

Parent Attorney Trial Notebook for Deprivation Cases in Georgia's Juvenile Courts

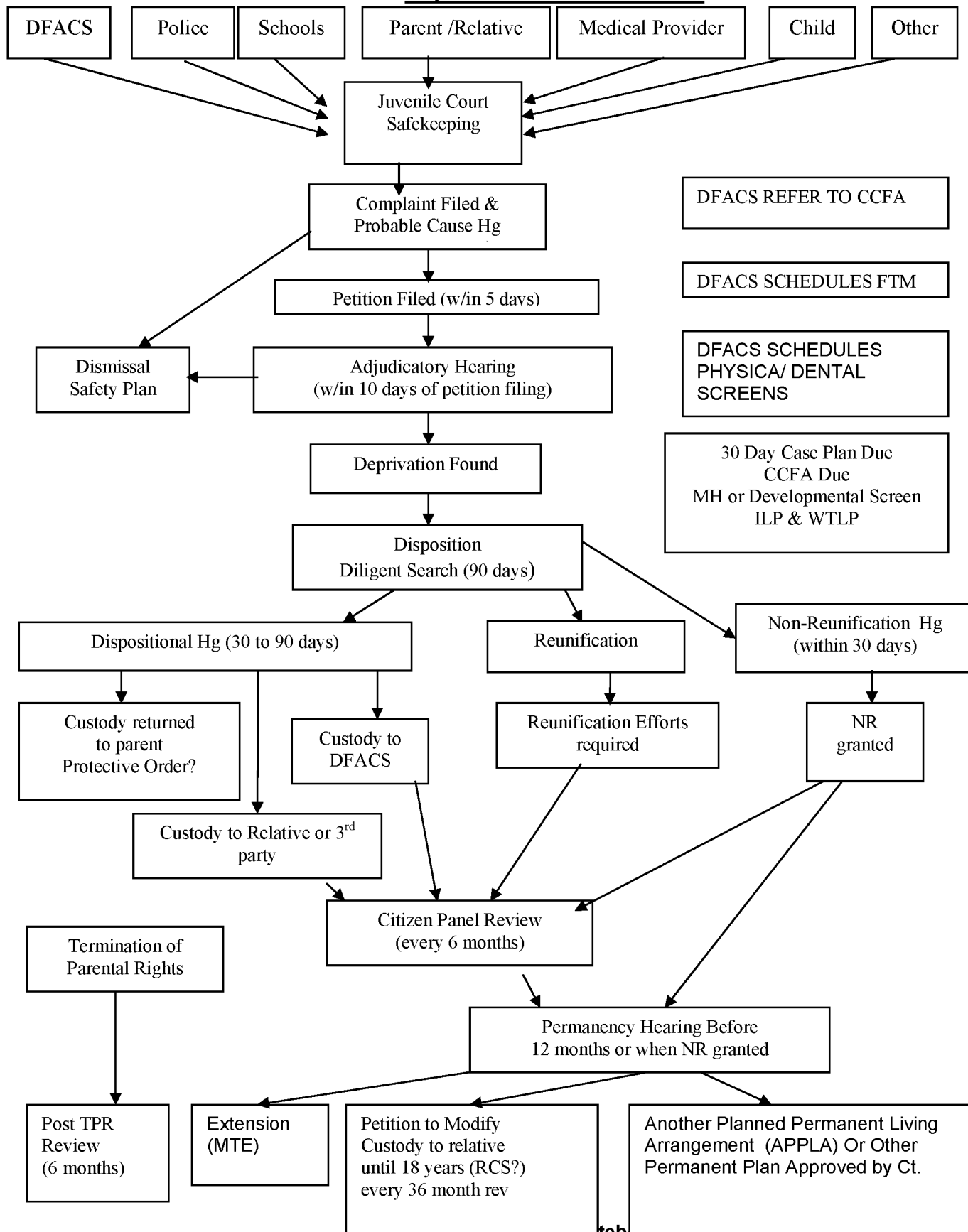
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Deprivation Case Flowchart



DFACS REFER TO CCFA

DFACS SCHEDULES FTM

DFACS SCHEDULES PHYSICA/ DENTAL SCREENS

30 Day Case Plan Due
CCFA Due
MH or Developmental Screen
ILP & WTLP

Parent/Attorney Information

Timelines for a Deprivation Case

Event	Timing	Time Waiveable?
Safekeeping / Date Entered Foster Care	immediate @ removal	NO (IV-E required)
Detentiona Hg w/ Ch removal	72 Hours of removal	NO
Detentiona Hg w/OUT Ch removal	30 days of complaint	NO
Reasonable Efforts	At every Hearing	NO
Continued DT	Every 72 Hours from removal - after 30 days dead	YES, if all parties pres & waive
CCFA - Comprehensive Child & Family Assessment	Within 24 hours of a Det Hg - DFCS refers to CCFA provider	NO
Petition Filing W Ch Removal	Within 5 days of DT Hg	NO
Petition Filing W/OUT Ch Removal	Within 30 days of DT Hg	NO
Adjudication Hg W/ Ch Removal	Within 10 days of Petition Filing	YES, if all parties pres & waive
Adjudication Hg W/OUT Ch Removal	Within 60 days of Petition Filing	YES, if all parties pres & waive
FTM - Family Team Meeting	Within 3-9 days after a child enters FC	NO
Physical Health Screen	Within 10 days of a child's entry into FC	NO
Dental Health Screen	Within 10 days of a child's entry into FC	NO
Multidisciplinary Meeting (MDT)	Within 25 days of a child's entry into FC	NO
Case Plan	Within 30 days of a child's entry into FC	NO
ILP & ILP Services	at caseplan if child over 14 years	NO
WTLP - Written Transitional Living Plan+A19	at caseplan if child over 14 years	NO
CCFA DUE, needed for MDT & CSPL	Within 30 days of a child's entry into FC	
MH Screen (Child: 4 yrs. & older)	Within 30 days of a child's entry into FC.	NO
Developmental Assessment (Child: 4 yrs. & under)	Within 30 days of a child's entry into FC. BCW referral immediately.	NO
Disposition	within 90 Days from Removal - Must have Diligent Search included	NO
Diligent Search	within 90 Days from Removal - Might be part of cspl then due w/ cspl	NO
Notice tp Foster Parents	written notice in advance of hgs under 15-11-58 (dispo, permanency, NR, custody mod.,)	NO
Non Reunification Hearing	with in 30 days of NR announced as CSPL	NO
Extension	prior to expiration of previous order	NO, except all parties waive
TPR 15 out of 22 months child in FC or if abandoned infant or NR CSPL or 12 months non compliance w/ CSPL	Hearing must be held within 90 days of TPR Petition filing & TPR Order must be signed within 30 days of close of evidence, "Just Cause Exception"	YES If Court makes findings on record of an exception, Caselaw says TPR order must be signed within 1 year of filing petition
TPR Reviews	at least every 6 months	NO
Petition to Modify Third Party	anytime, check RCS time limits for \$\$\$\$\$	
Protective Order	anytime	
Expedited ICPC	receiving State has 30 days after all documents submitted	
Citizen Panel Review	every 6 months - minimum	NO
Guardianship	anytime	
Legitimation	anytime,if TPR w/in 30 of service of TPR	
Immigration Issue	ongoing, must complete before 18th, in ILP	

Event	Timing	Time Waiveable?
IEP	ongoing	
Expiration Date	If to DFACS - 12 months if to relative or non relative 24 months	NO
Permanency Hearing Date	every 12 months child in FC	NO
Visitation - Parent	Within 1st week & bi monthly	
Visitation - Sibling or other family	as soon as possible	
Third party Custody Reviews	If relative - every 36 months if non relative every 12 months	NO
Abandoned Infant TPR	3 months abandoned - DFACS shall TPR	NO

GEORGIA PERFORMANCE STANDARDS FOR PARENT ATTORNEYS

The purpose of these standards is to provide attorneys representing parents with a general guide to appropriate and zealous advocacy on behalf of clients in juvenile court deprivation and termination of parental rights cases.

Performance Standard 1:

Obligations of Parent Attorney

The primary and most fundamental obligation of a family defender is to provide zealous and effective representation for his or her client at all stages of the juvenile court proceedings. The parent attorney's duty is to promote and protect the parent's expressed interest. If personal matters make it impossible for parent attorney to fulfill the duty of zealous representation, he or she has a duty to refrain from representing the client. Attorneys also have an obligation to uphold the ethical standards of the State Bar of Georgia and to act in accordance with the Uniform Juvenile Court Rules.

Performance Standard 2:

Training and Experience of Parent Attorney

Deprivation and Termination of Parental Rights (TPR) cases should not be taken on without the adequate experience and knowledge necessary to represent the client zealously.

- 2.1** Before practicing in juvenile court, parent attorney should be proficient in applicable substantive and procedural Georgia juvenile law and federal laws relating to child abuse and neglect and should have appropriate experience, skills and training necessary to represent parents.
 - a. At a minimum parent attorney should observe at least ten hours of juvenile court, including every stage of a deprivation/TPR proceeding. Parent Attorney should obtain a minimum of six hours per year of training in relevant areas of practice.
 - b. It is highly recommended that parent attorney either work with a mentor before taking a case or have a mentor available to consult on a case.
- 2.2** Parent attorney should be knowledgeable about and seek ongoing training in the following areas:
 - a. DFCS policies and procedures;
 - b. Federal Regulations relating to DFCS and foster care;
 - c. Services available to children and parents through the juvenile court and community;
 - d. Child development;
 - e. Adoption process/benefits available;
 - f. Substance abuse, addiction recovery stages;
 - g. Causes and available treatment for child abuse and neglect;
 - h. Effective communication skills to communicate with child witnesses;
 - i. Cultural competency;
 - j. State and federal government benefits;
 - k. Immigration laws relating to child welfare and child custody;
 - l. Interstate Compact on Placement of Children;
 - m. Medical and mental health care;
 - n. Domestic violence;

o. Disabilities.

- 2.3** Parent attorney should note that local juvenile court practices and procedures may differ.
- 2.4** Parent attorney has a continuing obligation to stay abreast of changes and developments in the law.
- 2.5** Before agreeing to act as parent attorney or accepting appointment by a court, parent attorney has an obligation to make sure that he/she has available sufficient time, resources, knowledge and experience to offer effective representation to a client in a particular matter. If it later appears that parent attorney is unable to offer effective representation in the case, he/she should move to withdraw.
- 2.6** If a conflict develops during the course of representation, parent attorney has a duty to notify the client and the court in accordance with the Uniform Rules of Court and in accordance with the Disciplinary Rules of the State Bar of Georgia.
- 2.7** If parent attorney is an Assistant Public Defender and parent attorney's caseload becomes so large that he/she is unable to satisfactorily meet these performance standards, he/she shall inform the Circuit Public Defender for parent attorney's judicial circuit and the court or courts before whom parent attorney's cases are pending. If the Circuit Public Defender determines that the caseloads for the entire office are so large that parent attorney is unable to satisfactorily meet these performance standards, the Circuit Public Defender shall inform the court or courts before whom cases are pending and the Director of the Georgia Public Defender Standards Council.

Performance Standard 3:

The Role of Parent Attorney

- 3.1** Parent attorney's principal duty is to zealously advocate the parent's fundamental liberty interest in the care and custody of his or her child.¹
- a. Parent attorney is bound by and should advocate for the client's position, and may not substitute parent attorney's own judgment for the client's, nor should parent attorney ignore the client's wishes because they are perceived not to be in the client's or the child's best interests.
- b. Parent attorney should advise the client as to the probable success and the consequences of adopting any position, and should give the client all information necessary for the client to make an informed decision.
- 3.2** In order to effectively advocate for the client and to provide suggestions for appropriate dispositional options, parent attorney should take a holistic approach, evaluating all factors which may have contributed to the allegations of abuse or neglect.

Performance Standard 4:

Relationship with Client

Attorneys representing parents should show respect and professionalism towards their clients. Parent attorneys should support their clients and be sensitive to the client's individual needs. Attorneys should remember that they may be the client's only advocate in the system and should act accordingly.²

- 4.1** Parent attorney should explain the nature of the attorney client relationship to the parent, emphasizing that parent attorney works for the parent.

Parent attorney should establish a reliable communication system that meets the client's needs.³

- 4.2** Parent attorney should meet and communicate regularly with the client well before court proceedings and advise the client as to all legal matters related to the case, including specific allegations against the client, the caseplan, the client's rights in the pending proceeding, any orders entered against the client and the potential consequences of failing to obey court orders or cooperate with caseplans.⁴
- 4.3** Parent attorney should adhere to all laws and ethical obligations, including the Georgia Rules of Professional Conduct⁵, concerning client confidentiality.
- 4.4** Parent attorney should act in a culturally competent manner and with regard to the socioeconomic position of the parent throughout all aspects of representation.
- 4.5** Parent attorney should take diligent steps to locate and communicate with a missing parent and decide representation strategies based on that communication.⁶
- 4.6** Parent attorney should be aware of the unique issues an incarcerated parent faces and provide competent representation to the incarcerated client.⁷
- 4.7** Parent attorney should be aware of the client's mental health status and be prepared to assess whether the client can assist with the case.⁸
- a. Whether the client can assist parent attorney is a different issue from whether the client is able to parent the children, though the condition may be related to ability to parent.⁹
 - b. In assessing whether the client can assist parent attorney, parent attorney may consult family members, consult with professional who can protect the client, and use a reconsideration period to permit clarification or improvement of circumstances¹⁰;
 - c. In severe cases, where parent attorney determines that the client does not have the capacity to assist with the case, parent attorney may ask for a guardian ad litem to be appointed to the client. Since this action may have an adverse effect on the client's legal claims, the attorney should ask for a GAL only when absolutely necessary.¹¹

Performance Standard 5:

Duty at Appointment

- 5.1** Establishing and maintaining a relationship with the client is the foundation of the attorney-client relationship. Parent attorney should conduct an initial interview of the client within 72 hours of appointment.¹²
- 5.2** Many important rights of clients involved in juvenile court proceedings can be protected only by prompt advice and action. Parent attorney should immediately inform the client of his or her rights and the nature of the attorney client relationship, and should pursue any investigatory or procedural steps necessary to protect the clients' interests. Parent attorney should invoke the protections of appropriate constitutional provisions, federal and state laws, statutory provisions, regulations, and court rules on behalf of a client, and revoke any waivers of these protections purportedly given by the client as soon as practicable.¹³

**Performance Standard 6:
Parent Attorney's Initial Interview with Client
Commentary:**

The initial interview is the first and most crucial opportunity to build rapport with the client. It is important to initiate face-to-face contact with the client as soon as possible after appointment.

- 6.1** In preparation for the interview, parent attorney should:
- a. Schedule the interview to allow for ample time to speak with the client;
 - b. Collect any relevant information to bring, including all records and releases;
 - c. Be familiar with the elements of the allegations of abuse or neglect.
- 6.2** At the interview, parent attorney should:
- a. Explain to the client the role of parent attorney. Thoroughly explain the confidential nature of attorney client conversations;
 - b. Explain the allegations and possible dispositions;
 - c. Explain the juvenile court process, timelines and the role of all the parties involved, such as the Judge, SAAG, DFCS staff, CASA and Child Advocate Attorneys;
 - d. Instruct the client not to make statements to anyone concerning the case;
 - e. Obtain signed releases by the client and parent for medical and mental health records, school records, DFCS records, employment records, etc. Parent Attorney should advise the client of the potential use of this information and the privileges that attach to this information;
 - f. Obtain information from the client concerning the facts of the allegations, the accuracy thereof and any other relevant information including client's prior contact with DFCS;
 - g. If the child has been removed parent attorney should inquire as to:
 - i. reasons for removal or intervention;
 - ii. reasonable efforts provided prior to removal or intervention;
 - iii. services the client feels would have avoided the need for removal;
 - iv. alternatives to removal, including relative placements, in-home services or removal of the alleged perpetrator;
 - v. current efforts to reunify the family;
 - vi. family history, including identity of prior caretakers of the child;
 - vii. services needed by the child, parent(s) or guardian;
 - viii. the client's concerns about placement;
 - ix. the client's long and short term goals;
 - x. current visitation and the client's desires concerning visitation.¹⁴

**Performance Standard 16:
Conflicts of Interest**

16.1 Parent attorney should be alert to and avoid potential conflicts of interest that would interfere with the competent representation of the client.

16.2 Parent attorney should generally avoid representing both parents when

there is even a potential for conflicts of interests, and should never represent both parents in cases that involve allegations of sexual, physical, or emotional abuse, or when the interests of the parents differ.

- 16.3** If a conflict develops during the course of representation, parent attorney has a duty to notify the client and the court in accordance with the Uniform Rules of Court and in accordance with the Disciplinary Rules of the State Bar of Georgia.

Probable Cause / Detention / 72 Hour Hearing

Authority	15-11-49 & 49.1, URJC 8 Should be held within 72 hours of removal authorization (safekeeping) 15-11-49(c) remedy for violation- start over with new safekeeping – IV-E eligibility issue
Purpose	<ul style="list-style-type: none">• Should a petition issue?• Do reasonable grounds exist to believe allegations in complaint are true.• Should child be removed (detained) pending ADJ? Should removal should be based on explicit findings of fact the child would be at risk of further harm if returned to the parents
Pleading	Complaint, police report may be attached
Parties	DFACS, mother, father (legal or putative), SAAG, CA, legal guardian, police, attorney for parent, other relatives
Notice	“reasonable notice” to parent or guardian of time & place of hearing, reason for removal; may be by phone, note on door, oral
Rt to Atty	<ul style="list-style-type: none">• parents/legal guardian should be advised of right to counsel• if indigent then right to appointed counsel or “undue hardship” in obtaining representation• are there parents incarcerated???• putative father, right to counsel?
Std of Proof	reasonable grounds exist to believe that the allegations in the complaint are true – Juvenile Court Rules # 8 Hearsay evidence allowed
Reasonable Efforts	<ul style="list-style-type: none">• to prevent removal,• preserve family• continuation in the home would be contrary to the welfare of the child
Waiver	parents / legal guardian may waive PCH & stipulate to RE / contrary to the welfare
Jurisdiction	child under 18 years alleged to be deprived in state
Venue	child present in the county when action commenced found in the county

Decision Points

placement of child pending cont. or ADJ
Petition Issue?

- Custody? Pending next hearing
- Reasons for removal – identify specific issues (drugs, mental health, neglect, physical abuse, sexual abuse, abandonment) – specific findings
- Contrary to the welfare – specific findings
- visitation b/n child & parent, child & other family (sibling)
- relatives resources to be explored,
- home evaluations
- immediate service needs of child or family, (medical/educational) would DFACS services expedite return?
- forensic evaluation / psych evaluation / medical exam
- absent parents, name & whereabouts, legal status
- CASA should they be appointed
- Is father putative or legal? – is **Legitimation** needed?
- DNA Testing??
- Poverty / Homelessness
- Could child be returned to parents with DFACS services?
- If services to be provided by whom & for how long?
- Is further in court review needed to confirm services?
- Are the reasons for removal the same as barriers to reunification?

Documents/ Information Needed

- police reports / bond conditions for parent or perpetrator
- what witnesses need to subpoenaed
- prior history w/ DFACS or Court
- photos, medical reports, school records
- parents make statements / to whom
- who is perpetrator – further access to child
- psych evaluations / records
- if forensic interview has been done need report & copy of video
- When is the Family Team meeting
- Who is the CCFA provider
- Who is placement worker
- When is visitation scheduled

- Have parents made any statements & to whom
- Is there police action
- Have parents taken any drug screen
- Have parents signed anything

Continuance

why: further investigation, necessary witness, begin services to allow child to return home, home evaluation of relative no more than 72 hour increments unless parties waive on record

**Order
Next Court Date & / or
Family Conference**

Sample in Forms section
Before adjourning PCH, all parties should have notice of the next court date & Date of Family Team Meeting
Is mediation available?

