subsection (a) of Code Section 15-11-566, 671 relating to dismissal order upon transfer to superior court, as follows:
672 "(a) If the court decides to transfer a child for trial in superior court, it shall dismiss the 673 juvenile court petition alleging delinquency for the offense or offenses being transferred, 674 set forth the offense or offenses which are being transferred, and make the following 675 findings of fact in its dismissal order:
676 (1) That the court had jurisdiction of the cause and the parties;
677 (2) That the child subject to transfer was represented by an attorney; and
678 (3) That the hearing was held in the presence of the child subject to transfer and his or 679 her attorney."
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680 SECTION 1-43.
681 Said chapter is further amended by revising subsection (a) of Code Section 15-11-582, 682 relating to adjudication hearings in delinquency cases and time limitations, as follows:
683 "(a) The court shall fix a time for the adjudication hearing. If an alleged delinquent child 684 is in detention, the hearing shall be scheduled to be held no later than ten days after the 685 filing of the delinquency petition. If a child is not in detention, the hearing shall be 686 scheduled to be held no later than 60 days after the filing of such petition."
687 SECTION 1-44.
688 Said chapter is further amended by revising subsections (c), (d), and (h) of Code Section 689 15-11-602, relating to the disposition of persons adjudicated for class A or class B 690 designated felony acts, as follows:
691 "(c) An order for a child adjudicated for a class A designated felony act placing such child 692 in restrictive custody shall provide that:
693 (1) Such child shall be placed in DJJ custody for an initial period of up to 60 months;
694 (2) Such child shall be confined for a period set by the order in a secure residential
695 facility, except as provided in subsection (e) of this Code section. All time spent in a secure residential facility or nonsecure residential facility shall be counted toward the confinement period set by the order;

698 (3) After a period of confinement set by the court, such child shall be placed under intensive supervision not to exceed 12 months;

700 (4) Such child shall not be released from intensive supervision unless by court order; and

701 (5) All home visits shall be carefully arranged and monitored by DJJ personnel while such child is placed in a secure residential facility or nonsecure residential facility.

703 (d) An order for a child adjudicated for a class B designated felony act placing such child in restrictive custody shall provide that:

705 (1) Such child shall be placed in DJJ custody for an initial period of up to 36 months; provided, however, that not more than 18 months of such custodial period shall be spent in restrictive custody;

708 (2) Except as provided in subsection (e) of this Code section, if such child is classified as moderate risk or high risk, he or she shall be confined for a period set by the order in a secure residential facility for half of the period of restrictive custody and the other half of the period of restrictive custody may, at the discretion of DJJ, be spent in a nonsecure residential facility. All time spent in a secure residential facility or nonsecure residential facility shall be counted toward the confinement period set by the order;

714 (3) Except as provided in subsection (e) of this Code section, if such child is classified as low risk, he or she shall be confined for a period set by the order in a nonsecure residential facility subsequent to the date of the disposition hearing and prior to placement in a nonsecure residential facility shall be counted toward the confinement period set by the order;

720 (4) Such child shall be placed under intensive supervision not to exceed six months either after a period of confinement set by the court or as an initial period of supervision;

722 (5) Such child shall not be released from intensive supervision unless by court order; and

723 (6) All home visits shall be carefully arranged and monitored by DJJ personnel while a child is placed in a secure residential facility or nonsecure residential facility."

725 "(h) The court shall identify the school last attended by a child adjudicated for a class A designated felony act or class B designated felony act and the school which such child intends to attend and shall transmit a copy of the adjudication to the principals of both schools within 15 30 days of the adjudication. Such information shall be subject to notification, distribution, and other requirements as provided in Code Section 20-2-671."

730 SECTION 1-45.

731 Said chapter is further amended by revising subsection (a) of Code Section 15-11-604, relating to credit for time served, as follows:

733 "(a) A child adjudicated to have committed a delinquent act shall be given credit for each day spent in a secure residential facility, or a nonsecure residential facility, or any institution or facility for the treatment or examination of a physical or mental disability
736 awaiting adjudication, pending disposition and for each day spent in a secure residential
737 facility or nonsecure residential facility in connection with and resulting from a court order
738 entered in the proceedings for which the disposition was imposed and in any institution or
739 facility for treatment or examination of a physical or mental disability. Such credit shall
740 be applied toward the child's disposition."