Practice Points

- *identify what actions should be taken by each party pending ADJ*
- *will child be present at next hearing?*
- **Court of Inquiry?**
- *drug screen for parents?*
- *Parents may waive PCH in an effort to work w/ DFACS & Court to obtain services or correct problem in anticipation case may move more quickly toward reunification, to avoid **Court of Inquiry** issue, to avoid parent being called for purposes of cross examination & making incriminating statements*
- *Will parents submit to drug / psych / parenting assessments?*
- *Hearsay allowed but not double hearsay*
- *DFACS must make a showing that returning the child to the home would be contrary to the child's welfare and the Court must state these reasons on the record. These findings should be made at each hearing*
- *DFACS must establish ongoing, present RISK of harm to the child in order to keep a child away from the parents. The parental actions or inactions must place the child at RISK for harm.*
- *Parent Attorneys may suggest continuing the PCH if the parents can quickly remedy the depriving situation. Examples are removals for dirty house, no utilities, a relative may become available, temporary incarceration, temporary medical or mental health needs of the parent.*
- *Some of the parent issues might be able to be*

*quickly resolved with the other longer term issues
being addressed through a continuum of services.*

Georgia Standards for the Parent Attorney at the Probable Cause Hearing

Performance Standard 7: Parent Attorney's Duty at the 72 Hour Hearing¹⁵

- 7.1** In preparation for the 72 hour hearing parent attorney should:
- a. Immediately determine both the agency's and the client's version of the reasons for the child's removal;
 - b. Determine the client's wishes regarding the child's placement, frequency of visits, and communication with the child;
 - c. Inform the client of the nature of the proceedings as well as his or her Fifth Amendment rights;
 - d. Be familiar with placement options and available community services.
- 7.2** During the 72 Hour Hearing parent attorney should:
- a. Make sure incarcerated parents are present;
 - b. Obtain copies of all relevant documents including copies of all previous orders;
 - c. Take time to talk to the client, and ask for a recess or continuance if necessary;
 - d. Assist the client in exercising the right to an evidentiary hearing to demonstrate to the court that the child can be returned home without further danger;
 - e. Where appropriate, present facts and arguments regarding:
 - i. jurisdictional sufficiency;
 - ii. adequacy of notice provided to parties;
 - iii. necessity of shelter care;
 - iv. alternatives to shelter care to be explored such as relative placement, intensive in-home services and mediation;
 - v. why it is in the best interests of the child to remain home;
 - vi. whether reasonable efforts were made to prevent removal;
 - vii. whether reasonable and available services can prevent or eliminate the need to separate the family;
 - viii. whether the placement proposed is the least disruptive and most family-like setting that meets the needs of the child;
 - ix. the possibility of placement with appropriate non-custodial parents and relatives;
 - x. arrangements for visits if the child is to remain out of the home;
 - f. Ensure that any services or needs of the family are met by the responsible agencies if the child is returned to the parents;
 - g. Request scheduling and notice of case plan meeting;
 - h. Request the date and time for the adjudicatory hearing.¹⁶

15-11-49. Release of child where detention not warranted; informal detention hearing; notice; guardian ad litem; rehearing; presentation of petition.

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

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

(c) (1) If a child alleged to be delinquent is not so released, an informal detention hearing shall be held promptly and not later than 72 hours after the child is placed in detention or shelter care to determine whether detention or shelter care of the child is required under Code Section 15-11-46, provided that, if the 72 hour time period expires on a Saturday, Sunday, or legal holiday, the hearing shall be held on the next day which is not a Saturday, Sunday, or legal holiday.

(2) If a child alleged to be unruly is not so released, the informal detention hearing shall be held promptly and not later

15-11-49.1. When order for immediate custody authorized.

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

RULES OF JUVENILE COURTS
8. DETENTION HEARING

8.1 Purpose.

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

8.2 Notice.

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

8.3 Commencement of Hearing.

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

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

8.5 Violation of Conditions.

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

8.6 Continuance.

On the motion of the court or that of a party, the court may continue a detention hearing for a reasonable period to receive reports and other evidence bearing on the need to detain the child. In this event, the court shall make an appropriate order for detention of the child or release of the child from detention subject to supervision of the court during the period of continuance.

In scheduling investigations and hearings, the court shall give priority to proceedings in which a child is in detention or has otherwise been removed from home before an order of disposition has been made. A request for continuation by a party or a party's counsel beyond these limits shall be considered as a waiver of the right to a hearing within the appropriate time limits.

Adjudication – Formal Hearing – 10 day hearing – ADJ.

Authority	15-11-39, 15-11-39.1, 15-11-39.2 & 15-11-54, URJC 6 & 11
Purpose	To determine whether there is clear and convincing evidence the child is presently deprived <ul style="list-style-type: none">• Petition, verified by petitioner
Pleading	<ul style="list-style-type: none">• Filed within 5 days of PCH (not waivable)• Late filing - cure start over w/ new safekeeping• Contains specific statement of factual allegations
Jurisdiction	child under 18 years alleged to be deprived in state
Venue	<ul style="list-style-type: none">• Child present in the county when action commenced• Found in the county• Custodial parents residence• set & heard within ten days of Petition filing• May be waived to be set at same time as disposition hearing, if waiver on record & good cause shown• If ADJ continued, & child removed – Adj should be heard within 30 days of removal but may be waived• If ADJ continued, & child with parent – should be heard with 60 days of petition filing but may be waived
Timing	Provisional Hearing, 15-11-39.2 , may be held where: <ul style="list-style-type: none">• one of the parties is present before the Court at the Provisional Hearing and the other is being served by publication,• child is personally before the Court at the Provisional hearing, and• Final hearing is noticed and held following completion of publication
Parties	DFACS, mother, father (legal or putative), SAAG, CA, legal guardian, Attorney for parent, CASA, age appropriate children may be excluded 15-11-78 (a) Other helpful persons - relatives, potential placements, service providers, witnesses of deprivation, persons of significance to the child
Service	Formal service required – summons & copy of petition May be waived if on record by appearance at the adjudication hearing Personal service to parent / legal custodian - whereabouts known within state, then at least 24 hours before hearing Certified/registered mail, overnight delivery to parent / legal guardian – if within the State but cannot be found but address is known or can with diligence be ascertained,

serve 5 days prior to hearing

Personal, certified/registered mail, overnight delivery to parent / legal guardian – if outside the State where address is known or can with diligence be ascertained, serve 5 days prior to hearing

Publication: if after reasonable efforts whereabouts are unknown, Hearing may be held 5 days after last publication
Clear & Convincing evidence

Standard of Proof

Rules of evidence apply

Right to Attorney

Parents/legal guardian should be advised of right to counsel & if indigent, right to appointed counsel

incarcerated parents transported for hearing????

Reasonable Efforts

- To prevent removal, preserve family
- To reunify family where removal was necessary
UNLESS case qualifies as **NONREUNIFICATION**
- **15-11-58(a)(4) & (5)** – more below

Stipulation

parents / legal custodian may negotiate stipulation to certain facts in petition which would result in a finding of deprivation

- 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
- Stipulated facts **MUST** address all risk 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's findings of facts control the **Case plan** & when and how the child is reunified

Could child be returned to the parents with DFACS services possibly under a **Protective Order** (Court supervision of parental/custodian compliance with safety plan or case plan.)

Petition sustained or stipulated or dismissed

Decision Points

- 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? – **Protective Order 15-11-11**, & is the Court going to review compliance with the Protective Order?
- If Petition sustained, is custody going to someone other than DFACS? **Custody to Third Party 15-11-55 (a)(2)(A)**
- Specific finding of facts supporting finding of deprivation must be made by the Court &

included in the Court Order

- Specific conclusions of law must be made by the Court & included in the Court Order
- What specific actions must parent take to have child returned
- Reasons for removal – identify issues (drugs, mental health, neglect, physical abuse, sexual abuse, abandonment) – specific findings
- Contrary to the welfare – specific findings
- Visitation b/n child & parent, child & other family (sibling)
- Relative resources to be explored, home evals
- Immediate service needs of child or family (medical / educational)
- Would DFACS services expedite return? If so, which services are needed & for how long?
- Absent parents, name & whereabouts, legal status
- Does Father need to **Legitimate? DNA Testing**
- Should a CASA be appointed?
- Is Poverty / Homelessness an issue?
- If perpetrator is unknown, identity of perpetrator may be condition precedent to return of child to home
- If deprivation result of parental drug / alcohol abuse, 6 consecutive months of random clean screens may be condition precedent to return of child to home **15-11-55(e)**
- Are the reasons for Removal the same as the barriers to reunification: if different order needs to address
- Set **Disposition** hearing date
- Reports from: forensic eval / psych eval / medical & dental screen or exam
- Progress of **CCFA** – due 30 days after removal?
- Home evaluations of relative placement options
- **Case plan** due 30 days after removal
- Photos / police reports / criminal records
- MDT – Multidisciplinary Team Meeting scheduled???
- Why: further investigation, necessary witness, service on parties begin services to allow child to return home,
- home evaluation of relative

Documents / Information Needed

Continuance

Practice Points

- *How does parental behavior impact welfare of child?*
- *There MUST be direct correlation between the parental behavior which causes the child to be deprived and*
- *Get copy of any document or exhibit submitted into evidence*
- *Parents & their attorneys should remember deprivation is a CIVIL case NOT a criminal case and while admissions & stipulations should be well reasoned, focus on the safety of the child and how to rehabilitate the family through appropriate services most frequently get the child home faster*

Georgia Standards for the Parent Attorney at the Adjudication Hearing

Performance Standard 8:

Parent Attorney's Duty to Investigate

Parent attorney should conduct a thorough and independent investigation at every stage of the proceeding. Parent attorney should not rely solely on the report of the case manager.¹⁷

- 8.1 Parent attorney should conduct an in-depth interview with the client covering:
 - a. The events giving rise to the allegations in the petition;
 - b. The existence of witnesses or other potential sources of information;
 - c. information about the child's current placement, condition and needs.
- 8.2 Parent attorney should ask for and review the agency's case file as early during the course of representation as possible and should periodically check for additions to the file by the agency.
- 8.3 Parent Attorney should be knowledgeable as to what documents and information the agency is mandated to provide pursuant to statutory and case law.
- 8.4 Parent attorney should be familiar with and, where appropriate, obtain the assistance of local juvenile and mental health experts who can provide attorneys with consultation, evaluation of the client or other parties, parent-child interaction assessments, and testimony on issues in the case.
- 8.5 Parent attorney should interview all potential witnesses including adverse witnesses.
- 8.6 Parent attorney should obtain information and records from representatives of other agencies with which the family has been involved.

**Performance Standard 9:
Discovery**

Formal discovery in Deprivation and TPR cases is governed by Georgia Uniform Juvenile Court Rules Section 7. Parent attorney should know what information is needed to prepare for the case and understand the best methods of obtaining that information in the jurisdiction, through either informal or formal discovery.

**Performance Standard 10:
Parent Attorney's Duty at Adjudicatory Hearing**

- 10.1** In preparation for the adjudicatory hearing parent attorney should:
- a. Develop a theory of the case;
 - b. Confirm legally sufficient service to the client, and adherence to legally mandated timelines;
 - c. Thoroughly prepare the client for the hearing;
 - d. Request pre-trial conferences, when necessary;
 - e. File any appropriate pre-trial motions;
 - f. Review the DFCS file;
 - g. Identify and interview all appropriate parties;
 - h. Explore alternative placement options;
 - i. Develop recommendations for progress of, or resolution to the case;
 - j. Talk with the Guardian ad Litem and/or CASA;
 - k. Issue subpoenas for witnesses, as needed, for trial;
 - l. Identify need for experts and seek necessary funding;
 - m. Where a child is a witness, meet with the GAL to minimize stress on the child and parent;
 - n. Request other process diversions, when appropriate, such as mediation;
 - o. Discuss the court process with the parent;
 - p. Review applicable law, including the rules of evidence, supporting case law and the statutory burden of proof;
 - q. Coordinate with attorney handling a corresponding criminal case, if any, and be mindful of the consequences with regard to any prosecution of the client;
 - r. Prepare proposed findings of fact, conclusions of law and orders when they will be used in the court's decision or may otherwise benefit the client.
- 10.2** At the adjudicatory hearing parent attorney should:
- a. Have all relevant materials available, including all pleadings, discovery, investigative reports and relevant statutes;
 - b. Advance the theory of the case through opening statement, direct and cross examination of witnesses, introduction of relevant evidence and closing argument;
 - c. Make all appropriate motions and evidentiary objections;
 - d. Preserve legal issues for appeal as appropriate;

- e. Take all necessary steps to ensure full official recordation of all aspects of the court proceeding;
- f. Request that the court state its expectations of all parties;
- g. Request that the court articulate for the record the findings of fact which support the court's ruling;
- h. If the child is removed from the home, request that the court articulate for the record the barriers to reunification.

**Performance Standard 15:
Appeals**

- 15.1** Parent attorney should review the court order to ensure accuracy and clarity.
- 15.2** Parent attorney should provide the client with a copy of the order and review the order with the client to ensure the client understands it.
- 15.3** Parent attorney should ascertain whether the client wishes to appeal and discuss the likelihood of success on appeal and potential consequences of an appeal.
- 15.4** Parent attorney should advise the client on potential consequences of failing to comply with the order, take reasonable steps to ensure the client complies with the order and determine whether the case needs to be brought back to court.
- 15.5** Parent attorney should know the rules of both the Supreme Court and the Court of Appeals concerning the filing of appeals.
- 15.6** Parent attorney should communicate the results of the appeal and its implication to the client.

15-11-39. Time for hearing; summons; waiver of service of summons; judicial order to child's parents, guardian, or custodian.

- (a) After the petition has been filed the court shall set a hearing thereon, which, if the child is in detention, shall not be later than ten days after the filing of the petition. In the event the child is not in detention, the court shall set a hearing thereon which shall be not later than 60 days from the date of the filing of the petition.
- (b) The court shall direct the issuance of a summons to the parents, guardian, or other custodian, a guardian ad litem, and any other persons who appear to the court to be proper or necessary parties to the proceeding, requiring them to appear before the court at the time fixed to answer the allegations of the petition. The summons shall also be directed to the child if he or she is 14 or more years of age or is alleged to be a delinquent or unruly child. A copy of the petition shall accompany the summons unless the summons is served by publication, in which case the published summons shall indicate the general nature of the allegations and where a copy of the petition can be obtained.
- (c) The court may endorse upon the summons an order directing the parents, guardian, or other custodian of the child to appear personally at the hearing and directing the person having the physical custody or control of the child to bring the child to the hearing. In the event a parent, guardian, or other custodian of the child willfully fails to appear personally at the

hearing after being ordered to so appear, or the parent, guardian, or other custodian of the child willfully fails to bring the child to the hearing after being so directed, the court may enter any order authorized by and in accordance with the provisions of Code Section 15-11-5.

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

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

15-11-39.1. Service of summons; costs of service and travel expenses.

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

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

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

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

15-11-39.2. Provisional hearing where summons served by publication; interlocutory effect of findings and order; final hearing.

(a) If service of summons upon a party is made by publication, the court may conduct a provisional hearing upon the allegations of the petition and enter an interlocutory order of disposition if:

(1) The petition alleges delinquency, unruly conduct, or deprivation of the child;

(2) The summons served upon any party:

(A) States that prior to the final hearing on the petition designated in the summons a provisional hearing thereon will be held at a specified time and place;

(B) Requires the party who is served other than by publication to appear and answer the allegations of the petition at the provisional hearing;

(C) States further that findings of fact and orders of disposition made pursuant to the provisional hearing will become final at the final hearing unless the party served by publication appears at the final hearing; and

- (D) Otherwise conforms to Code Section 15-11-39; and
- (3) The child is personally before the court at the provisional hearing.
- (b) All provisions of this article applicable to a hearing on a petition, to orders of disposition, and to other proceedings dependent thereon shall apply under this Code section, but findings of fact and orders of disposition shall have only interlocutory effect pending final hearing on the petition. The rights and duties of the party served by publication are not affected except as provided in subsection (c) of this Code section.
- (c) If the party served by publication fails to appear at the final hearing on the petition, the findings of fact and interlocutory orders made shall become final without further evidence and shall be governed by this article as if made at the final hearing. If the party appears at the final hearing, the findings and orders shall be vacated and disregarded and the hearing shall proceed upon the allegations of the petition without regard to this Code section.

15-11-54. Findings in deprivation proceedings.

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

15-11-78. Exclusion of public from hearing; exceptions.

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

RULES OF JUVENILE COURTS
6. FILING OF PETITION

6.1 When May a Petition Be Filed.

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

6.2 Definition of Filing.

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

6.3 Preliminary Determination.

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

6.4 Style of the Petition.

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

6.5 Content of Petition.

See O.C.G.A. § 15-11-38.1.

6.6 Amendment to Petition.

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

6.7 Withdrawal of Petition.

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

6.8 Time Limitations.

If a child who is alleged to be delinquent or deprived is detained or placed in shelter care, a detention hearing shall be held within 72 hours from the moment the child is placed in detention or shelter care to determine whether detention or shelter care is required, provided that if the 72 hour time period expires on a Saturday, Sunday or legal holiday, the hearing shall be held on the next day which is not a Saturday, Sunday, or legal holiday. With respect to any

child alleged to be unruly, the informal detention hearing shall be held promptly and not later than 72 hours. If a child is not detained and the case is to be further prosecuted other than by informal adjustment, a petition must be made and filed with the court within 30 days from the date of the child's release. If a child who is alleged to be delinquent or unruly is not released from detention, a petition must be made and filed within 72 hours of the detention hearing. If a child who is alleged to be deprived is not released from detention, a petition must be made and filed within five [5] days of the detention hearing. After the petition has been filed, the court shall fix a time for a hearing thereon, which, if the child is in detention, shall not be later than ten (10) days after the filing of the petition. In the event the child is not in detention, the court shall fix a time for a hearing thereon which shall be not later than sixty (60) days from the date of the filing of the petition.

Any child who is the subject of a delinquency or unruly proceeding or any party in a deprivation or termination of parental rights proceeding may request a rehearing of an associate judge's findings and recommendations in said proceeding. A written request for a rehearing before the judge on an associate judge's findings and recommendations shall be made within five (5) days of the date of receiving notice of the findings and recommendations, unless the fifth day falls on a weekend or legal holiday, in which event the time shall be extended to the next working day.

6.9 Responsive Pleadings and Motions.

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

RULES OF JUVENILE COURTS **11. ADJUDICATORY HEARING**

11.1 Nature and Purpose.

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

11.2 Dismissal.

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

11.3 Continuance.

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

11.4 Social History.

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

Disposition

Authority	15-11-55, 56, 57, 58 URJC 15
Purpose	Decide where child will be placed, What services the family & child need, Best long term plan for child Receive case plan (must be in writing & filed w/ court) Receive Diligent Search for Relative or other persons who have demonstrated an ongoing commitment to the child (must be in writing & filed w/ court) Deprivation Petition
Pleading	Caseplan – did parent participate in development of caseplan in a meaningful way???? Did parents sign caseplan????
Jurisdiction	same as ADJ
Venue	same as ADJ
Timing	Except if Intra State Transfer requested for purposes of Reunification – Coordination with receiving County needed Immediately following adjudication if requirements of 15-11-55 satisfied and case plan prepared May be postponed to comply with requirements of 15-11-55 and preparation of case plan No more than 90 days from removal
Diligent Search	Caveat: Case plan filed with court 30 days after removal 15-11-55 requirement Prior to a final disposition Order, due in writing to Court within 90 days of removal
Parties	DFACS, parents, parents' attorney, CA attorney, DJJ if applicable
Notice	Reasonable
Standard of Proof	Hearsay accepted, relaxed rules of evidence; "all information helpful in determining the questions presented" 15-11-56(a)
Case plan Options	<ul style="list-style-type: none">• Reunification or concurrent or• Non Reunification (NR) then Non Reunification Hearing required within 30 days• Another Planned Permanent Living Arrangement• DFACS (duration: 12 months from removal)
Custody Options	<ul style="list-style-type: none">• Return to parents with OR without conditions or limitations & supervision as directed by the Court• Return to parents upon the occurrence of specified circumstances with OR without conditions or limitations & supervision as directed by the Court• Any individual, who after study is found to be qualified to receive & care for child Court should receive written home evaluation or assessment before placement.• If relative Order is a two-year custody order (except when there is a Non Reunification already granted),

then custody to relative may be until child turns 18 years old

- A private agency or organization authorized by law to receive child
- A public agency or organization authorized by law to receive child
- Individual out of state – should be **ICPC** compliant / home assessment
- If an out of state placement is being considered, request an In Court Review **PRIOR** to the child's removal out of state to address any visitation / care issues & for the Court to receive a copy of ICPC Home evaluation

Caveat Court cannot split legal and physical custody between DFACS & other unrelated party;

- **exception commitment to DJJ & DFACS:** both agencies are mandated to work together pursuant to a Cooperative agreement signed by both agencies; whenever joint custody with DJJ then a consolidated caseplan should be presented & DJJ representative should be present at dispositional hearing to produce coordinated plan of care Same as ADJ

To achieve goals of the case plan

Right to Attorney Reasonable Efforts

Decision Points

- Who gets custody?
- Accept or reject case plan?
- Are goals support by the findings of fact?
- Accept or reject long term case plan goal (reunify or not)?
- Reasonable efforts to implement case plan?
- Does **non reunification hearing** need to be scheduled?
- Order counseling for child & parent designed to deter future conditions of deprivation **15-11-57**
- If deprivation is a result of alcohol / drug abuse, court may require offending parent to have 6 months of random clean screens prior to placing the child back in the home
- Visitation between child & parent / sibling contact

Order

Court issues order addressing custody, permanency / case plan goal, acceptance of Diligent Search, approving case plan, and any special considerations with visitation, court ordered counseling, child support?????

Practice Points

- *Case plan is the roadmap for the future of the case, who & what needs to be done, in addition the time frame to complete goals*
- *If case plan is **Non Reunification**, then a separate hearing **MUST** be held within 30 days*
- *If custody to other than the parent, the parents rights*

are only temporarily suspended, until expiration of order or further action by Court

Georgia Standards for the Parent Attorney at the Disposition Hearing

Performance Standard 11: Parent Attorney's Duty at Disposition

Commentary:

The active participation of parent attorney at disposition is essential. In many cases, parent attorney's most valuable service to clients will be rendered at this stage of the proceeding. An important part of representation in a deprivation case is planning for disposition.

- 11.1** In preparation for the disposition hearing parent attorney should:
- a. Obtain the case plan and ensure that the goals for reunification are consistent with the reasons for removal;
 - b. Review the placement recommendations and identify alternative placements, if necessary;
 - c. Ensure that the case plan clearly states the service obligations of DFCS to address the reasons for removal;
 - d. Ensure that the case plan sets forth objective criteria for the child's return;
 - e. Ensure that the case plan clearly states the requirements of the parents to address the reasons for removal;
 - f. Ensure that the case plan includes timeframes for both DFCS and the parent to complete the case plan requirements;
 - g. Obtain recommendations of professionals, including medical and psychiatric care providers and teachers, if necessary;
 - h. Prepare proposed findings of fact, conclusions of law and orders;
 - i. Review any proposed orders submitted by other parties.
- 11.2** During the dispositional hearing parent attorney should:
- a. Review the case plan on the record;
 - b. Ensure that the case plan is still appropriate and consistent with the reasons for removal and that both DFCS and the client's obligations are set out in the case plan;
 - c. Ensure early and adequate provision of services;
 - d. Ensure that the orders are clear and specific, using language that the parent understands;
 - e. Advocate for a meaningful visitation plan that best fits the needs of the individual family;
 - f. Address issues relating to placement, services, transportation, housing, time frames, medical needs, educational needs and counseling;
 - h. Request appropriate services from DFCS to address the causes of removal;
 - i. Appropriately object to provisions of the case plan that the client objects to or cannot comply with;
 - j. Ensure that the client understands the case plan, the client's responsibilities and the potential consequences of failing to comply with the case plan or the timelines.

15-11-55. Disposition of deprived child.

(a) If the child is found to be a deprived child, the court may make any of the following orders of disposition best suited to the protection and physical, mental, and moral welfare of the child:

(1) Permit the child to remain with his or her parents, guardian, or other custodian, including a putative father, subject to conditions and limitations as the court prescribes, including supervision as directed by the court for the protection of the child;

(2) Subject to conditions and limitations as the court prescribes, transfer temporary legal custody to any of the persons or entities described in this paragraph. Without limiting the generality of the foregoing, such conditions and limitations shall include a provision that the court shall approve or direct the retransfer of the physical custody of the child back to the parents, guardian, or other custodian either upon the occurrence of specified circumstances or in the discretion of the court. Any such retransfer of physical custody may be made subject to such further conditions and limitations as the court prescribes, including supervision for the protection of the child. The persons or entities to whom or which temporary legal custody may be transferred shall include the following:

(A) Any individual including a putative father who, after study by the probation officer or other person or agency designated by the court, is found by the court to be qualified to receive and care for the child;

(B) An agency or other private organization licensed or otherwise authorized by law to receive and provide care for the child;

(C) Any public agency authorized by law to receive and provide care for the child; or

(D) An individual in another state with or without supervision by an appropriate officer under Code Section 15-11-89.

Except for dispositions pursuant to paragraph (1) of subsection (a) of Code Section 15-11-66 and Code Section 15-11-67, before transferring temporary legal custody in an order of disposition under this paragraph a reasonably diligent search for a parent or relative of the child or other persons who have demonstrated an ongoing commitment to the child shall be conducted by the court and the Department of Human Resources. Such search shall be completed within 90 days from the date on which the child was removed from the home, the results of such search documented in writing and filed with the court at the time of the first review. During such 90 day period, the child may be placed in the temporary legal custody of the Department of Human Resources or any other appropriate entity or person; or

(3) Without making any of the orders specified in paragraphs (1) and (2) of this subsection, transfer custody of the child to the court of another state exercising jurisdiction over children if authorized by and in accordance with Code Section 15-11-87 if the child is or is about to become a resident of that state.

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

(c) Notwithstanding any other provision of law, the court after transferring temporary legal custody of a child to the Division of Family and Children Services within the Department of Human Resources may at any time conduct sua sponte a judicial review of the current placement plan being provided to said child. After its review the court may

order the division to comply with the current placement plan, order the division to devise a new placement plan within available division resources, or make any other order relative to placement or custody outside the Department of Human Resources as the court finds to be in the best interest of the child. Placement or a change of custody by the court outside the Department of Human Resources shall relieve the department of further responsibility for the child so placed.

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

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

15-11-56. Evidence in proceedings; continuances; scheduling.

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

(b) Continuances; scheduling. On its own motion or that of a party, the court may continue the hearings under subsection

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

15-11-57. Counseling or counsel and advice for children and their parents or guardians.

When any child is before a juvenile court and such child is found by the court to be a deprived child, the court shall be authorized, in addition to any other disposition authorized by this article, to order such child and such child's parents or guardian to participate in counseling or in counsel and advice as determined by the court. Such counseling and counsel and advice may be provided by the court, court personnel, probation officers, professional counselors or social workers, psychologists, physicians, qualified volunteers, or appropriate public, private, or volunteer agencies as directed by

the court and shall be designed to assist in deterring future conditions of deprivation, or other conduct or conditions which would be harmful to the child or society.

15-11-58. Reasonable efforts regarding reunification of family; reports and plans; custody orders when reunification found not to be in child's best interest; duration of orders; review of determinations; hearings; supplemental orders.

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

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

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

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

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

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

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

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

(B) The parent has:

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

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

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

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

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

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

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

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

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

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

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

(c) If the report contains a plan for reunification services, such plan if adopted by the court shall be in effect until modification by the court. The plan shall address each reason requiring removal and shall contain at least the following:

(1) The purpose for which the child was placed in foster care, including a statement of the reasons why the child cannot be adequately protected at home and the harm which may occur if the child remains in the home and shall also include a description of the services offered and the services provided to prevent removal of the child from the home;

(2) A discussion of how the plan is designed to achieve a placement in a safe setting that is the least restrictive, most family-like, and most appropriate setting available and in close proximity to the home of the parents, consistent with the best interests and special needs of the child;

(3) A clear description of the specific actions to be taken by the parents and the specific services to be provided by the Division of Family and Children Services of the Department of Human Resources or other appropriate agencies in order to bring about the identified changes that must be made in order for the child to be safely returned home; provided, however, that all services and actions required of the parents which are not directly related to the circumstances necessitating separation cannot be made conditions of the return of the child without further court review;

(4) Specific time frames in which the goals of the plan are to be accomplished to fulfill the purpose of the reunification plan;

(5) The person within the Division of Family and Children Services of the Department of Human Resources or other agency who is directly responsible for ensuring that the plan is implemented; and

(6) Consideration of the advisability of a reasonable visitation schedule which allows the parents to maintain meaningful contact with their children through personal visits, telephone calls, and letters.

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

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

(f) When a recommendation is made that reunification services are not appropriate and should not be allowed, the report shall address each reason requiring removal and shall contain at least the following:

(1) The purpose for which the child was placed in foster care, including a statement of the reasons why the child cannot be adequately and safely protected at home and the harm which may occur if the child remains in the home and a description of the services offered and the services provided to prevent removal of the child from the home; and

(2) A clear statement describing all of the reasons supporting a finding that reasonable efforts to reunify a child with the child's family will be detrimental to the child, and that reunification services therefore need not be provided, including specific findings as to whether any of the grounds for terminating parental rights exist, as set forth in subsection (b) of Code Section 15-11-94 or paragraph (4) of subsection (a) of this Code section.

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

(h) When reviewing the determination by the Division of Family and Children Services of the Department of Human Resources that a reunification plan is not appropriate, the court shall determine by clear and convincing evidence whether reasonable efforts to reunify a child with his or her family will be detrimental to the child and that reunification services, therefore, should not be provided or should be terminated. There shall be a presumption that reunification services should not be provided if the court finds by clear and convincing evidence that:

- (1) The parent has unjustifiably failed to comply with a previously ordered plan designed to reunite the family;
 - (2) A child has been removed from the home on at least two previous occasions and reunification services were made available on those occasions;
 - (3) Any of the grounds for terminating parental rights exist, as set forth in subsection (b) of Code Section 15-11-94; or
 - (4) Any of the circumstances set out in paragraph (4) of subsection (a) of this Code section exist, making it unnecessary to provide reasonable efforts to reunify.
 - (i)(1) If the court has entered an order finding that reasonable efforts to reunify a child with his or her family would be detrimental to the child in accordance with subsection (h) of this Code section and if the court finds that referral for termination of parental rights and adoption is not in the best interest of the child, the court may, upon proper petition, enter a custody order which shall remain in effect until the child's eighteenth birthday:
 - (A) Placing the child in the custody of a relative of the child if such a person is willing and, after study by the probation officer or other person or agency designated by the court, is found by the court to be qualified to receive and care for the child;
 - (B) Placing the child in the custody of any non-relative individual who, after study by the probation officer or other person or agency designated by the court, is found by the court to be qualified to receive and care for the child;
 - (C) Placing the child in the custody of a suitable individual custodian in another state pursuant to the provisions of Code Section 15-11-89; or
 - (D) In the case where the court has found a compelling reason that a placement pursuant to subparagraph (A), (B), or (C) of this paragraph is not in the child's best interest, placing the child in the custody of an agency or organization licensed or otherwise authorized by law to receive and provide care for the child which is operated in a manner that provides such care, guidance, and control as would be provided in a family home as defined in the court's order.

Such order may be modified following a petition for modification by a party or upon motion of the court pursuant to Code Section 15-11-40.
- (2) A probation officer, judicial citizen review panel established by the court, or other person or agency designated by the court shall, after study or review, submit a report to the court addressing whether the custodian to whom custody of a child has been given pursuant to this Code section continues to be qualified to receive and care for the child within:
 - (A) Thirty-six months of an order placing a child in the custody of a relative pursuant to subparagraph (A) of paragraph (1) of this subsection and every 36 months thereafter; or
 - (B) Twelve months of an order placing a child in the custody of a non-relative, an out-of-state custodian, or an agency or organization licensed or otherwise authorized by law to receive and provide care for the child pursuant to subparagraph (B), (C), or (D) of paragraph (1) of this subsection and every 12 months thereafter.
- (3) Whenever a child is placed in the custody of an agency or organization licensed or otherwise authorized by law to receive and provide care for the child pursuant to subparagraph (D) of paragraph (1) of this subsection, such agency or organization shall be charged with the responsibility of notifying the court within ten days in the event its license is placed on probation, suspended, revoked, or surrendered and, in such event, the court shall conduct a judicial review within ten days of such notification to determine whether another placement should be made for the child.
- (j) At the hearing required by subsection (e) of this Code section, the court shall hold a permanency hearing in accordance with subsection (o) of this Code section and shall

consider and incorporate a permanency plan for the child in its order which shall comply with subsection (o) of this Code section.

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

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

- (1) That the child return to the home of his or her parents, legal guardian, or custodian with or without court imposed conditions;
- (2) That the child continue in the current custodial placement and that the current placement is appropriate for the child's needs; or
- (3) That the child continue in the current custodial placement but that the current placement plan is no longer appropriate for the child's needs and direct the department to devise another plan within available resources. The new plan must be submitted within ten days for court approval. Copies of any court approved revised plan shall be furnished to all parties. The Division of Family and Children Services of the Department of Human Resources shall provide the custodian of the child, the foster parents of the child, and any pre-adoptive parents or relatives providing care for the child with a copy of those portions of the court approved revised plan that involve the permanency goal and the services to be provided to the child.

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

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

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

- (1) A hearing is held upon motion of the Division of Family and Children Services of the Department of Human Resources prior to the expiration of the order;
- (2) Reasonable notice of the factual basis of the motion and of the hearing and opportunity to be heard are given to the parties affected; and

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

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

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

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

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

court finds essential in the proposed permanency plan. In the event a hearing before the court is requested on the report transmitted by the judicial citizen review panel, the court shall, after hearing evidence, enter a supplemental order incorporating all the elements required in paragraphs (5) and (6) of this subsection.

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

(4) The parents, the custodian of the child, the foster parents of the child, any pre-adoptive parent or relative providing care for the child, and other parties shall be given written notice of a permanency hearing at least five days in advance and shall be advised that the permanency plan recommended by the Division of Family and Children Services of the Department of Human Resources will be submitted to the court for consideration to become an order of the court. Procedural safeguards shall be applied with respect to parental rights pertaining to the removal of the child from the home of his or her parents, to a change in the child's placement, and to any determination affecting visitation privileges of parents. The provisions of subsection (p) of this Code section concerning notice, opportunity to be heard, authority of the court, and content of the court's order are applicable to proceedings under this paragraph.

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

(6) The court or judicial citizen review panel which conducts the permanency hearing shall determine, as a finding of fact, whether the Division of Family and Children Services of the Department of Human Resources 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. 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. The provisions of subsection (p) of this Code section concerning notice, opportunity to be heard, authority of the court, and content of the court's order are applicable to proceedings under this paragraph.

(7) A supplemental order of the court adopting the permanency plan must be entered within 30 days after the court has determined that reunification efforts will not be made by the Division of Family and Children Services of the Department of Human Resources, if applicable, or within 12 months after the child is considered to have entered foster care, whichever is first, and at least every 12 months thereafter while the

child is in foster care, unless the court finds good cause why such order cannot be entered by that time.

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

RULES OF JUVENILE COURTS

15. LIMITATIONS OF TIME ON ORDERS OF DISPOSITION

15.1 Termination of Parental Rights.

See O.C.G.A. § 15-11-93.

15.2 Other Orders of Disposition.

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

15.3 Termination of Order.

Except as provided in O.C.G.A. § 15-11-70, the court may terminate an order of disposition or extension prior to its expiration, on or without an application of a party, if it appears to the court that the purposes of the order have been accomplished.

Except as otherwise provided by law, when the child reaches 21 years of age, all orders affecting the child then in force terminate and the child is discharged from future obligation or control.

15.4 Early Termination of Probation.

The probation officer, with the approval of the probation supervisor, may submit a request for early termination of probation to the judge asking that a child be released early from probation. The recommendation should include a history of the child's involvement with the court, an account of the child's conduct and progress during probation and the reason for making the request. If the early termination is approved by the judge, the probation officer shall notify the child and his or her parents.

REVIEW HEARING

Authority	15-11-58(k) & (l), 15-11-55(c), URJC 24
Purpose	To check progress on case plan goals, accountability of all parties Parental compliance with caseplan??? To determine if permanent plan for child is still appropriate To determine if goals & services are still appropriate To determine if there a continued need for an out of home placement for the child
Jurisdiction	Same as Adj., attaches to a pending deprivation action
Venue	Same as Adj., attaches to a pending deprivation action
Timing	Anytime at the request of a party or the Court's own Motion In Court Review Hearing may be requested by Citizen Panel Review Deprivation cases MUST be reviewed EVERY SIX months either in Court or by the Citizen Review Panel
Pleading	May be scheduled as part of a Court Order Separate Motion for Court Review, stating the issues to be reviewed or the relief sought
Parties	Same parties as the Adj., & foster parents Personal service to the parent / legal guardian
Notice	written notice to foster parents
Std Proof	Clear & convincing proof
Reasonable Efforts	Is DFACS using reasonable efforts within the resources available to implement the case plan goals
Right to Attorney	Yes
Decision Point	<ul style="list-style-type: none">• 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?• Are the specific services made available appropriate?• Changes made by parents• Likelihood of success by parents? -- what is timeframe for success?• Receive reports by service providers• Summary of visitation & effect on child• Are the child's needs being adequately met?• Receive reports from GAL or CASA• Does child need to remain in out of home placement? Court may "sua sponte" at any review hearing modify custody back to the parents & relieve DFACS of custody (15-11-55(c)) What goals have the parent completed????

Order

- recite the reasons why child is still in need of continued placement
- why case plan is appropriate and what if any changes need to be made to the case plan by the Court's Order
- Report on reasonable efforts by DFACS
- make any other orders necessary to resolve deprivation issue for family & child
- may schedule next hearing

Practice Points

- *Reviews are necessary & encouraged to expedite progress on 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*
- **ACCOUNTABILITY FOR ALL PARTIES**
- **Parent stays motivated!!!!**

Georgia Standards for Parent Attorneys at Review Hearings

Performance Standard 12:

Parent Attorney's Duty at Review Hearings

Commentary:

Review hearings are court proceedings that take place after disposition in which the court reviews the status of the case. In many counties, this hearing is delegated to citizen review panels which do a full review of the case and make recommendations to the judge. The judge will then review the same case on paper with the panel's recommendations and will issue an order incorporating those recommendations, if appropriate.

12.1 For citizen review panels parent attorney should:

- a. Request notice of the panel meeting;
- b. Prepare for and participate in the meeting when warranted;
- c. If necessary, provide information in writing to the panel;
- d. Discuss the proceeding with the client before and after the review;
- e. Have client collect information on progress made on case plan and goals achieved to present to DFCS prior to the review, and to the panel at the review;
- f. Review the report of the panel and request judicial review or in- court review if needed;
- g. Confirm that the citizen review panel does not make any additional caseplan goals without a court hearing.

- 12.2** For judicial reviews the attorney should:
- a. Request notice of the court date;
 - b. Attend each review;
 - c. Talk to service providers or others who may help client;
 - d. Explore whether the child can now be returned home or ensure that the current placement is still appropriate and the least restrictive;
 - e. Modify or increase the visitation schedule, as needed;
 - f. Ensure the agency is making reasonable efforts by providing services to eliminate the need for placement of the child;
 - g. Explore whether services set forth in the case plan have been provided and if the responsibilities of the parties need to be clarified or modified due to the availability of additional information or changed circumstances;
 - h. Explore whether any additional court orders need to be made to move the case toward successful completion;
 - i. Determine whether the current custody order has expired;
 - j. Explore the current permanency plan for the child and ensure that it is appropriate;
 - k. Modify deadlines and timelines, as needed;
 - l. Make a record of caseworker changes.
- 12.3** Parent attorney should request a review when court intervention is necessary to resolve disputes in such matters as visitation, placement or services.¹⁸
- 12.4** Parent attorney should request a review when any event occurs that may significantly affect the need for continued placement.¹⁹
- 12.5** Parent attorney should move the court to return the children or extend visitation in the least restrictive alternative if the client is meeting the requirements of the case plan.
- 12.6** Parent attorney should move the court to require DFCS to provide services if they are not being timely provided.

**Performance Standard 17:
Case Planning
Commentary:**

The parent and parent attorney should play an active role in developing the case plan to ensure that the goals of the case plan and the services provided reflect the court's findings and the statutory bases for the deprivation adjudication and that the services are designed to remedy or address the problems identified.

- 17.1** To participate in case plan development and adoption parent attorney should:
- a. Receive notice of case plan family conference meeting;
 - b. Attend the case plan meeting or send a designee if possible;
 - c. Instruct the client not to sign or agree to the case plan before parent attorney's review;
 - d. Make recommendations for the case plan or develop an alternative case plan, as appropriate;
 - e. Receive or request a copy of the case plan;

- f. Ensure that the case plan relates to reasons for removal;
- g. Ensure that the findings of fact relate to the case plan;
- h. Ensure that the required steps relate to the case plan problems and goals;
- i. Ensure that the case plan contains specific measurable goals tailored to the client;
- j. Ensure that the case plan is realistic regarding requirements of the parent;
- k. Ensure that the case plan reflects time lines and details for who is personally responsible under each provision of the case plan;
- l. Ensure that the case plan addresses who will pay for the services in the case plan;
- m. Ensure that if there is a concurrent case plan that it is known to all parties;
- n. Ensure that the case plan defines specific duties for DFCS and specific services with timelines to be provided by DFCS.

17.2 After the court has adopted the case plan parent attorney should:

- a. Ensure that the client understands his/her responsibilities as outlined in the case plan;
- b. Ensure adherence to the case plan by frequently monitoring the client's progress and the services provided by the agency;
- c. Work with the client to develop a calendar system that reflects case plan deadlines and important dates;
- d. Be attentive to any problems that arise as the parties execute or fail to execute the plan;
- e. Seek to modify the case plan as circumstances require or change.

15-11-55 (c) Disposition of deprived child.

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

15-11-58 (k) & (l) Review hearing

k) Except as otherwise provided by law, an order of disposition placing a deprived child in foster care under the supervision of the Division of Family and Children Services of the Department of Human Resources shall continue in force for 12 months after the

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

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

- (1) That the child return to the home of his or her parents, legal guardian, or custodian with or without court imposed conditions;
- (2) That the child continue in the current custodial placement and that the current placement is appropriate for the child's needs; or

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

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

RULES OF JUVENILE COURTS

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 case. Such review shall be conducted by the juvenile court judge, or a properly designated associate judge or judge pro tempore, or by judicial citizen review panels established by the court. After the initial review, each case shall be reviewed at least every six (6) months.