741 SECTION 1-46.
742 Said chapter is further amended by revising subsection (d) of Code Section 15-11-656,
743 relating to disposition of incompetent child, as follows:
744 "(d) All court orders determining incompetency shall include specific written findings by
745 the court as to the nature of the incompetency and the mandated outpatient competency
746 remediation services. If such child is in an out-of-home placement, the court shall specify
747 the type of competency remediation services to be performed at such child's location. A
748 child may be placed in a secure treatment facility or crisis stabilization unit, as such term
749 is defined in Code Section 37-1-29, or a psychiatric residential treatment facility operated
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by DBHDD or other program, not to include DJJ facilities, if the court makes a finding by
751 clear and convincing evidence that:
752 (1) A child is mentally ill or developmentally disabled and meets the requirements for
753 civil commitment pursuant to Chapters 3 and 4 of Title 37; and
754 (2) All available less restrictive alternatives, including treatment in community
755 residential facilities or community settings which would offer an opportunity for
756 improvement of a child's condition, are inappropriate."

757 SECTION 1-47.
758 Code Section 19-7-1 of the Official Code of Georgia Annotated, relating to in whom
759 parental power lies and how such power may be lost, is amended by revising paragraph (8) of
760 subsection (b) as follows:
761 "(8) A superior court order terminating parental rights of the legal father or the biological
762 father who is not the legal father of the child in a petition for legitimation, a petition to
763 establish paternity, a divorce proceeding, or a custody proceeding pursuant to this chapter
764 or Chapter 6 5, 8, or 9 of this title, provided that such termination is in the best interest
765 of such child; and provided, further, that this paragraph shall not apply to such
766 termination when a child has been adopted or is conceived by artificial insemination as
767 set forth in Code Section 19-7-21 or when an embryo is adopted as set forth in Article 2
768 of Chapter 8 of this title."

769 PART II
770 SECTION 2-1.
771 Part 1 of Article 2 of Chapter 13 of Title 16 of the Official Code of Georgia Annotated,
772 relating to schedules, offenses, and penalties, is amended by revising subsection (m) of Code
773 Section 16-13-30, relating to purchase, possession, manufacture, distribution, or sale of
774 controlled substances or marijuana and penalties, as follows:
"(m) As used in this Code section, the term 'solid substance' means a substance with shape and volume that is not liquid. Such term shall include tablets, pills, capsules, caplets, powder, crystal, or any variant of such items."

**SECTION 2-2.**

Said part is further amended by revising subsection (i) of Code Section 16-13-31, relating to trafficking in cocaine, illegal drugs, marijuana, or methamphetamine and penalties, as follows:

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"(i) Notwithstanding Code Section 16-13-2, any sentence imposed pursuant to subsection (g) of this Code section shall not be reduced by any earned time, early release, work release, leave, or other sentence-reducing measures under programs administered by the Department of Corrections, the effect of which would be to reduce the period of incarceration ordered by the sentencing court or any form of pardon, parole, or commutation of sentence by the State Board of Pardons and Paroles; provided, however, that during the final year of incarceration, a defendant so sentenced shall be eligible to be considered for participation in a Department of Corrections administered transitional center or work release program."

**SECTION 2-3.**

Said part is further amended by revising subsection (e) of Code Section 16-13-31.1, relating to trafficking in ecstasy, sentencing, and variation, as follows:

"(e) Notwithstanding Code Section 16-13-2, any sentence imposed pursuant to subsection (b) of this Code section shall not be reduced by any earned time, early release, work release, leave, or other sentence-reducing measures under programs administered by the Department of Corrections, the effect of which would be to reduce the period of incarceration ordered by the sentencing court or any form of pardon, parole, or commutation of sentence by the State Board of Pardons and Paroles; provided, however, that during the final year of incarceration, a defendant so sentenced shall be eligible to be considered for participation in a Department of Corrections administered transitional center or work release program."

**PART III**

**SECTION 3-1.**

Part 1 of Article 2 of Chapter 13 of Title 16 of the Official Code of Georgia Annotated, relating to schedules, offenses, and penalties, is amended by revising subsection (m) of Code Section 16-13-30, relating to purchase, possession, manufacture, distribution, or sale of controlled substances or marijuana and penalties, as follows:

"(m) As used in this Code section, the term 'solid substance' means a substance with shape and volume that is not liquid. Such term shall include tablets, pills, capsules, caplets, powder, crystal, or any variant of such items."
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812 PART IV  
813 SECTION 4-1.  
814 Parts I and II and this part of this Act shall become effective upon its approval by the  
815 Governor or upon its becoming law without such approval, and Part III of this Act shall  
816 become effective on July 1, 2014.  
817 SECTION 4-2.  
818 All laws and parts of laws in conflict with this Act are repealed.