24.2 Creation of Judicial Citizen Review Panels.

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

Only those courts which agree to operate under such terms and conditions shall be deemed to be in compliance with O.C.G.A. § 15-11-58.

24.3 Program Guidelines.

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

24.4 Appointments; Term of Service; Vacancies; and Removal from Office.

- 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.
- 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.
- Vacancies. In the event that a vacancy arises, the judge shall appoint a qualified individual to serve the remainder of the unexpired term.

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

PROTECTIVE ORDER

Authority	15-11-11
Purpose	Court can restrain or control the conduct of a person where an order of disposition of a child has been or is about to be made
Jurisdiction	Same as Adj., attaches to a pending deprivation action
Venue	Same as Adj., attaches to a pending deprivation action
Timing	Where an order of deprivation disposition of a child has been or is about to be made Finding of deprivation has been made by the court
Parties	Person whose behavior is sought to be controlled or restrained Parties to the deprivation action
Pleading	May be a prayer in a Deprivation petition Filed as a separate action Oral motion in open Court
Notice	Person whose behavior is sought to be controlled or restrained should receive notice of the application, grounds & an opportunity to be heard Personal service to the person to be controlled because order may be enforced by a contempt action
Standard of Proof	Clear & Convincing
Right to Attorney	Yes
Decision Points	What actions need to be controlled by the court May require
Order	<ul style="list-style-type: none">• to stay away from the home of the child• to permit a parent to visit the child at stated periods• to abstain from offensive conduct against the child, child's parent or any custodian of the child• clean the home, abstain from actions which make the child's home improper• to cooperate with DFACS or their service providers• to ensure child attends school• to participate in counseling with child• to enter & successfully complete a substance abuse treatment program• may be used as a way to expedite placement of the child back in the home of the parent under Court supervision & DFACS services
Practice Points	<i>provides more accountability for parties to comply with case plan goals</i>

15-11-11. Protective orders.

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

1. To stay away from the home or the child;
2. To permit a parent to visit the child at stated periods;
3. To abstain from offensive conduct against the child, the child's parent, or any person to whom custody of the child is awarded;
4. To give proper attention to the care of the home;
5. To cooperate in good faith with an agency to which custody of a child is entrusted by the court or with an agency or association to which the child is referred by the court;
6. To refrain from acts of commission or omission that tend to make the home not a proper place for the child;
7. To ensure that the child attends school pursuant to any valid law relating to compulsory attendance;
8. To participate with the child in any counseling or treatment deemed necessary after consideration of employment and other family needs; and
9. To enter into and complete successfully a substance abuse program approved by the court.
 - a. After notice and opportunity for hearing afforded to a person subject to a protective order, the order may be modified or extended for a further specified period, or both, or may be terminated if the court finds that the best interests of the child and the public will be served thereby.

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

PERMANENCY HEARING

Authority	15-11-58 (o)
Purpose	To receive the permanent plan to determine whether reasonable efforts have been made to finalize the permanent plan
Pleadings	May be part of a Motion to Extend or Non Reunification Hearing may be held by Citizen Panel Review Panel IF reunification is the plan MUST be held annually
Parties	Same as Adj. Plus notice to foster parents / caregiver for child
Notice	Reasonable & opportunity to be heard (5 days) Written to foster parents / caregiver for child (5 days)
Right to Attorney	Parent
Std of Proof	Clear & convincing
Reasonable Efforts	To finalize the Permanent Plan
Jurisdiction	Same as Adj
Venue	Same as Adj
Decision Points	Confirm what the permanent plan is & is it still appropriate is plan to: <ul style="list-style-type: none">• Return to parent• Refer for TPR / adoption• Refer for legal guardianship• Placement with a fit & willing relative Or if a compelling reason exists why none of the above are in the child's best interest, then another planned permanent living arrangement (apply)
Documents Needed	Possible motion to extend Possible non reunification motion
Practice Points	Always: Caseplan & report on progress of child & family <i>Recommend scheduling at 11 Months following the child's removal, then Court Order will NEVER inadvertently expire</i> <i>Motion to Extend may then combined</i> <i>Promotes accountability for the permanent plan</i>

Georgia Standards for Parent Attorneys at Permanency Hearings

Performance Standard 13: Parent Attorney's Duty at Permanency Hearings

- 13.1** At the permanency hearing parent attorney should:
- Review the case plan and request additional services or modifications as necessary;

- b. Review compliance with the case plan as well as all other evidence;
- c. Review current placement, if reunification is not the plan;
- d. If DFCS or the GAL is moving towards termination of parental rights, ensure that the next steps and deadlines are set;
- e. Propose a recommendation and be able to support that recommendation with facts;
- f. If there is no parent/child reunification, address sibling visitation;
- g. Consider alternative and relative placements;
- h. Discuss voluntary relinquishment with the client, if appropriate;
- i. Discuss the timelines and the next steps with the client;
- j. Ensure that the client has all appropriate information and then advocate for the client's wishes.

15-11-58 (o)

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

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

(3) The permanency hearing may be conducted as the court directs by the juvenile court judge or by an associate juvenile court judge or judge pro tempore. The court may also direct that the permanency hearing be conducted by a judicial citizen review panel established by the court in the manner provided in subsection (k) of this Code section, unless the permanency hearing is one required under subsection (j) of this Code section as a result of a recommendation that reunification services are not appropriate. The judicial citizen review panel may conduct its hearing in the same manner as it conducts a case review under subsection (k) of this Code section.

The provisions of subsection (p) of this Code section concerning notice, opportunity to be heard, authority of the court, and content of the court's order are applicable to proceedings under this paragraph.

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

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

(4) The parents, the custodian of the child, the foster parents of the child, any pre-adoptive parent or relative providing care for the child, and other parties shall be given written notice of a permanency hearing at least five days in advance and shall be advised that the permanency plan recommended by the Division of Family and Children Services of the Department of Human Resources will be submitted to the court for consideration to become an order of the court. Procedural safeguards shall be applied with respect to parental rights pertaining to the removal of the child from the home of his or her parents, to a change in the child's placement, and to any determination affecting visitation privileges of parents. The provisions of subsection (p) of this Code section concerning notice, opportunity to be heard, authority of the court, and content of the court's order are applicable to proceedings under this paragraph.

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

(6) The court or judicial citizen review panel which conducts the permanency hearing shall determine, as a finding of fact, whether the Division of Family and Children Services of the Department of Human Resources 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. 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. The provisions of subsection (p) of this Code section concerning notice, opportunity to be heard, authority of the court, and content of the court's order are applicable to proceedings under this paragraph.

(7) A supplemental order of the court adopting the permanency plan must be entered within 30 days after the court has determined that reunification efforts will not be made by the Division of Family and Children Services of the Department of Human Resources, if applicable, or within 12 months after the child is considered to have entered foster care, whichever is first, and at least every 12 months thereafter while the child is in foster care, unless the court finds good cause why such order cannot be entered by that time.

Motion to Extend

Authority	15-11-58 (n)
Purpose	To determine whether extended custody to DFACS is necessary to accomplish the purposes of the <u>ORIGINAL</u> Order ; Order can only be extended ONE time & then DFACS MUST start with a new action
Pleadings	Motion to Extend
Jurisdiction	Same as Order being extended
Venue	Same as order being extended
Timing	Filed and Heard prior to expiration of the Order being extended, except hearing may be continued past expiration of prior Order IF parent request an attorney or waives
Parties	Parents, DFACS, attorneys for parties, CA attorney, foster parents
Notice	Reasonable notice, if address known or “last known” address then parents may be mailed notice & Motion
Standard of Proof	Clear & Convincing
Reasonable Efforts	To reunify the family & otherwise achieve permanency for the child
Decision Points	Have the purposes of the original Order been accomplished? Has DFACS used reasonable efforts? Is the stated case plan still appropriate?
Order	Requires specific findings of fact concerning whether the purposes of the original Order have been accomplished; Analysis of which goals have been achieved and what are the Barriers to Reunification <i>Try to have the Permanency Hearing at the same time as the Motion to Extend</i>
Practice Points	<i>What are the barriers to reunification must be related to the ORIGINAL order’s findings of fact Are there new or different barriers to reunification? Could some of the Caseplan goals be accomplished with the child back in the home and wraparound or aftercare services or a protective order?</i>

15-11-58 (n) Motion to Extend

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

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

NON REUNIFICATION HEARING

Authority	15-11-58 (h & i)
Purpose	To determine whether reunification services should continue to be offered to the family To determine whether reunification in the child's best interest To determine if the continuation of reunification services to the family would be detrimental to the child
Jurisdiction	Same as Adj., Attaches to a pending deprivation action
Venue	Same as Adj., Attaches to a pending deprivation action
Timing	Within 30 days where an order of deprivation disposition of a child has been made stating non reunification is the goal Within 30 days of a separate motion for non reunification has been filed Within 30 days of DFCS submitting a case plan which states the goal is non reunification
Pleading	May be separate action, Prayer in a Deprivation Petition or Motion to Extend Part of case plan
Parties	Same parties as the Adj., & foster parents
Notice	Personal service to the parent / legal guardian, Written notice to foster parents
Standard of Proof	Clear & convincing proof that reunification services would be detrimental to the child
Presumptions	Reunification is the presumed plan except in following limited circumstances : <ul style="list-style-type: none">• Parent has unjustifiably failed to comply w/ a previously ordered reunification plan for 12 months or longer• Child removed two prior times & reunification was offered on previous removals• Any of the grounds to terminate parental rights• Parent has subjected the child to aggravating circumstances including abandonment, torture, chronic abuse, sexual abuse• Parent has committed murder of a sibling• Parent has been convicted of murdering the other parent• Parent has committed voluntary manslaughter of a sibling• Parent has aided, abetted, attempted, conspired or solicited to commit murder or voluntary manslaughter of a sibling• Parent has committed a felony assault resulting in serious bodily injury to the child or a sibling of the child• Involuntary termination of parental rights to a sibling of the child Any of the grounds for termination of parental rights exist as stated in 15-11-94 (b)

Right to Attorney Decision Points

Yes

- Are reunification services detrimental to the child?
- Do any of the circumstances listed above apply to this child?
- Is the case appropriate for termination of parental rights?
- If case is appropriate for TPR, when will the TPR petition be filed?
- If case is **NOT** appropriate for TPR, but NR should be granted then what is long term placement plan for the child?
- **Petition to Modify Custody** may be filed where custody is modified from DFACS to a relative until the child reaches 18 years old with in Court reviews of the placement's continued appropriateness every 36 months - relative may be eligible for **Relative Care Subsidy (RCS)**
- Another planned permanent living arrangement
- If DFACS states they will not be proceeding with a TPR, then the

Court may appoint a GAL to determine whether a TPR should be commenced (15-11-58 (g))

Order

Recite the reasons why Non Reunification is appropriate plan
Approve the long term plan for the child
State the terms of the NR, such as visits or contact with parent/siblings/family,
NR terms can be defined by the Court

Practice Points

- *Non reunification is NOT a necessary step on the road to TPR; in fact, it is totally unnecessary*
- *Non Reunification should only be granted where DFACS can show by clear and convincing evidence that reunification services would be detrimental to the child; NR is NOT a matter of convenience for DFACS not to have to work with a non complying parent*
- *If Non Reunification is granted, terms can still be dictated such as visits or contact with parent / siblings / extended family if in the child's best interest*
- *NR **DOES NOT** end the child / parent right to visit & for DFACS to facilitate those visits*
- ***Concurrent Plan** is possible where DFACS is pursuing both reunification and other permanency options*
- ***NR is necessary to some relative placement funding***

15-11-58 (h)

When reviewing the determination by the Division of Family and Children Services of the Department of Human Resources that a reunification plan is not appropriate, the court shall determine by clear and convincing evidence whether reasonable efforts to reunify a child with his or her family will be detrimental to the child and that reunification services, therefore, should not be provided or should be terminated. There shall be a presumption that reunification services should not be provided if the court finds by clear and convincing evidence that:

The parent has unjustifiably failed to comply with a previously ordered plan designed to reunite the family;

A child has been removed from the home on at least two previous occasions and reunification services were made available on those occasions;

Any of the grounds for terminating parental rights exist, as set forth in subsection (b) of Code Section 15-11-94; or

Any of the circumstances set out in paragraph (4) of subsection (a) of this Code section exist, making it unnecessary to provide reasonable efforts to reunify.

15-11-58 (i)

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

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

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

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

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

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

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

Thirty-six months of an order placing a child in the custody of a relative pursuant to subparagraph (A) of paragraph (1) of this subsection and every 36 months thereafter; or twelve months of an order placing a child in the custody of a non-relative, an out-of-state custodian, or an agency or organization licensed or otherwise authorized by law to receive and provide care for the child pursuant to subparagraph (B), (C), or (D) of paragraph (1) of this subsection and every 12 months thereafter.

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

PETITION TO MODIFY/RELATIVE CARE SUBSIDY

Authority	15-11-40, 15-11-39.1 & 39.2, 15-11-58(I) 15-11-89
Purpose	To modify, change or vacate a prior court order where changed circumstances so require in the best interest of the child
Pleadings	Petition to Modify setting forth in clear & concise language the grounds upon which the relief is requested Filed by DFACS, parents, child advocate or other
Parties	Same as Adj. Plus notice to foster parents / caregiver for child
Notice	Personal to parents or other parties (this is a Petition!) Written to foster parents / caregiver for child (5 days)
Right to Attorney	Parent
Standard of Proof	Clear & convincing
Reasonable Efforts	To finalize the permanent plan/reunify
Jurisdiction	Same as Adj.
Venue	Same as Adj
Decision Points	Should the Court order be modified to accomplish the goals of the case plan? Typically modifications are for: <ul style="list-style-type: none">• Return child to parent• Following a non reunification hearing to grant custody of the child to a relative until the child reaches 18 (frequent)• Must have in court or citizen panel reviews every 36 months to confirm the continued appropriateness of the placement• Following a non reunification hearing to grant custody of the child to a non- relative until the child reaches 18 (infrequent)• Must have in court or citizen panel reviews every 36 months by to confirm the continued appropriateness of the placement Modify prior order granting non reunification or custody to third party (parent attempting to regain custody)
Documents Needed	Home evaluation of proposed custodian Prior court orders
Relative Care Subsidy	Confirm all documents completed for Relative Care Subsidy (Either regular or enhanced RCS) Two levels of payment effective July 1, 2005 <ul style="list-style-type: none">▪ Regular RCS is \$10.00 per day▪ Enhanced RCS (ERCS) is 80% of the foster care per diem for the age of the child at the time custody is transferred to the relative & relative caregiver household income is less than 150K <ul style="list-style-type: none">• To move a child from foster care to a fit & willing relative

- with financial assistance from DFACS
- **Requires Non Reunification Order & Petition to Modify**
- Should be used for older children in a foster home for whom TPR / adoption is not appropriate so the child may move from foster to relative placement
- Not really a permanent plan because the parent may petition to modify the custody order – TPR is a permanent plan
- Form 45, application & agreement must be signed prior to the Court's transfer of legal custody from DFACS to the relative caregiver
- Financial assistance is reviewed annually by DFACS and the Court reviews the appropriateness of the placement every 36 months
- Child must remain enrolled in school
- Relative has received a favorable Relative Care Assessment (RCA) (home evaluation)
- Proposed guardian is related by blood, marriage or adoption
- Other support services available through DFACS to Relative Caregivers include: wraparound, PUP funds, initial & annual clothing allowance, Medicaid, physical or emotional therapy, training & educational support to relative

Practice Points

- *RCS not a good permanent plan where the child could be adopted even if it is a relative adoption*
- *Petition to Modify should **NOT** be confused with 15-11-55(c) which allows the Court to return custody to a parent or outside DFACS (relieving DFACS of custody) at any review or sua sponte*
- *Petition to Modify should NOT be confused with 15-11-58(l)(1) which allows the Court return custody to the parents*

15-11-40. Modification or vacation of orders; revocation of probation; petition; hearing and notice.

An order of the court shall be set aside if:

It appears that it was obtained by fraud or mistake sufficient therefore in a civil action;
The court lacked jurisdiction over a necessary party or of the subject matter; or
Newly discovered evidence so requires.

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

Any party to the proceeding, the probation officer, or any other person having supervision or legal custody of or an interest in the child may petition the court for the

relief provided in this Code section. The petition shall set forth in clear and concise language the grounds upon which the relief is requested.

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

15-11-39.1. Service of summons; costs of service and travel expenses.

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

If, after reasonable effort, a party to be served with a summons cannot be found and such party's post office address cannot be ascertained, whether he or she is within or outside this state, the court may order service of the summons upon him or her by publication in accordance with Code

Sections 9-11-4 and 9-11-5. The hearing shall not be earlier than five days after the date of the last publication. Service of the summons may be made by any suitable person under the direction of the court.

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

5-11-39.2. Provisional hearing where summons served by publication; interlocutory effect of findings and order; final hearing.

If service of summons upon a party is made by publication, the court may conduct a provisional hearing upon the allegations of the petition and enter an interlocutory order of disposition if:

The petition alleges delinquency, unruly conduct, or deprivation of the child;

The summons served upon any party:

States that prior to the final hearing on the petition designated in the summons a provisional hearing thereon will be held at a specified time and place;

Requires the party who is served other than by publication to appear and answer the allegations of the petition at the provisional hearing;

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

Otherwise conforms to Code Section 15-11-39; and

The child is personally before the court at the provisional hearing.

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

hearing on the petition. The rights and duties of the party served by publication are not affected except as provided in subsection (c) of this Code section.

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

15-11-58 (i)

(i)(1) If the court has entered an order finding that reasonable efforts to reunify a child with his or her family would be detrimental to the child in accordance with subsection (h) of this Code section and if the court finds that referral for termination of parental rights and adoption is not in the best interest of the child, the court may, upon proper petition, enter a custody order which shall remain in effect until the child's eighteenth birthday: Placing the child in the custody of a relative of the child if such a person is willing and, after study by the probation officer or other person or agency designated by the court, is found by the court to be qualified to receive and care for the child;

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

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

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

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

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

Thirty-six months of an order placing a child in the custody of a relative pursuant to subparagraph (A) of paragraph (1) of this subsection and every 36 months thereafter; or
Twelve months of an order placing a child in the custody of a non-relative, an out-of-state custodian, or an agency or organization licensed or otherwise authorized by law to receive and provide care for the child pursuant to subparagraph (B), (C), or (D) of paragraph (1) of this subsection and every 12 months thereafter.

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

15-11-89. Ordering out-of-state supervision; payment of cost thereof.

Subject to the provisions of this article governing dispositions and to the extent that funds of the county are available, the court may place a child in the custody of a suitable person in another state. On obtaining the written consent of a juvenile court of another state which has adopted the Uniform Juvenile Court Act or a substantially similar act which includes provisions corresponding to this Code section and Code Section 15-11-90, the court of this state may order that the child be placed under the supervision of a probation officer or other appropriate official designated by the accepting court. One certified copy of the order shall be sent to the accepting court and another shall be filed with the clerk of the governing authority of the county of the requesting court of this state.

The reasonable cost of the supervision, including the expenses of necessary travel, shall be borne by the county of the requesting court of this state. Upon receiving a certified statement signed by the judge of the accepting court of the cost incurred by the supervision, the court of this state shall certify if it appears that the sum so stated was reasonably incurred and shall file it with the appropriate officials of the county for payment. The appropriate officials shall thereupon issue a warrant for the sum stated payable to the appropriate officials of the county of the accepting court.

**FOUR TYPES OF
RELATIVE CARE**

	Relative Care: Reg.or Enhanced	Guardianship Subsidy Reg.or Enhanced
Who has Custody	DFACS is custodian, Placement w/ Relative	DFACS Relieved of Custody when Guardianship Granted
Is there a minimum time in FC?	No Child may be placed with relative immediately upon entering FC	Yes Child must be in FC for 12 months prior to the grant of guardianship
Home / Relative Care Assessment	Yes	Yes
Non Reunification Necessary?	No	No Parents consent to guardianship
Impact Training?	No	No
Drug Screen?	Probably	Probably
Action By Juvenile Court	Deprivation Action, Extensions Petition &	Deprivation Action Guardianship MUST be granted by Juv Ct, DFACS Relieved of Cust, Guardian provide Ct w/ annual report on child
DFACS Action	Maintain custody through Ct Action, per diem, Home Evaluation	DFACS Relieved of Custody, Home Assessemnt, Annual in house rev to maintain subsidy
DFACS Contact with Placement	Monthly	None Required except Court may order
Per Diem Amounts	Reg. \$10.00 per Day: Enhanced 80% of FC per diem for child's age when child entered FC	Reg. \$10.00 per Day: Enhanced 80% of FC per diem for child's age when child entered FC
ILP Services	Yes, IF child was in FC at 14years, must participates in ILP program to remain eligible	Yes, IF child was in FC at 14years, must participates in ILP program to remain eligible
Putative Father Family Considered for Placement	Yes unless TPR	Yes unless TPR
Medicaid	Yes b/c in DFACS custody but must be US Citizen	Only if Child meets one of Medicaid's 34 programs (RSM or Peach usually)
Food Stamps	Maybe: Household \$\$ Dependent	Maybe: Household \$\$ Dependent
Clothing Allowance	Yes (August)	Yes (August)
Wraparound Services (In State Placements)	Yes: transition & stablize placement	Yes: transition & stablize placement, Maybe Ct ordered
Citizen Panel Review	Yes	No
Childcare & Parent Services	Yes	Need & residence criteria
PUP Funds	Maybe	Maybe

FOUR TYPES OF RELATIVE CARE

	Relative Foster Care	Relative Care till Child 18
Who has Custody	DFACS is custodian Placement w/ Relative	DFACS Relieved of Custody when Custody Granted to Relative
Is there a minimum time in FC?	No Child may be placed with relative immediately upon relative meeting FC standards	Yes Child must be in FC for 12 months prior to the grant of Custody to relative
Home / Relative Care Assessment	Yes, Relative must meet all FC requirements	Yes
Non Reunification Necessary?	No	Yes
Impact Training?	Yes	No
Drug Screen?	Yes	Probably
Action By Juvenile Court	Deprivation Action, Petition & Extensions	Deprivation Action, Nonreunification & Cust Mod to Rel, DFACS Relieved of Cust, Ct Rev every 3 years
DFACS Action	DFACS Maintain custody through Ct Action, per diem, Home Evaluation	DFACS Relieved of Cust: Home Assesemnt: Annual in house rev to maintain subsidy
DFACS Contact with Placement	Monthly	Annual: is home still appropriate & as ordered by Ct
Per Diem Amounts	\$13.78 0 to 6 years \$15.50 7 to 12 years \$17.75 13 & up	Reg. \$10.00 per Day: Enhanced 80% of FC per diem for child's age when child entered FC
ILP Services	Yes, IF child was in FC at 14years, must participates in ILP program to remain eligible	Yes, IF child was in FC at 14years, must participates in ILP program to remain eligible
Putative Father Family Considered for Placement	Yes unless TPR	Yes unless TPR
Medicaid	Yes b/c in DFACS custody but must be US Citizen	Only if Child meets one of Medicaid's 34 programs (RSM or Peach usually)
Food Stamps	Maybe: Household \$\$ Dependent	Maybe: Household \$\$ Dependent
Clothing Allowance	Yes, Initial & Annual	Yes (August)
Wraparound Services (In State Placements)	Yes: transition & stabilize placement	Yes: transition & stabilize placement, Maybe Ct ordered
Citizen Panel Review	Yes	No, Unless Ct directs Panel to perform the 3 year Reviews
Childcare & Parent Services	Yes	Need & residence criteria
PUP Funds	Maybe	Maybe

Reasonable Efforts Requirements/IVE Eligibility

"Reasonable efforts" must be made by DFCS to prevent removal, and to facilitate reunification where removal was necessary to protect the health and safety of the child, to expeditiously move the child to permanency & finalize the permanent plan. (ASFA) Where reunification is the permanency goal, ASFA requires the case plan for each child must include a description of services offered and provided to prevent the removal of the child from the home and to reunify the family after removal. Neither the Adoption Assistance and Child Welfare Act of 1980 nor the Adoption and Safe Families Act of 1997 provide any definition of "reasonable efforts."

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

- 24-hour emergency caretakers;
- homemaker services;
- day care;
- crisis counseling;
- individual and family counseling;
- emergency shelters;
- procedures and arrangements for access to available emergency financial assistance;
- temporary child care to provide respite to the family for a brief period;
- home-based family services;
- self-help groups;
- services to unmarried parents;
- provision of or arrangements for mental health, drug and alcohol abuse counseling;
- vocational counseling or rehabilitation;
- other services the agency identifies as necessary or appropriate.

45 C.F.R. Ch. XIII, §1357.15(e)(2) (10-1-95 Edition).

Making Reasonable Efforts: Steps for Keeping Families Together.

National Council of Juvenile and Family Court Judges, also includes a list of recommended services to facilitate meeting reasonable efforts requirements:

- family preservation services;
- generic family based/family centered services;
- cash payments to meet emergency needs and to provide ongoing financial support;
- non-cash services to meet basic needs;
- food and clothing;
- housing (emergency shelter and permanent housing);
- non-cash services to address specific problems; in home respite

- care;
- out of home respite care and child day care;
- treatment for substance abuse/chemical addiction;
- treatment for sexual abusers and victims;
- mental health counseling/psychotherapy;
- parental and life skills training;
- household management;
- facilitative services
- visitation (to prepare both parent and child for their eventual reunification);
- transportation (when services are geographically inaccessible)

Reunification Efforts Not Always Required

- Reasonable efforts to reunify families are not always required and the provision of reunification services is limited. ASFA .
- An initial finding may be made as early as the dispositional phase, that reasonable efforts to reunify not be required, and a "non-reunification" plan be submitted in lieu of a reunification plan. 15-11-58(f).

If a child has been in foster care 15 out of the most recent 22 months, the state is directed to file a petition to terminate parental rights unless:

- the state has placed the child with a relative;
- the state has documented a compelling reason for determining that terminating parental rights would not be in the best interests of the child; or
- if the state has failed to provide appropriate reunification services where such services were warranted, the state must now provide those services & suffer a finding of no reasonable efforts in that particular case.
- A permanency hearing must be held within 12 months after a child has entered foster care.
- Under certain egregious circumstances, reasonable efforts will not be considered. Federal guidelines and Georgia law recognize the need for immediate removal, as long as DFCS adequately documents the emergency nature of the situation for the juvenile court judge. The safety and health of the child are to be the paramount concerns throughout the case. Federal Adoption and Safe Families Act of 1997 (Public Law 105-89), 15-11-58(a)(1).

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

- subjected the child to aggravated circumstances including abandonment, torture, chronic abuse or sexual abuse,
- committed the murder or voluntary manslaughter of another child of the parent or aided or abetted, attempted, conspired or solicited to do

- the same, or
- who has committed a felony assault that results in serious bodily injury to the child or another child.

Reasonable efforts are similarly not required where the parental rights of another sibling of the child have been terminated involuntarily. 15-11-58(a)(4).

IV-E Eligibility & Funding

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

Three Steps to IV-E Eligibility & Funding

1. First Court ruling (order) which sanctions removal of the child from the home **MUST** explicitly state
 - a. Continuation in the home would be "contrary to the welfare of the child"
 - b. Court must be presented with evidence from DFACS and must make specific findings of fact supporting "contrary to the welfare"
 - c. Findings must be explicitly documented & made on a case by case basis
2. Within 60 days of the child removal from the home, Court order must make a finding that reasonable efforts have been made to preserve the family or reunify the family OR that reasonable efforts were not required because of the limited circumstances of 15-11-58(a)(4)
 - a. Judicial finding must be explicitly documented
 - b. 15-11-58(a)(4)
 - i. parent committed murder of another child of the parent
 - ii. parent has been convicted of the murder of the other parent of the child
 - iii. parent has committed voluntary manslaughter of another child of the parent
 - iv. parent has aided or abetted, attempted, conspired or solicited to commit murder or involuntary manslaughter of another child of the parent

- v. the parents' parental rights to a sibling of the child have been involuntarily terminated
3. Judicial finding of reasonable efforts to finalize permanency plan
 - a. Must be made within 12 months from the date of removal AND every 12 month thereafter
 - b. Or where court has determined reasonable efforts for reunification are NOT required (Non Reunification Hearing) then within 30 days of the Court's determination

Case Plans/Citizen Panel Review

Within thirty (30) days of the child's removal from the home and at each subsequent review of the dispositional order, DFCS must submit a written report which shall either include a case plan for reunification of the family or the basis for its determination that a reunification plan is not appropriate.

Parents shall be given written notice of the meeting at least five (5) days in advance and shall be advised that the report to be discussed at this meeting will be submitted to the Judge to become an order of the Court. The final report will become part of the formal case record and will be made available to the parents or guardian of the child upon request. The report must contain any dissenting recommendations of the citizen review panel and any recommendations made by the parents.

If a 30-day case plan is submitted to the court contains a plan for reunification services, it must also address each of the following items:

1. Each reason requiring the removal of the child;
2. 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;
3. The services offered and provided to prevent the removal of the child from the home;
4. 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;
5. 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).
6. Specific time frames in which the goals of the plan are to be

accomplished to fulfill the purpose of the reunification plan;

7. The person within DFCS who is directly responsible for ensuring that the plan is implemented;
8. Consideration of the advisability of reasonable visitation schedules which allow parent(s) to maintain meaningful contact with their children through personal visits, telephone calls, and letters.

Non-Reunification Plans

- Reunification services are **NOT** required in every case
- If the case plan does not contain a plan for reunification services then a **Non Reunification Hearing** must be held within 30 days of the filing of the case plan
- A case plan with a non-reunification recommendation must address each of the following issues:
 - Each reason requiring the removal of the child;
 - The purpose behind placing the child in foster care, the reasons why the child cannot be adequately protected at home, and the harm which may occur if the child remains in the home;
 - A description of the services offered and provided to prevent the removal of the child from the home,

A clear statement describing all of the reasons supporting a finding that reasonable efforts to reunify a child with the child's family will be detrimental to the child, and that reunification services therefore need not be provided, including specific findings as to whether any of the grounds for terminating parental rights exist, as set forth in **15-11-94(b)** or **15-11-58(a)(4)**

Termination of Parental Rights & Post TPR Reviews

Authority	15-11-93 through 15-11-106
Purpose	To permanently sever the parent – child relationship so that the child may be placed for adoption
Pleadings	Petition to Terminate Parental Rights Court is required to hear TPR within 90 days of filing of petition and make a ruling on TPR petition within 30 days of conclusion of the TPR, just cause exception
Parties	Parents, child, DFACS, SAAG, parents attorneys
Notice	<ul style="list-style-type: none">• formal notice, personal or publication• Notice to putative & legal father (15-11-96)• Summons & Petition to Terminate shall be served upon all parties at least thirty (30) days prior to the date of the termination hearing. (15-11-96 (c))• Legal father<ul style="list-style-type: none">▪ has legally adopted a child;▪ was married to the biological mother the child at the time the child was conceived or born unless his paternity was disproved in a court hearing;▪ married the legal mother of the child after the child was born and recognized the child as his own, unless paternity was disproved in a court hearing;▪ has been determined to be the father in a paternity hearing;▪ has legitimated the child.• Biological / Putative father<ul style="list-style-type: none">▪ If his identity is known to the petitioner or the petitioner's attorney;▪ If he is a registrant on the Putative Father Registry who has acknowledged paternity of the child;▪ If he is a registrant on the putative father registry who has indicated possible paternity of the child during a period of two years immediately prior to the child's date of birth; or▪ If the court finds from the evidence, including but not limited to an affidavit of the child's mother that the biological father who is not the legal father has performed any of the following acts:<ul style="list-style-type: none">▪ lived with the child;▪ contributed to the child's support;▪ made any attempt to legitimate the child; or▪ provided support or medical care for the mother either during her pregnancy or during her hospitalization for the birth of the child. 15-11-96 (e)

Jurisdiction /Venue Usually where deprivation actions held but may be county of residence of the child

- Decision Points**
- The court determines whether there is clear and convincing evidence of parental misconduct or unfitness.
 - Second, whether termination of parental rights is in the best interests of the child.
 - Past deprivation alone will not be considered sufficient to prove present deprivation but can be used as evidence if child is presently deprived
 - Physical or mental evaluations may be required by the Court for parent, child, stepparent or guardian
 - Make sure there is a court reporter & transcript
 - TPR Order must be signed within days of the close of the evidence

Placement of child following grant of TPR – all placements must be in child’s best interest (15-11-103)

1. First, with a person related by blood or marriage or extended family for adoption if the Court determines such a placement is in the child’s best interest
2. Second, DHR or licensed child-placing agency for adoption placement
3. Third, with suitable individual willing to become guardian
4. Fourth, DHR or licensed child-placing agency for foster care
5. Fifth, to an agency or organization authorized by law to receive & provide care for children.....
6. Sixth, Court may take other suitable measure for the care & welfare of the child

Post TPR Reviews 15-11-103 (e)

If adoption is not filed within 6 months of the TPR order then in court reviews every 6 months thereafter as long as the child remains un-adopted

To review the circumstances of the child, to review what efforts have been made to assure adoption (DFACS must continue to use reasonable efforts to finalize the permanent plan)

Georgia Standards for Parent Attorneys in Termination of Parental Rights Cases

Performance Standard 14: Parent Attorney's Duty at Termination of Parental Rights Hearings

- 14.1** In preparation for a TPR hearing parent attorney should:
- a. Explain the process and consequences of the hearing with the client;
 - b. Determine whether the client wishes to contest termination;
 - c. Discuss voluntary relinquishment with the client without undermining client's confidence;
 - d. Ensure that the petition states every factual allegation/ground that supports termination of parental rights;
 - e. Review the entire court record and case file;
 - f. If new to the case, conduct a full investigation and interview the prior attorney;
 - g. Review the Georgia TPR statutes;
 - h. Prepare witnesses for testimony, including direct and cross examination;
 - i. Be prepared to address unique issues and any recent developments in the case that may affect the court's decision;
 - j. Determine if there are compelling reasons why there should not be a termination;
 - k. Identify the basis of the original abuse or neglect allegations and analyze the agency's efforts to work with the client;
 - l. Consider motions for expert evaluations of:
 - i. the child's relationship with the client and foster parents;
 - ii. the child's response to continued contacts with the client while in foster care;
 - iii. the client's capacity to care for the child;
 - iv. mental disabilities or other specific diagnoses.
 - m. If representing the putative father:
 - i. insure that he has legitimized the child(ren);
 - ii. insure that he has his own separate case plan.
 - iii. check the putative father registry.
- 14.2** At the TPR hearing parent attorney should:
- a. Present evidence, including testimony of all witnesses;
 - b. Argue that TPR is not in the best interests of the child;
 - c. Contest the legal grounds for termination;
 - d. Prepare and make all appropriate motions and evidentiary objections in order to preserve issues for appeal.
- 14.3** Post TPR parent attorney should:
- a. Determine whether there are issues for appeal and file notice of appeal;
 - b. If filing an appeal, consider moving for visitation while the case is

- still pending;
- c. Advise client regarding consequences of the order and future issues;
- d. Send appropriate paperwork to the client.

**Performance Standard 15:
Appeals**

- 15.1** Parent attorney should review the court order to ensure accuracy and clarity.
- 15.2** Parent attorney should provide the client with a copy of the order and review the order with the client to ensure the client understands it.
- 15.3** Parent attorney should ascertain whether the client wishes to appeal and discuss the likelihood of success on appeal and potential consequences of an appeal.
- 15.4** Parent attorney should advise the client on potential consequences of failing to comply with the order, take reasonable steps to ensure the client complies with the order and determine whether the case needs to be brought back to court.
- 15.5** Parent attorney should know the rules of both the Supreme Court and the Court of Appeals concerning the filing of appeals.
- 15.6** Parent attorney should communicate the results of the appeal and its implication to the client.

15-11-93. Effect of termination order.

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

15-11-94. Grounds for termination; other dispositions.

(a) In considering the termination of parental rights, the court shall first determine whether there is present clear and convincing evidence of parental misconduct or inability as provided in subsection (b) of this Code section. If there is clear and convincing evidence of such parental misconduct or inability, the court shall then consider whether termination of parental rights is in the best interest of the child, after considering the physical, mental, emotional, and moral condition and needs of the child who is the subject of the proceeding, including

the need for a secure and stable home. If the court finds clear and convincing evidence of the circumstance provided in paragraph (5) of subsection (b) of this Code section, the court shall presume that termination of parental rights is in the best interest of the child.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (i) To develop and maintain a parental bond with the child in a meaningful, supportive manner;
- (ii) To provide for the care and support of the child as required by law or judicial decree; and
- (iii) To comply with a court ordered plan designed to reunite the child with the parent or parents; or

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

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

15-11-95. Petition

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

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

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

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

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

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

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

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

(d) If the paternity of a child born out of wedlock has been established in a judicial proceeding to which the father was a party prior to the filing of the petition, the father shall be served with summons as provided by this article. Such father has the right to be heard unless he has relinquished all paternal rights with reference to the child.

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

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

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

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

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

(A) Lived with the child;

(B) Contributed to the child's support;

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

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

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

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

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

(3) Publication once a week for three weeks in the official organ of the county where the petition has been filed and of the county of his last known address, which notice shall be deemed received upon the date of the last publication. If feasible, the methods specified in paragraph (1) or (2) of this subsection shall be used before publication.

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

(1) Lived with the child;

(2) Contributed to the child's support;

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

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

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

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

(1) A petition to legitimate the child pursuant to Code Section 19-7-22; and

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

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

- (1) Does not file a legitimation petition and give notice as required in subsection (h) of this Code section;
- (2) Files a legitimation petition which is subsequently dismissed for failure to prosecute; or
- (3) Files a legitimation petition and the action is subsequently concluded without a court order declaring a finding that he is the legal father of the child.

15-11-97. Failure to answer summons; taking child into protective custody.

- (a) If any person named in and properly served with summons shall without reasonable cause fail to appear or, when directed in the summons, to bring the child before the court, then the court may issue a rule nisi against such person, directing the person to appear before the court to show cause why such person should not be held in contempt of court.
- (b) If the summons cannot be served or if the person to whom the summons is directed fails to obey it, the court may issue an order to take the child into protective custody.

15-11-98. Attorneys and guardians ad litem.

- (a) In any proceeding for terminating parental rights or any rehearing or appeal thereon, the court shall appoint an attorney to represent the child as the child's counsel and may appoint a separate guardian ad litem or a guardian ad litem who may be the same person as the child's counsel.
- (b) If the parent or parents of the child desire to be represented by counsel but are indigent, the court shall appoint an attorney for such parent or parents, which shall be a charge upon the funds of the county upon certification thereof by the court in the same manner as authorized for other expenses under Code Section 15-11-8.

15-11-99. 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.

15-11-100. Physical and mental evaluations.

The court may require a physical or mental evaluation of any parent, stepparent, guardian, or child involved in a proceeding under this article.

15-11-101. Record inadmissible in other actions; exceptions.

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

15-11-102. Applicability of Code Section 15-11-39.2 to hearings.

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

15-11-103. Placement of child following termination order; custodial authority; review of placement.

(a)(1) If, upon the entering of an order terminating the parental rights of a parent, there is no parent having parental rights, the court shall first attempt to place the child with a person related to the child by blood or marriage or with a member of the child's extended family if such a person is willing and, after study by the probation officer or other person or agency designated by the court, is found by the court to be qualified to receive and care for the child, if the court determines such placement is the most appropriate for and in the best interest of the child. A placement effected under this paragraph shall be conditioned upon the family member who is given permanent custody or who is granted an adoption of the child agreeing to abide by the terms and conditions of the order of the court.

(2) If no placement of the child is effected under paragraph (1) of this subsection, the court may commit the child to the custody of the Department of Human Resources or to a licensed child-placing agency willing to accept custody for the purpose of placing the child for adoption, if the court determines such placement is the most appropriate for and in the best interest of the child.

(3) If no placement of the child is effected under paragraph (1) or (2) of this subsection, the court may commit the child to a suitable individual on the condition that the person becomes the guardian of the person of the child pursuant to the court's authority under Code Section 15-11-30.1, if the court determines such placement is the most appropriate for and in the best interest of the child.

(4) If no placement of the child is effected under paragraph (1), (2), or (3) of this subsection, the court may commit the child to the custody of the Department of Human Resources or to a licensed child-placing agency willing to accept custody for the purpose of placing the child in a foster home, if the court determines such placement is the most appropriate for and in the best interest of the child.

(5) If no placement of the child is effected under paragraph (1), (2), (3), or (4) of this subsection, the court may commit the child to the custody of an agency or organization authorized by law to receive and provide care for children which is operated in a manner that provides such care, guidance, and control as would be provided in a family home as defined in the court's order, if the court determines that such placement is the most appropriate for and in the best interest of the child.

(6) If no placement of the child is effected under paragraph (1), (2), (3), (4), or (5) of this subsection, the court may take other suitable measures for the care and welfare of the child.

(b) A placement may be made under the terms of this Code section only if the court finds that such placement is in the best interest of the child.

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

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

(e) Except in those cases where the child was placed pursuant to paragraph (3) or (5) of subsection (a) of this Code section, if a petition seeking the adoption of the child is not filed within six months after the date of the disposition order, the court shall then, and at least every six months thereafter as long as the child remains unadopted, review the circumstances of the child to determine what efforts have been made to assure that the child will be adopted. The court may then enter such orders as it deems necessary to further the adoption, including but not limited to another placement. In those cases where the child was placed with a guardian of the child's person pursuant to paragraph (3) of subsection (a) of this Code section, the guardian shall report to the court in the same manner and at the same frequency as is required for guardians of the person of minors appointed by the judge of the probate court. In those cases where the child was placed pursuant to paragraph (5) of subsection (a) of this Code section, the court shall, at least every six months thereafter as long as the child remains subject to the jurisdiction of the court, review the circumstances of the child to determine that placement in the family home-like setting continues to be in the child's best interests.

Court of Inquiry

Authority	15-11-4 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
Purpose	protection of child, family and public, where police action has not begun
Timing	At any stage of the juvenile proceeding
Standard of Proof	Reason to believe / probable cause
Action	Court can commit or bind over for trial, set bond, discharge

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Notice

Usually the suspect is before the Court during the course of a hearing on deprivation of a child, when a motion is made by one of the attorneys to advise the suspect that the Court sits as a Court of Inquiry & the consequences OR the suspect may be apprehended & brought before the Juvenile Court, based on sworn testimony presented to the Court during a deprivation hearing.

Possible Charges

16-5-45	Interference with Custody
16-5-70	Cruelty to Children
16-5-72	Reckless Abandonment
16-5-73	Prohibition against presence of children during the manufacture of methamphetamine
16-6-1	Rape
16-6-2	Sodomy; aggravated sodomy; medical expenses
16-6-3	Statutory Rape
16-6-4	Child Molestation; aggravated child molestation
16-6-5	Enticing a child for indecent purposes
16-6-9	Prostitution
16-6-10	Keeping a place of prostitution

16-6-11	Pimping
16-6-12	Pandering
16-6-14	Pandering by compulsion
16-6-22	Incest
16-6-22.1	Sexual Battery
16-6-22.2	Aggravated Sexual Battery
16-12-1	Contributing to the delinquency, unruliness or deprivation of a minor
16-12-100	Sexual exploitation of children
19-7-5	Reporting of child abuse

Guardianship & Transfers of Guardianship Terminations

Authority Purpose	15-11-30.1, Title 29 Guardianship Juvenile Court has concurrent jurisdiction to grant temporary guardianship of person & property of a minor of any child, (in practice Juvenile Court property guardianships rarely done) – Several different types of guardianships
Termination of Guardianship	Dissolves guardianship
Transfer from Probate Court	When parent files to revoke a Probate Court guardianship and the guardian files “objections” to the revocation, then the Probate Court shall transfer case to Juvenile Court for notice and hearing as to whether dissolution is in the child’s best interest
Pleading Parties	Petition for Guardianship, Petition to Revoke Guardianship Parent, guardian, CA Atty., DFACS, attorney for parties
Standard of Proof	clear and convincing Best Interest of child
Guardianship	Documents needed: Petition, Relinquishment by Parents Proof of Service, Guardian information form, Guardian Duties form, consent of child over 14 years, Order, Letters of Temporary Guardianship take testimony of proposed guardian under oath, confirm proposed guardian understands responsibilities as they temporarily assumes parental role (food, clothing, shelter, medical) confirm proposed guardian understands they cannot just return the child to the parents without first coming back to the Court which granted the guardianship, they have discretion to allow visits confirm proposed guardian understands they must keep Court advised of changes in address confirm proposed guardian understands DFACS may close case & may not provide any services or benefits confirm proposed guardian understands, parent may file to revoke guardianship & the guardian is responsible for filing objections if necessary Oath – proposed guardian takes oath on record Determine whether proposed guardian is eligible for subsidized guardianship (SG) or enhanced subsidized guardianship payments from DFACS
Caveat	when guardianship is proposed as an alternative to proceeding with a deprivation petition, DFACS closes case,

no help for offending parent to correct deficits, no record of what parent should correct prior to resuming parental role, no monitoring of child's care
if guardianship granted in lieu of proceeding w/ deprivation petition then ask Court to include in Dismissal Order all corrections parent needs to make prior to revoking the guardianship

Guardianship Subsidy effective July 1, 2005

DFACS 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

Subsidized Guardianship (SG) \$10.00 per diem and
Enhanced Subsidized Guardianship (ESG) :household income less than 150K; 80% of current foster care per diem
The child must have been in DFACS foster care for a minimum of 12 months

Relative has received a favorable **Relative Care Assessment (RCA)** (home evaluation)

Proposed guardian is related by blood, marriage or adoption
Form 45SG, application and agreement completed prior to the grant of guardianship

subsidy is \$10.00 per day for regular RCS or 80% of the current foster care per diem for enhanced
renewed by DFACS annually

other support services available through DFACS to Relative Caregivers include: wraparound, PUP funds, initial & annual clothing allowance, Medicaid, physical or emotional therapy, training & educational support to relative.

Termination of Juvenile Court Guardianship

for guardianship granted prior to 2000, then guardianship is revocable at will of parent, CA or Court may ORDER referral to DFACS **for guardianship granted after 2000 & parental relinquishment states guardian may file objections**, the guardian may file objections to the dissolution of the guardianship, then notice to parties & evidentiary hearing, CA 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 CA may file objections to dissolution of guardianship – undecided

Transfer from Probate Court

guardianship granted in Probate Court when parent files to revoke the guardianship, if the guardian files objections to the revocation then Probate Court shall transfer the case to Juvenile Court for notice and evidentiary hearing, CA

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

CA may file objections to dissolution of guardianship
Following Juvenile Court determination, case must be transferred back to Probate Court

Legitimation

Authority	19-7-22, 15-11-28(e) Significant changes to 19-7-22 effective 7-1-05
Purpose	Create legal relationship between child and birth father Expands paternal resources for child Change child's name
Jurisdiction	15-11-28(e) "Pending" deprivation in juvenile court, open case Concurrent jurisdiction with superior court
Venue	County of residence of mother, venue can be waived <u>Holmes v. Traweek</u> , 276 ga 296 (2003) or county of residence of the person having legal custody or guardianship of the child
Pleading	Petition to Legitimate
Parties	Mother, Father, Child, DFACS
Notice	To mother, Pending deprivation so argument may be made for child advocate attorney & DFACS
Standard of Proof	Has father abandoned his "opportunity interest" to develop a familial relationship with child? If No, father has NOT abandoned his opportunity interest & father has established a familial bond then best interest of child standard If Yes, father has abandoned his opportunity interest & father has NOT established a familial bond then fitness to parent <u>In Re: Baby Girl Eason</u> , 257 Ga 292 (1987) <u>Lebrecht v. Davis</u> , 243 Ga App 307 (2000)
Order	Should state which standard was used and contain findings of fact Or conclusions of law to support the legitimation decision, <u>Jones v. Smith</u> , 250 ga app 486 (2001).
Objections	Mother can file Child advocate – maybe
<u>Decision Points</u>	<ul style="list-style-type: none">▪ Has father abandoned opportunity interest?▪ Is legitimation in child's best interest?▪ If older child, discuss name change issue▪ DNA test, always a good idea
Practice Points	<ul style="list-style-type: none">▪ <i>may be unnecessary if there is a prior paternity determination, but name change may still be an issue which legitimation can cure</i>▪ <i>following legitimation father must go to Vital Statistics & get new birth certificate with name change & his name</i>

- added*
- *legitimation does not change child custody*
 - *DFACS may have information if mother has ever named someone else as the father*

Administrative Legitimation

Effective 7-1-05, (OCGA 19-7-22); a birth father may administratively legitimate his child when establishing paternity through the hospital voluntary acknowledgement program at the time of the child's birth or later at a child support office where the statement contains express language indicating voluntary acknowledgement by both the mother and the father. Despite the changes in the law, some questions remain as to name change of the child to reflect the legitimation and whether an "administrative legitimation" provides the birth father & child with all legal rights included in a separate legitimation petition & Court Order.

15-11-28. (e) Jurisdiction of juvenile court.

(e) Concurrent jurisdiction as to legitimation petitions.

(1) The juvenile court shall have concurrent jurisdiction to hear any legitimation petition transferred to the juvenile court by proper order of the superior court.

(2) The juvenile court shall have jurisdiction to hear any legitimation petition filed pursuant to Code Section 19-7-22 as to a child with respect to whom a deprivation proceeding is pending in the juvenile court at the time the legitimation petition is filed.

(3) Notwithstanding the provisions of paragraphs (1) and (2) of this subsection, after a petition for legitimation is granted, if a demand for a jury trial as to support has been properly filed by either parent, then the case shall be transferred to superior court for such jury trial.

Discovery

Authority	URJC 7.1 through 7.9 9-11-26 through 9-11-37
Purpose	At discretion of Juvenile Court Judge, allows for discovery in cases alleging deprivation, termination of parental rights & transfers from Superior Court
Timing	Request for discovery MUST be filed within 48 hours of petition filing when child is detained OR within 15 days if child not detained Time requirements may be modified upon showing of good cause
Requirements	<ul style="list-style-type: none">▪ Any request for discovery must be in writing▪ State type & scope of discovery requested, timeframe for completion Include rule nisi served not later than 3 days before nisi serve parents, attorneys, child or legal guardian, child advocate
Types	<ul style="list-style-type: none">▪ Written interrogatories▪ Deposition▪ Request for admissions▪ Request for production of documents Request for physical or mental exam of a parent, guardian, custodian or child & why necessary
Discovery Order	Whether discovery allowed Outline discovery allowed Time for completion of discovery Date & time for adjudication
Trial	To be heard within 7 days of discovery completion
Motion to Compel Discovery	Must be made prior to adjudication

RULES OF JUVENILE COURTS 7. DISCOVERY AND MOTIONS

7.1 When Discovery is Permitted. Discovery may be allowed in all cases where deprivation is alleged, or where the termination of parental rights is requested or in cases where matters of custody have been referred to the juvenile court by a superior court. Any discovery so permitted shall be at the discretion of the judge to whom the case is assigned, and any such discovery allowed shall be made in conformance with Article V of the Civil Practice Act, O.C.G.A. §§ 9-11-26 through 9-11-37, except as modified by these rules. Discovery in any case in which delinquency is alleged shall be as provided by O.C.G.A. § 15-11-75.

7.2 How Discovery May Be Made. Any request for discovery shall be made in writing and shall state with particularity the type of discovery requested.

If the request is for answers to written interrogatories, such request shall include the questions to be answered and include the name of the person or persons who are to respond to those interrogatories.

If the request is for the taking of a deposition, such request should name the person or persons who are to be deposed and their addresses, and such request should also include the subject matter areas which the deposition would embrace.

If the request is for admissions of a party to a proceeding, such request should include the exact admissions requested and the party to whom directed.

If the request is for production of documents, such request shall state the documents requested and the name of the individual from whom the documents are sought.

If the request is for physical or mental examination of a parent, guardian, custodian or child, such request shall state the name of the person or persons to be examined and the reason why such examination is necessary.

Rule Nisi. All written requests for discovery shall include a Rule Nisi order setting down a time and place for a hearing for the entry of an order by the court as to the scope of discovery to be allowed and the time for the completion of such discovery.

Objections. Any and all objections to any of the requests for discovery so made shall be made at such hearing or all objections are waived unless otherwise allowed by discretion of the court.

Notice and Service. The written motion and notice of the hearing thereof shall be served not later than three (3) days, excluding weekends and holidays, before the time specified for the hearing, unless specifically ordered otherwise by the court on ex parte application for good cause shown. All requests for discovery shall be served as required by these rules upon all parties, including parents, child or legal custodian and any other person to whom the court directs, or their legal counsel, if so represented.

7.3 Time Periods. Any request for discovery must be filed within forty-eight (48) hours of the filing of the petition where the child is in detention. Otherwise, the request must be filed within fifteen (15) days of the filing of the petition. The court may modify these requirements upon a showing of good cause for the lack of filing within these time periods.

Any such discovery permitted shall be completed within fifteen (15) days of the date of the order permitting such discovery where the child is in detention. In all other cases, such discovery shall be completed within thirty (30) days from the date of the order permitting such discovery. These time periods may be either extended or abbreviated at the discretion of the court for legal cause shown.

If the child is in detention and a request for discovery is made by any party, such request shall simultaneously act as request for a continuance as pertains to the time provisions of O.C.G.A. § 15-11-39(a) regarding time period for adjudicatory hearings. The adjudicatory hearing shall then be reset to be heard within seven (7) days, excluding weekends and holidays, of the date that such discovery is ordered to be completed by the court.

7.4 Hearing on the Motion. At the hearing set to determine whether discovery is to be allowed, the court shall enter an order outlining the discovery to be allowed and time for completion of such discovery and setting the date for the adjudicatory hearing.

Any motions for orders to compel discovery, requests for sanctions or request for expenses as a result thereof, shall be made to the judge issuing the original order allowing discovery. Any such motion shall be made prior to the adjudicatory hearing and in conformance with the procedures set out herein for filing motions.

7.5 Pretrial Procedure. Upon the motion of any party, or upon its own motion, the court shall direct the attorneys for the parties to appear before it for a conference to consider:

1. The simplification of the issues;
2. The necessity or desirability of amendments to the pleadings;
3. The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;
4. The limitation of the number of expert witnesses; and
5. Such other matters as may aid in the disposition of the action.

The court shall make an order which recites the action taken at the conference and the agreements made by the parties as to any of the matters considered and which limits the issue for trial to those not disposed of by admissions or agreements of counsel. The order, when entered, controls the subsequent course of the action unless modified at the trial to prevent manifest injustice.

7.6 Responsive Pleadings. Responsive pleadings in all proceedings before the juvenile court are permissible and encouraged. However, they are not mandatory. If filed, such responsive pleadings must be in writing and served upon all parties. Responsive pleadings may be filed any time prior to the adjudicatory hearing.

7.7 Continuances. Except as provided for in Rules 7.3 and 8.6, any request for continuance shall be made in conformance with O.C.G.A. § 9-10-150 et seq. through or on stipulation of counsel alone. Permission of the court is required for all continuances

7.8 Filing. All pleadings made pursuant to any proceeding of the juvenile court shall be filed with the clerk of juvenile court and stamped with the date

and time of filing along with a certificate of service showing to whom copies have been served.

7.9 Other Motions. All other pretrial motions must be made in writing and filed not later than three (3) days, excluding weekends and holidays, before the adjudicatory hearing unless otherwise permitted by the court. If any such motions necessitate an evidentiary hearing, the procedures in Rule 7.2(c) concerning notice and service must be followed.

9-11-26

(a) *Discovery methods.* Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property for inspection and other purposes; physical and mental examinations; and requests for admission. Unless the court orders otherwise under subsection (c) of this Code section, the frequency of use of these methods is not limited.

(b) *Scope of discovery.* Unless otherwise limited by order of the court in accordance with this chapter, the scope of discovery is as follows:

(1) **IN GENERAL.** Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence;

(2) **INSURANCE AGREEMENTS.** A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this paragraph, an application for insurance shall not be treated as part of an insurance agreement;

(3) **TRIAL PREPARATION; MATERIALS.** Subject to paragraph (4) of this subsection, a party may obtain discovery of documents and tangible things otherwise discoverable under paragraph (1) of this subsection and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including his attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such

materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation. A party may obtain, without the required showing, a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain, without the required showing, a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. Paragraph (4) of subsection (a) of Code Section 9-11-37 applies to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a 'statement previously made' is (A) a written statement signed or otherwise adopted or approved by the person making it, or (B) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded; and (4) TRIAL PREPARATION; EXPERTS. Discovery of facts known and opinions held by experts, otherwise discoverable under paragraph (1) of this subsection and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

A)(i) A party may, through interrogatories, require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

(ii) A party may obtain discovery under Code Section 9-11-30, 9-11-31, or 9-11-34 from any expert described in this paragraph, the same as any other witness, but the party obtaining discovery of an expert hereunder must pay a reasonable fee for the time spent in responding to discovery by that expert, subject to the right of the expert or any party to obtain a

determination by the court as to the reasonableness of the fee so incurred;

(B) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in subsection (b) of Code Section 9-11-35 or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means; and

(C) Unless manifest injustice would result:

(i) The court shall require the party seeking discovery to pay the expert a reasonable fee for time spent in responding to discovery under subparagraph (B) of this paragraph; and

(ii) With respect to discovery obtained under division (ii) of subparagraph (A) of this paragraph, the court may require, and with respect to discovery obtained under subparagraph (B) of this paragraph the court shall require, the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(c) *Protective orders.* Upon motion by a party or by the person from whom discovery is sought and for good cause shown, the court in which the action is pending or, alternatively, on matters relating to a deposition, the court in the county where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

- (1) That the discovery not be had;
- (2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;
- (3) That the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;
- (4) That certain matters not be inquired into or that the scope of the discovery be limited to certain matters;
- (5) That discovery be conducted with no one present except persons designated by the court;
- (6) That a deposition, after being sealed, be opened only by order of the court;
- (7) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; or
- (8) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court. If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. Paragraph (4) of subsection (a) of Code Section 9-11-37 applies to the award of expenses incurred in relation to the motion.

(d) *Sequence and timing of discovery.* Unless the court, upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence; and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(e) *Supplementation of responses.* A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his response to include information thereafter acquired, except as follows:

(1) A party is under a duty seasonably to supplement his response with respect to any question directly addressed to:

(A) The identity and location of persons having knowledge of discoverable matters; and

(B) The identity of each person expected to be called as an expert witness at trial, the subject matter on which he is expected to testify, and the substance of his testimony.

(2) A party is under a duty seasonably to amend a prior response if he obtains information upon the basis of which:

(A) He knows that the response was incorrect when made; or
(B) He knows that the response, though correct when made, is no longer true and the circumstances are such that a failure to amend the response is, in substance, a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

9-11-27

(a) *Before action.*

(1) **PETITION.** A person who desires to perpetuate such person's own testimony or that of another person regarding any matter that may be cognizable in any court may file a verified petition in the superior court of the county where the witness resides. The petition shall be entitled in the name of the petitioner and shall show that the petitioner expects to be a party to litigation but is presently unable to bring it or cause it to be brought, the subject matter of the expected action and the petitioner's interest therein, the facts which the petitioner desires to establish by the proposed testimony and the petitioner's reasons for desiring to perpetuate it, the names or a description of the persons the petitioner expects will be adverse parties and their addresses so far as known, and the names and addresses of the persons to be examined and the substance of the testimony which the petitioner expects to elicit from each, and shall ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition, for the purpose of perpetuating their testimony.

(2) **NOTICE AND SERVICE.** The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the court at a time and place named therein for the order described in the petition. At least 20 days before the date of hearing the notice shall be served either within or outside the county in the manner provided for service of summons; but, if such service cannot with due diligence be made upon any expected adverse party named in the petition, the court may make such order as is just for service by publication or otherwise and shall appoint, for persons not served, an attorney who shall represent them and, in case they are not otherwise represented, shall cross-examine the deponent. The court may make such order as is just requiring the petitioner to pay a reasonable fee to an attorney so appointed. If any expected adverse party is a minor or an incompetent person and does not have a general guardian, the court shall appoint a guardian ad litem.

(3) **ORDER AND EXAMINATION.** If the court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written interrogatories. The depositions may then be taken

by a certified court reporter, or as otherwise provided by the rules of the Board of Court Reporting, in accordance with this chapter; and the court may make orders of the character provided for by Code Sections 9-11-34 and 9-11-35. For the purpose of applying this chapter to depositions for perpetuating testimony, each reference therein to the court in which the action is pending shall be deemed to refer to the court in which the petition for such deposition was filed.

(4) **USE OF DEPOSITION.** If a deposition to perpetuate testimony is taken under this Code section or if, although not so taken, it would be otherwise admissible under the laws of this state, it may be used in any action involving the same parties and the same subject matter subsequently brought.

(b) *Pending appeal.* If an appeal has been taken from a judgment of a trial court or before the taking of an appeal if the time therefor has not expired, the court in which the judgment was rendered may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in the trial court. In such case the party who desires to perpetuate the testimony may make a motion in the trial court for leave to take the depositions, upon the same notice and service thereof as if the action were pending in the court. The motion shall show the names and addresses of persons to be examined, the substance of the testimony which the movant expects to elicit from each, and the reasons for perpetuating their testimony. If the court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may make an order allowing the depositions to be taken and may make orders of the character provided for by Code Sections 9-11-34 and 9-11-35; and thereupon the depositions may be taken before a certified court reporter, or as otherwise provided by the rules of the Board of Court Reporting, and used in the same manner and under the same conditions as are prescribed in this chapter for depositions taken in actions pending in court.

(c) *Perpetuation by action.* This Code section does not limit the power of a court to entertain an action to perpetuate testimony.

9-11-28

(a) *Within the United States and its possessions.* Within the United States or within a territory or insular possession subject to the dominion of the United States, depositions shall be taken before an officer authorized to administer oaths by the laws of the United States or by the laws of the place where the examination is held or before a court reporter appointed by the court in which the action is pending or, if within this state, before a certified court reporter or as otherwise provided by the rules of the Board of Court Reporting. A person so appointed has power to administer oaths and take testimony.

(b) *In foreign countries.* In a foreign state or country depositions shall be taken on notice before a secretary of embassy or legation, consul general,

consul, vice-consul, or consular agent of the United States, or before such person or officer as may be appointed by commission or under letters rogatory. A commission or letters rogatory shall be issued only when necessary or convenient, on application and notice, and on such terms and with such directions as are just and appropriate. Officers may be designated in notices or commissions either by name or by descriptive title and letters rogatory may be addressed 'To the Appropriate Judicial Authority in (here name the country).'

(c) *Disqualification for interest.* No deposition shall be taken before a court reporter who is a relative, employee, attorney, or counsel of any of the parties, or who is a relative or employee of such attorney or counsel, or who is financially interested in the action, excepting that a deposition may be taken before a court reporter who is a relative of a party or of an attorney or counsel of a party if all parties represented at the deposition enter their explicit consent to the same upon the record of the deposition.

9-11-29

Unless the court orders otherwise, the parties may, by written stipulation:

(1) Provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and, when so taken, may be used like other depositions; and

(2) Modify the procedures provided by this chapter for other methods of discovery.

9-11-29.1

(a) Depositions and other discovery material otherwise required to be filed with the court under this chapter shall not be required to be so filed unless:

(1) Required by local rule of court;

(2) Ordered by the court;

(3) Requested by any party to the action;

(4) Relief relating to discovery material is sought under this chapter and said material has not previously been filed under some other provision of this chapter, in which event copies of the material in dispute shall be filed by the movant contemporaneously with the motion for relief; or

(5) Such material is to be used at trial or is necessary to a pretrial or post-trial motion and said material has not previously been filed under some other provision of this chapter, in which event the portions to be used shall be filed with the clerk of the court at the outset of the trial or at the filing of the motion, insofar as their use can be reasonably anticipated by the parties having custody thereof, but a party attempting to file and use such material which was not filed with the clerk at the outset of the trial or at the filing of the motion shall show to the satisfaction of the court, before the court may authorize such filing and use, that sufficient reasons exist to justify that late

filing and use and that the late filing and use will not constitute surprise or manifest injustice to any other party in the proceedings.

(b) Until such time as discovery material is filed under paragraphs (1) through (5) of subsection (a) of this Code section, the original of all depositions shall be retained by the party taking the deposition and the original of all other discovery material shall be retained by the party requesting such material, and the person thus retaining the deposition or other discovery material shall be the custodian thereof.

9-11-30

(a) *When depositions may be taken.* After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of court, granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition prior to the expiration of 30 days after service of the summons and complaint upon any defendant or service made under subsection (f) of Code Section 9-11-4, except that leave is not required if a defendant has served a notice of taking deposition or otherwise sought discovery or if special notice is given as provided in paragraph (2) of subsection (b) of this Code section. The attendance of witnesses may be compelled by subpoena as provided in Code Section 9-11-45. The deposition of a person confined in a penal institution may be taken only by leave of court on such terms as the court prescribes.

(b) *Notice of examination.*

(1) **GENERAL REQUIREMENTS.** A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition, the means by which the testimony shall be recorded, and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person to be examined or the particular class or group to which he or she belongs. If a subpoena for the production of documentary and tangible evidence is to be served on the person to be examined, the designation of the materials to be produced, as set forth in the subpoena, shall be attached to, or included in, the notice.

(2) **SPECIAL NOTICE.** Leave of court is not required for the taking of a deposition by plaintiff if the notice:

(A) States that the person to be examined is about to go out of the county where the action is pending and more than 150 miles from the place of trial, or is about to go out of the United States, or is bound on a voyage to sea, and will be unavailable for examination unless the deposition is taken before expiration of the 30 day period; and

(B) Sets forth facts to support the statement. The plaintiff's attorney shall sign the notice, and said attorney's signature constitutes a certification by him or her that, to the best of his or her knowledge, information, and belief, the statement and supporting facts are true. If a party shows that, when he

or she was served with notice under this paragraph, he or she was unable through the exercise of diligence to obtain counsel to represent him or her at the taking of the deposition, the deposition may not be used against such party.

(3) TIME REQUIREMENTS. The court may, for cause shown, enlarge or shorten the time for taking the deposition.

(4) RECORDING OF DEPOSITION. Unless the court orders otherwise, the testimony at a deposition must be recorded by stenographic means, and may also be recorded by sound or sound and visual means in addition to stenographic means, and the party taking the deposition shall bear the costs of the recording. A deposition shall be conducted before an officer appointed or designated under Code Section 9-11-28. Upon motion of a party or upon its own motion, the court may issue an order designating the manner of recording, preserving, and filing of a deposition taken by nonstenographic means, which order may include other provisions to assure that the recorded testimony will be accurate and trustworthy.

Any party may arrange for a transcription to be made from the recording of a deposition taken by nonstenographic means. With prior notice to the deponent and other parties, any party may designate another method to record the deponent's testimony in addition to the methods specified by the person taking the deposition. The additional record or transcript shall be made at that party's expense unless the court otherwise orders. The appearance or demeanor of deponents or attorneys shall not be distorted through camera or sound-recording techniques. Notwithstanding the foregoing provisions of this paragraph, a deposition may be taken by telephone or other remote electronic means only upon the stipulation of the parties or by order of the court. For purposes of the requirements of this chapter, a deposition taken by telephone or other remote electronic means is taken in the state and at the place where the deponent is to answer questions.

(5) PRODUCTION OF DOCUMENTS AND THINGS. The notice to a party deponent may be accompanied by a request made in compliance with Code Section 9-11-34 for the production of documents and tangible things at the taking of the deposition. The procedure of Code Section 9-11-34 shall apply to the request.

(6) Deposition of organization. A party may, in his or her notice, name as the deponent a public or private corporation or a partnership or association or a governmental agency and designate with reasonable particularity the matters on which examination is requested. The organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which he or she will testify. The persons so designated shall testify as to matters known or reasonably available to the organization. This paragraph does not preclude taking a deposition by any other procedure authorized in this chapter.

(c) Examination and cross-examination; record of examination; oath; objections.

(1) Examination and cross-examination of witnesses may proceed as permitted at the trial under the rules of evidence. The authorized officer or court reporter before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under the direction and in the presence of the authorized officer or court reporter, record the testimony of the witness.

(2) All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition, and said party shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

(3) Unless otherwise ordered by the court or agreed by the parties, the officer shall retain the record of each deposition until the later of (A) five years after the date on which the deposition was taken, or (B) two years after the date of final disposition of the action for which the deposition was taken and any appeals of such action. The officer may preserve the record through storage of the original paper, notes, or recordings or an electronic copy of the notes, recordings, or the transcript on computer disks, cassettes, backup tape systems, optical or laser disk systems, or other retrieval systems.

(d) *Motion to terminate or limit examination.* At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or the court in the county where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition or may limit the scope and manner of the taking of the deposition as provided in subsection (c) of Code Section 9-11-26. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. Paragraph (4) of subsection (a) of Code Section 9-11-37 applies to the award of expenses incurred in relation to the motion.

(e) *Review by witness; changes; signing.* If requested by the deponent or a party before completion of the deposition, the deponent shall have 30 days after being notified by the officer that the transcript or recording is available in which to review the transcript or recording and, if there are changes in form or substance, to sign a statement reciting such changes and the reasons given by the deponent for making them. The officer shall indicate in the certificate prescribed by paragraph (1) of subsection (f) of this Code section whether any review was requested and, if so, shall append any changes made by the deponent during the period allowed. If the

deposition is not reviewed and signed by the witness within 30 days of its submission to him or her, the officer shall sign it and state on the record that the deposition was not reviewed and signed by the deponent within 30 days. The deposition may then be used as fully as though signed unless, on a motion to suppress under paragraph (4) of subsection (d) of Code Section 9-11-32, the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(f) *Certification and filing by officer; inspection and copying of exhibits; copy of deposition.*

(1)(A) The officer shall certify that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness. This certificate shall be in writing and accompany the record of the deposition. The officer shall then securely seal the deposition in an envelope marked with the title of the action, the court reporter certification number, and 'Deposition of (here insert name of witness)' and shall promptly file it with the court in which the action is pending or deliver it to the party taking the deposition, as the case may be, in accordance with Code Section 9-11-29.1.

(B) Documents and things produced for inspection during the examination of the witness shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition and may be inspected and copied by any party, except that the person producing the materials may substitute copies to be marked for identification, if he or she affords to all parties fair opportunity to verify the copies by comparison with the originals; and, if the person producing the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to and returned with the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

(2) Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.

(g) *Failure to attend or to serve subpoena; expenses.*

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon him and the witness, because of such failure, does not attend and if another party attends in person or by attorney because he expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees.

(h) *Form of presentation.* Except as otherwise directed by the court, a party offering deposition testimony may offer it in stenographic or non-stenographic form, but if in non-stenographic form, the party shall also provide the court with a transcript of the portions so offered. On request of any party in a case tried before a jury, deposition testimony offered other than for impeachment purposes shall be presented in non-stenographic form, if available, unless the court for good cause orders otherwise.

9-11-31

(a) *Serving questions; notice.*

(1) After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon written questions. The attendance of witnesses may be compelled by the use of subpoena as provided in Code Section 9-11-45. The deposition of a person confined in a penal institution may be taken only by leave of court on such terms as the court prescribes.

(2) A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating the name and address of the person who is to answer them, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs and the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with paragraph (6) of subsection (b) of Code Section 9-11-30.

(3) Within 30 days after the notice and written questions are served, a party may serve cross-questions upon all other parties. Within ten days after being served with cross-questions, a party may serve redirect questions upon all other parties. Within ten days after being served with redirect questions, a party may serve recross-questions upon all other parties. The court may, for cause shown, enlarge or shorten the time.

(b) *Officer to take responses and prepare record.* A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by subsections (c), (e), and (f) of Code Section 9-11-30, to take the testimony of the witness in response to the questions and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the questions received by him.

9-11-32

(a) *Use of depositions.* At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

- (1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness;
- (2) The deposition of a party or of anyone who, at the time of taking the deposition, was an officer, director, or managing agent or a person designated under paragraph (6) of subsection (b) of Code Section 9-11-30 or subsection (a) of Code Section 9-11-31 to testify on behalf of a public or private corporation, a partnership or association, or a governmental agency which is a party may be used by an adverse party for any purpose;
- (3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds:
- (A) That the witness is dead;
 - (B) That the witness is out of the county, unless it appears that the absence of the witness was procured by a party offering the deposition;
 - (C) That the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment;
 - (D) That the party offering the deposition has been unable to procure the attendance of the witness by subpoena;
 - (E) That because of the nature of the business or occupation of the witness it is not possible to secure his personal attendance without manifest inconvenience to the public or third persons; or
 - (F) That the witness will be a member of the General Assembly and that the session of the General Assembly will conflict with the session of the court in which the case is to be tried;
- (4) The deposition of a witness, whether or not a party, taken upon oral examination, may be used in the discretion of the trial judge, even though the witness is available to testify in person at the trial. The use of the deposition shall not be a ground for excluding the witness from testifying orally in open court; or
- (5) If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce all of it which is relevant to the part introduced, and any party may introduce any other parts. Substitution of parties does not affect the right to use depositions previously taken; and, when an action in any court of the United States or of any state has been dismissed and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor.
- (b) *Objections to admissibility.* Subject to paragraph (3) of subsection (d) of this Code section, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.
- (c) *Effect of taking or using depositions.* A party does not make a person his own witness for any purpose by taking his deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition; but this shall not apply to the

use by an adverse party of a deposition under paragraph (2) of subsection (a) of this Code section.

At the trial or hearing any party may rebut any relevant evidence contained in a deposition whether introduced by him or by any other party.

(d) *Effect of errors and irregularities in depositions.*

(1) AS TO NOTICE. All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(2) AS TO DISQUALIFICATION OF OFFICER. Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(3) AS TO TAKING OF DEPOSITION.

(A) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(B) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented are waived unless seasonable objection thereto is made at the taking of the deposition.

(C) Objections to the form of written questions submitted under Code Section 9-11-31 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within five days after service of the last questions authorized.

(4) AS TO COMPLETION AND RETURN OF DEPOSITION. Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the officer under Code Sections 9-11-30 and 9-11-31 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

9-11-33

(a) *Availability; procedures for use.*

(1) Any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or a governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party; provided,

however, that no party may serve interrogatories containing more than 50 interrogatories, including subparts, upon any other party without leave of court upon a showing of complex litigation or undue hardship incurred if such additional interrogatories are not permitted.

(2) Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after the service of the interrogatories, except that a defendant may serve answers or objections within 45 days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. The party submitting the interrogatories may move for an order under subsection (a) of Code Section 9-11-37 with respect to any objection to or other failure to answer an interrogatory.

(b) *Scope; use at trial.*

(1) Interrogatories may relate to any matters which can be inquired into under subsection (b) of Code Section 9-11-26, and the answers may be used to the extent permitted by the rules of evidence.

(2) An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or to the application of law to fact; but the court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pretrial conference or other later time.

(c) *Option to produce business records.* Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit, or inspection of such business records, or from a compilation, abstract, or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to the interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit, or inspect such records and to make copies, compilations, abstracts, or summaries.

9-11-34

(a) *Scope.* Any party may serve on any other party a request:

(1) To produce and permit the party making the request, or someone acting on his behalf, to inspect and copy any designated documents (including writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of

subsection (b) of Code Section 9-11-26 and which are in the possession, custody, or control of the party upon whom the request is served; or

(2) To permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of subsection (b) of Code Section 9-11-26.

(b) *Procedure.*

(1) The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. The request shall set forth the items to be inspected, either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

(2) The party upon whom the request is served shall serve a written response within 30 days after the service of the request, except that a defendant may serve a response within 45 days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order under subsection (a) of Code Section 9-11-37 with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

(c) *Applicability to nonparties.*

(1) This Code section shall also be applicable with respect to discovery against persons, firms, or corporations who are not parties, in which event a copy of the request shall be served upon all parties of record; or, upon notice, the party desiring such discovery may proceed by taking the deposition of the person, firm, or corporation on oral examination or upon written questions under Code Section 9-11-30 or 9-11-31. The nonparty or any party may file an objection as provided in subsection (b) of this Code section. If the party desiring such discovery moves for an order under subsection (a) of Code Section 9-11-37 to compel discovery, he or she shall make a showing of good cause to support his or her motion.

(2) This Code section shall also be applicable with respect to discovery against a nonparty who is a practitioner of the healing arts or a hospital or health care facility, including those operated by an agency or bureau of the state or other governmental unit. Where such a request is directed to such a nonparty, a copy of the request shall be served upon all parties of record, and where such a request to such a nonparty seeks the records of a person who is not a party, a copy of the request shall be served upon all parties of record, the person whose records are sought, and, if known, that person's counsel; or, upon notice, the party desiring such discovery may proceed by

taking the deposition of the person, firm, or corporation on oral examination or upon written questions under Code Section 9-11-30 or 9-11-31. The nonparty, any party, or the person whose records are sought may file an objection with the court in which the action is pending and shall serve a copy of such objection on the nonparty to whom the request is directed, who shall not furnish the requested materials until further order of the court, and on all other parties to the action. Upon the filing of such objection, the party desiring such discovery may move for an order under subsection (a) of Code Section 9-11-37 to compel discovery and, if he or she shall make a showing of good cause to support his or her motion, discovery shall be allowed. If no objection is filed within ten days of the request, the nonparty to whom the request is directed shall promptly comply therewith.

(d) *Confidentiality.* The provisions of this Code section shall not be deemed to repeal the confidentiality provided by Code Sections 37-3-166 concerning mental illness, 37-4-125 concerning mental retardation, and 37-7-166 concerning alcohol and drug treatment.

9-11-35

(a) *Order for examination.* When the mental or physical condition (including the blood group) of a party, or of a person in the custody or under the legal control of a party, is in controversy, the court in which the action is pending may order the party to submit to a physical examination by a physician or to submit to a mental examination by a physician or a licensed psychologist or to produce for examination the person in his custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

(b) *Report of examining physician or psychologist.*

(1) If requested by the party against whom an order is made under subsection (a) of this Code section or by the person examined, the party causing the examination to be made shall deliver to him a copy of a detailed written report of the examining physician or psychologist setting out his findings, including results of all tests made, diagnoses, and conclusions, together with like reports of all earlier examinations of the same condition.

(2) Any party shall be entitled, upon request, to receive from the party whose physical or mental condition is in issue, or who is in control of, or has legal custody of, a person whose physical or mental condition is in issue, a report of any and every examination, previously or thereafter made, of the condition in issue, unless, in the case of a report of examination of a person not a party, the party shows that he is unable to obtain it.

(3) The court, on motion, may make an order against a party requiring delivery of a report under paragraph (1) or (2) of this subsection on such terms as are just; and, if a physician or psychologist fails or refuses to make a report, the court may exclude his testimony if offered at the trial.

(4) By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives any

privilege he may have in that action, or any other action involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine him in respect to the same mental or physical condition.

(5) Paragraphs (1) through (4) of this subsection apply to examinations made by agreement of the parties, unless the agreement expressly provides otherwise. Paragraphs (1) through (4) of this subsection do not preclude discovery of a report of an examining physician or psychologist or the taking of a deposition of the physician or psychologist in accordance with any other Code section of this chapter.

9-11-36

(a) Scope; service; answer or objection; motion to determine sufficiency.

(1) A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of subsection (b) of Code Section 9-11-26 which are set forth in the request and that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.

(2) Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney; but unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of 45 days after service of the summons and complaint upon him. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission; and, when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; he may, subject to subsection (c) of Code Section 9-11-37, deny the matter or set forth reasons why he cannot admit or deny it.

(3) The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this subsection, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a pretrial conference or at a designated time prior to trial. Paragraph (4) of subsection (a) of Code Section 9-11-37 shall apply to the award of expenses incurred in relation to the motion.

(b) *Effect of admission.* Any matter admitted under this Code section is conclusively established unless the court, on motion, permits withdrawal or amendment of the admission. Subject to Code Section 9-11-16 governing amendment of a pretrial order, the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice him in maintaining his action or defense on the merits. Any admission made by a party under this Code section is for the purpose of the pending action only and is not an admission by him for any other purpose, nor may it be used against him in any other proceeding.

9-11-37

(a) *Motion for order compelling discovery.* A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

(1) **APPROPRIATE COURT.** An application for an order to a party may be made to the court in which the action is pending or, on matters relating to a deposition, to the court in the county where the deposition is being taken. An application for an order to a deponent who is not a party shall be made to the court in the county where the deposition is being taken;

(2) **MOTION; PROTECTIVE ORDER.** If a deponent fails to answer a question propounded or submitted under Code Section 9-11-30 or 9-11-31, or a corporation or other entity fails to make a designation under paragraph (6) of subsection (b) of Code Section 9-11-30 or subsection (a) of Code Section 9-11-31, or a party fails to answer an interrogatory submitted under Code Section 9-11-33, or if a party, in response to a request for inspection submitted under Code Section 9-11-34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order. If the court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to subsection (c) of Code Section 9-11-26;

(3) **EVASIVE OR INCOMPLETE ANSWER.** For purposes of the provisions of this chapter which relate to depositions and discovery, an evasive or incomplete answer is to be treated as a failure to answer; and

(4) **AWARD OF EXPENSES OF MOTION.**

If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

(B) If the motion is denied, the court shall, after opportunity for hearing, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

(C) If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(b) *Failure to comply with order.*

(1) **SANCTIONS BY COURT IN COUNTY WHERE DEPOSITION IS TAKEN.** If a deponent fails to be sworn or to answer a question after being directed to do so by the court in the county in which the deposition is being taken, the failure may be considered a contempt of that court.

(2) **SANCTIONS BY COURT IN WHICH ACTION IS PENDING.** If a party or an officer, director, or managing agent of a party or a person designated under paragraph (6) of subsection (b) of Code Section 9-11-30 or subsection (a) of Code Section 9-11-31 to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subsection (a) of this Code section or Code Section 9-11-35, the court in which the action is pending may make such orders in regard to the failure as are just and, among others, the following:

(A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence;

(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(D) In lieu of any of the foregoing orders, or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination; or

(E) Where a party has failed to comply with an order under subsection (a) of Code Section 9-11-35 requiring him to produce another for examination, such orders as are listed in subparagraphs (A), (B), and (C) of this paragraph, unless the party failing to comply shows that he is unable to produce such person for examination. In lieu of any of the foregoing orders, or in addition thereto, the court shall require the party failing to obey the order or the attorney advising him, or both, to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(c) *Expenses on failure to admit.* If a party fails to admit the genuineness of any document or the truth of any matter as requested under Code Section 9-11-36 and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, he may apply to the court for an order requiring the other party to pay him the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The court shall make the order unless it finds that the request was held objectionable pursuant to subsection (a) of Code Section 9-11-36, or the admission sought was of no substantial importance, or the party failing to admit had reasonable ground to believe that he might prevail on the matter, or there was other good reason for the failure to admit.

(d) *Failure of party to attend at own deposition or serve answers to interrogatories or respond to request for inspection.*

(1) If a party or an officer, director, or managing agent of a party or a person designated under paragraph (6) of subsection (b) of Code Section 9-11-30 or subsection (a) of Code Section 9-11-31 to testify on behalf of a party fails to appear before the officer who is to take his deposition, after being served with a proper notice, or fails to serve answers or objections to interrogatories submitted under Code Section 9-11-33, after proper service of the interrogatories, or fails to serve a written response to a request for inspection submitted under Code Section 9-11-34, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just; and, among others, it may take any action authorized under subparagraphs (b)(2)(A) through (b)(2)(C) of this Code section. In lieu of any order, or in addition thereto, the court shall require the party failing to act or the attorney advising him, or both, to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(2) The failure to act described in the provisions of this chapter which relate to depositions and discovery may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by subsection (c) of Code Section 9-11-26.

INTRA STATE TRANSFER (PRE-ADJ & POST DISPOSITION)

Authority	15-11-29 (a) for pre adjudication 15-11-30.5 for post adjudication 15-11-30.6
Purpose Pleadings	To transfer the deprivation case to a more convenient Venue Written motion or oral motion in open Court For pre adjudication, child/parent county of residence must be different f the county where the child was “found” & the action was brought For post adjudication, reunification must be the plan & the parent to whom reunification is directed resides in a different county
Parties Decision Points	Same as Adj. Plus notice to foster parents / caregiver for child For either type of transfer: DFACS policy requires a joint staffing between the receiving & the sending counties to assure there is an continuum of services & jurisdiction For post adjudication, Reunification must be the plan & the parent to whom Reunification is directed resides in a different county Parents’ residence changed during the pending action Disposition order states reunification Within 30 days, sending court provides certified copies of adjudication, disposition & transfer orders, case plan & other necessary documents to the receiving county For pre adjudication, NOT used often; child present in county when action commenced but parties residents of another county, then for convenience of parties & witnesses Court may transfer to the county of residence of the child
Practice Points	<ul style="list-style-type: none">• <i>recommend scheduling an In Court Review as soon as possible to make sure Court, DFACS and all parties are informed of the new Venue</i>• <i>may encounter meeting timeline requirements for case if there are delays with the transfer of necessary documents</i>

15-11-29. Venue.

(a) A proceeding under this article may be commenced in the county in which the child resides. If delinquent or unruly conduct is alleged, the proceeding may be commenced in the county in which the acts constituting the alleged delinquent or unruly conduct occurred. If deprivation is alleged, the proceeding may be brought in the county in which the child is present when it is commenced; provided, however, that for the convenience of the parties and witnesses, the court may transfer the proceeding to the county in which the child resides. If the proceeding is transferred, certified copies of all legal and social documents and

records pertaining to the proceeding on file with the clerk of court shall accompany the transfer. A juvenile court judge, an associate juvenile court judge, a judge pro tempore of the juvenile court, or any person sitting as a juvenile court judge may conduct hearings in connection with any proceeding under this article in any county within the judicial circuit.

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

15-11-30.5. Transfer of jurisdiction over reunification plans.

Whenever an order of disposition incorporates a reunification plan and the residence of the parent is not in the county of the court with jurisdiction or the residence of the parent changes to a county other than the county of the court with jurisdiction, the court may transfer jurisdiction to the juvenile court of the residence of the parent or parents to whom reunification is directed. Said transferring court shall provide the receiving court within 30 days of the filing of the transfer order with certified copies of the adjudication order, the order of disposition, the order of transfer, the case plan, and such other court documents deemed necessary by the sending court to enable the receiving court to assume jurisdiction over the matter. Compliance with this Code section shall terminate jurisdiction in the transferring court and initiate jurisdiction in the receiving court.

Interstate Compact on the Placement of Children (ICPC)

Authority	15-11-87, 89 & 90
Purpose	<p>To evaluate and approve placement of children who are in the temporary legal custody of DFACS 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.</p> <p>The sending State maintains jurisdiction and the sending State maintains legal custody of the child. The sending state will continue to have financial responsibility for the child and DFCS will have to 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.</p>
Where ICPC Applies	<p>The child is to remain in the legal custody of the sending State with the receiving State providing ongoing supervision and services</p>
Where ICPC Does NOT Apply	<p>Article III of ICPC states two situations where ICPC does NOT apply:</p> <ol style="list-style-type: none">1. The sending or bringing of a child into a receiving state by his parent, step-parent, grandparent, adult brother or sister, adult uncle or aunt or his legal guardian and leaving the child with any such relative or non-agency guardian in the receiving state.2. Any placement, sending or bring of a child into a receiving state pursuant to any other interstate compact to which both parties are a party to. (applies for delinquent or mental illness cases)
Procedure	<p>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:</p> <ol style="list-style-type: none">1. The name, date, and place of birth of the child.2. The identity and address or addresses of the parents or legal guardian.3. The name and address of the person, agency or institution to or with which the sending agency

- proposes to send, bring, or place the child.
4. A full statement of the reasons for such a proposed action and evidence of the authority to which the placement is proposed to be made. ICPC, Article III(b)(1-4). In practicality this means that the caseworker or the judge who has made a proposed order for disposition in another state, will need to complete ICPC Form 100A and send it, along with the social history of the child, to the Compact Administrator for the State of Georgia as defined in Article VII of the ICPC.
 5. The administrator reviews the information & forwards it to the Compact Administrator in the receiving state. The local child welfare agency in the receiving state conducts a study of the proposed placement, records their findings in a report to the receiving state's Compact Administrator. The child will not be "sent, brought, or cause to be sent or brought into the receiving state" until the Compact Administrator in the receiving state has notified the sending state in writing that the proposed placement does not appear to be contrary to the interests of the child. ICPC, Article III(d). The National Association for the Administrators of the Interstate Compact recommends that it should take no longer than 30 working days (6 weeks) to process such a request in the receiving state from the time that the Compact Administrator receives the request until the date that the proposed placement is approved or denied. In reality this process may take 3 to 6 months or LONGER.

Expedited Order / Priority Placement - Regulation 7

Priority Placement procedures are now applicable if the proposed placement is with a parent, step-parent, grandparent, adult brother or sister, adult uncle or aunt and:

1. the child is under two; or
2. the child is in an emergency shelter; or
3. the court finds the child has spent a substantial amount of time in the home of the proposed placement.

Or Priority Placement may be invoked where the receiving state Compact Administrator has a properly completed ICPC-100A and the necessary supporting documentation for over thirty (30) business days but has not provided notice as to whether the placement will be approved or denied. ICPC, Regulation 7.1(b). Regulation 7 establishes a strict time table for the completion of each step in the process of placing a child in a facility or foster care family across state lines. If a juvenile

court judge determines that the circumstances warrant a priority placement, he/she should within two (2) business days notify the sending agency (the local county DFCS office). The county department has three (3) business days to transmit the order along with a completed ICPC-100A and the, supporting documentation to the Georgia Compact Administrator. Within two (2) business days the Compact Administrator should send the priority placement request and supporting documentation to the receiving state's Compact Administrator by overnight mail. The receiving state's child welfare department has twenty (20) business days from this date to send to Compact Administrator for that state the evaluation of the proposed placement. The Compact Administrator in the receiving state will return the necessary documentation with a notice of approval or denial to the sending state's Compact Administrator by fax. The Georgia Compact Administrator will then notify DFCS and the juvenile court judge of the decision of the receiving state. Regulation 7, ICPC. The priority placement request and home study requires additional forms.

Priority Placement Order copy attached

Out of State Placement & CASA – CASA may help facilitate stable placements for children outside of Georgia. Because CASA is a national organization with branches throughout the United States, you may be able to call upon the CASA program director in the area where the child in question has been placed, to conduct a courtesy evaluation and interview, and/or serve as a liaison between the law guardian/CASA and the child protective services worker in the state serving the child.

Practice Points - *ICPC takes forever, frequent checking on the paperwork is necessary, CASA can be extremely helpful*

Whenever a child is being placed out of state, request an in Court Review **PRIOR** to the child's removal from Georgia to address any visitation issues and for the Court to receive a copy of the ICPC home evaluation

TEXT OF INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

Article I. Purpose and Policy

It is the purpose of the party state 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, 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 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, 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 agents 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, stepparent, 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 the 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.

EVIDENCE/OBJECTIONS/EXCEPTIONS

OBJECTIONS

Relevance

- “any evidence which logically tends to prove or to disprove a material fact which is at issue in the case, and every act or circumstance serving to elucidate or throw light upon a material issue or issues is relevant”
Madison v. State, 238 Ga. App. (1999)
- if doubtful evidence admitted weight is left to the trier of fact

Bolstering Credibility of Witness / Self-serving

- evidence which is designed to promote or extol the virtues of a witness, or to enhance the reputation of a witness
- child molestation case – expert witness – it is proper for an expert to testify an examination of a physician or an evaluation of a psychologist showed injury “consistent with sexual abuse” Odom v. State, 243 Ga. App 227 (2000), proper for expert to testify about the ability of children of certain ages to distinguish fiction from reality and expert testimony about the difficulty teenagers go through in bringing forth highly personal matters such as sexual abuse. Alford v. State, 243 Ga. App. 212 (2000).

No Foundation

- Lay Witness - testify to facts, opportunity to witness facts
- Expert Witness- qualifications of expert / education / experience
- Testimony will assist the trier of fact in making the ultimate decision in the case
- Hypothetical questions must contain fact in evidence or going to be in evidence otherwise objectionable as “assumes facts not in evidence”

Cumulative

- prohibition in Juvenile Court from submitting cumulative witness testimony or evidence

Offer of Proof

- to preserve record on appeal
- made after an adverse ruling on evidence

Privileged Communication

Witness Offering Opinion which goes to the Ultimate Issue,

- Invading the province of the Finder of fact

Hearsay & Hearsay Exceptions

- Evidence in which one witness simply says something he or she has heard from someone else. Since the original statement was not given

under oath, the repetition of such statements is inadmissible to the court as evidence.

Hearsay Exceptions=Offered to Explain Conduct or for some other purpose than the truth of the matter asserted

Admissions- A statement or conduct which is inconsistent with a party's position in litigation. Statement or conduct against interest.

Res Gestae- Declarations accompanying an act, or so nearly connected in time as to be free from all suspicion of device or after thought.

The four criteria of a res gestae statement is that

- (1) it must grow out of the main fact,
- (2) serve to illustrate the main fact,
- (3) be made contemporaneously with the main fact, and
- (4) be spontaneous and free from reflection.

i.e. a spontaneous admission made by the defendant or evidence provided by a witness at the time of the traumatic incident out of fear and disorientation can be considered as admissible evidence.

While a child may be too young and too immature to testify under oath, their res gestae statements may be allowed into evidence.

Dying Declarations- Exception is limited a person in the article of death, who is conscious of his condition and gives a declaration that relates to the cause of his condition and the person who killed him.

- Requires foundation – declarant must know death is imminent

Necessity Exception to Hearsay Rule

The four fundamental requirements are

- The witness must be unavailable,
- there must be guarantee of trustworthiness in the statement,
- the evidence must be relevant to a material fact in issue in the case, and
- the evidence must be more probative to that material fact than other evidence.

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Refreshed Recollection 24-9-69

- Witness refreshes recollection & assists memory by the use of a writing or memorandum, provided testimony is from recollection refreshed by the writing or “shall be willing to swear positively from the paper”
- All parties are allowed to see what refreshed the recollection of witness

Past Recollection Recorded

- Witness cannot recall the event in question but can attest the event was accurately recorded at a time closer to the event than the time of trial, the document is therefore introduced

Medical Diagnosis & Treatment 24-3-4

- statement made for purposes / facilitation of medical diagnosis & treatment,
- “pertinent to the medical treatment or diagnosis”
- does **not** have to be made to doctor
- 3 types of statements
- symptoms & physical condition
- causation
- medical history

Business Record Exception 24-3-14

- document **MUST** be maintained in the ordinary course of business or the organization or entity maintaining the record
- document **MUST** be the customary practice of the business or entity to maintain such record
- entries **MUST** be made at or about the time of the events described or recorded occurred

Photos - x rays

Foundation required

- photo is a fair and accurate depiction / representation of the object and what the witness observed
- who took photo irrelevant
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Child Hearsay Statute 24-3-16

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
- child must be under fourteen regardless mental capacity,
- child must be available to testify for both parties,
- statement made by the child must be a statement which explicitly & directly describes sexual or physical abuse, and
- the trustworthiness and the reliability of the statement, Factors to be considered: Gregg v. State, 201 Ga App 238 (1991)
- atmosphere & circumstances under which the statement was made,
- spontaneity of the child’s statement,
- child’s age,
- child’s general demeanor,
- child’s physical or emotional condition,
- presence or absence of threats and promises,
- presence or absence of alcohol,
- child’s general credibility,
- presence or absence of coaching by the parents or other 3rd parties
- consistency between out of court statement & testimony at trial.

Crawford v. Washington, 124 S. Ct. 1354 (2004)

Does not apply in deprivation cases, opposing counsel may try

24-3-16. Testimony as to child's description of sexual contact or physical abuse.

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 or performed with or on another in the presence of the child is admissible in evidence by the testimony of the person or persons 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.

Calling the parent for purposes of cross examination 24-9-81

- call parent as an adverse party pursuant to 29-9-81
- Deprivation cases are civil actions so when a parent takes the 5th then court is allowed a rebuttable inference that the response would be contrary to the interest of the party testifying or unfavorable.
In Re S.B. 242 Ga. App.184 (2000)

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242 Ga. App. 184; IN RE S. B.; 528 SE2d 278 (01/18/2000)

In addition to the facts noted by the juvenile court, the record shows that the mother refused to testify at the **deprivation** hearing when called as a witness by the Department.

Instead, she invoked her Fifth Amendment privilege against self-incrimination. While the mother asserts that she had no part in K. B.'s death, the Supreme Court has held that the invocation of the privilege against self-incrimination in such cases is an implied admission that a truthful answer would tend to prove that the witness had committed the act. The administration of justice and the search for truth demand that an **inference** may be drawn that witness' testimony would be unfavorable to [her] in a civil action in which the privilege is invoked to protect [herself]. This is particularly true in a child custody contest heard by a trial judge with broad discretion when the **inference** corroborates other proof of alleged illicit conduct between the parties which affects the welfare and interests of minor children.

24-9-81. When own witness may be impeached; right to call, examine, and impeach opposite party.

A party may not impeach a witness voluntarily called by him, except where he can show to the court that he has been

entrapped by said witness by a previous contradictory statement. However, in the trial of all civil cases, either plaintiff or defendant shall be permitted to make the opposite party, or anyone for whose immediate benefit the action is prosecuted or defended, or any agent of said party, or agent of any person for whose immediate benefit such action is prosecuted or defended, or officer or agent of a corporation when a corporation is such party or for whose benefit such action is prosecuted or defended a witness, with the privilege of subjecting such witness to a thorough and sifting examination and with the further privilege of impeachment, as if the witness had testified in his own behalf and were being cross-examined.

UNITED STATES SUPREME COURT

Crawford v. Washington,
124 S. Ct. 1354 (2004) [see attached article]

In Crawford v. Washington, the U.S. Supreme Court partially overruled Ohio v. Roberts, 448 U.S. 56 (1980), and created a new test for the admissibility of hearsay statements. Under Crawford, hearsay statements by an unavailable declarant are either testimonial or non-testimonial. If hearsay by an unavailable declarant is testimonial, it is inadmissible against the defendant unless the defendant had a prior opportunity to cross-examine the declarant. If the unavailable declarant's hearsay is non-testimonial, the Confrontation Clause is not implicated, and admissibility is governed by the rules of evidence, including considerations of reliability. Crawford provides limited examples of "testimonial" but does not provide a comprehensive definition: prior testimony that the defendant was unable to cross-examine, grand jury testimony, affidavits, depositions, and statements made during formal police interrogations.

Important Points:

- Crawford does not change the rule that if the hearsay declarant testifies at trial and is subject to cross-examination about the out-of-court statement, the Confrontation Clause is satisfied and poses no barrier to admissibility.
- Crawford is a Sixth Amendment case and the Sixth Amendment applies only to criminal cases. Juvenile proceedings are civil, not criminal.
- In Crawford, the Supreme Court wrote that the Confrontation "Clause does not bar the use of testimonial statements for purposes other than establishing the truth of the matter asserted." In certain cases, a child's out-of-court statements may be relevant for reasons other than truth of the matter asserted.

Possible Implications of Crawford:

- The Supreme Court has held that statements to police officers in the course of investigations are testimonial but it is unclear whether 911 calls are (See People v. Moscat, 2004 WL 615113 (N.Y. City Crim. Ct. 2004))

- (holding a 911 call to the police was an excited utterance and therefore non-testimonial)).
- In Snowden v. State, 2004 WL 71945 (Md. Ct. Special App. 2004), the court reversed the defendant's conviction for sexual abuse holding the children's hearsay statements to a CPS social worker, offered at trial in lieu of live testimony, was testimonial – and therefore inadmissible – hearsay.
 - It seems clear that videotaped interviews of children are testimonial under Crawford, but Crawford does not apply to civil deprivation hearings.

List of Basic Generic Objections

- ambiguous (see vague)
- answer non-responsive
- answer exceeds (goes beyond) scope of question and constitutes a volunteered statement by the witness
- argument improper (e.g., refers to facts not in evidence, misstates evidence, misquotes witness, vouches for witness, indicates personal belief or opinion of counsel, unfairly prejudicial, comment on defendant's failure to testify, indirect attack on accused by attacking integrity of defense counsel)
- argumentative in content and tone without asking for new information; using his/her question to argue the case
- assuming facts not in evidence (loaded question that prevents the witness from having the opportunity to deny the existence of the assumed fact)
- asked and answered (see repetitious)
- authentication lacking or improper (failure to identify item of evidence, e.g., writing, and show its logical relevance) (see failure to lay proper foundation)
- badgering the witness (also, quarreling with, arguing with, shouting at, bullying, looming over, and threatening)
- best evidence rule violated (see also, "original writing" rule)
- beyond scope of direct (in jurisdictions that limit the scope of cross to the subject matter of the direct and matters affecting credibility of the witness)
- chain of custody not properly established (particularly when item is fungible and thus easily alterable and no single witness can identify the item with personal knowledge)
- character evidence improper (e.g., to establish propensity)
- confusion of issues
- compound question that contains two or more questions within a single question
- comment on evidence by judge
- continuing (running) objection
- cumulative evidence, needlessly, in that it fails to add to the probity of previously admitted evidence

- displaying evidence prior to its introduction or continuing to display evidence after it has been used
- expert testimony not admissible (e.g., underlying facts or data insufficient; field of scientific, technological or other specialty of expertise not reliable and/or relevant based on *daubert* factors such as: (1) whether the principle has been tested, (2) the results of published peer review, (3) error rates and (4) general acceptance; old *frye* rule requires general acceptance)
- expert witness not competent
- final argument improper (see argument improper)
- failure to lay proper foundation for admission of testimony, exhibit, or document (predicate) (see lack of evidentiary predicate)
- habit not established, improper habit evidence because
- hearsay, question calls for or answer contains
- hearsay within hearsay
- hearsay, evidence contains
- hearsay, evidence is the result of and is based upon
- hearsay, even though the statement fits into a recognized hearsay exception, the confrontation clause (applies only when the prosecution offers hearsay against the accused) bars use of a *testimonial* out-of-court statement by an unavailable witness whom the defendant has not had the opportunity to cross-examine, irrespective of whether the statement is deemed reliable; the statement is inadmissible as un-cross-examined [see [crawford v. washington](#), 124 s. ct. 1354 (2004)]
- immaterial in that it is of no consequence to any issue in the case (couple with irrelevant)
- impeachment improper (improper opinion or reputation character evidence, improper proof of prior conviction, improper foundation for proof of witness' prior inconsistent statement, improper proof of untruthfulness, impeachment with an irrelevant or collateral matter)
- incompetency of witness (e.g., lack of perception, lack of memory, inability to understand nature and obligation of oath, inability to communicate in language of court)
- irrelevant in the sense that it does not make a fact of consequence to the lawsuit anymore or less likely
- judicial notice improper
- lack of evidentiary predicate (foundation) for admission of testimony, exhibit, or document
- lack of personal knowledge (witness, other than expert, does not have first-hand information)
- lay witness opinion and/or inference improper; not helpful to clear understanding of witness' testimony or determination of fact in issue, not rationally based on perception of witness (e.g., see rule 701 fre)
- leading question (suggests or coaxes desired answer)
- legal conclusion (questions calls for or answer contains)
- limited purpose, admissible only for a (and offered generally)

- misstatement (mischaracterization) of evidence by counsel (or witness)
- non-responsive answer
- opening statement improper (e.g., argumentative, invades province of court by providing instructions on law, states personal opinion or belief of counsel, counsel speculating about opposing counsel's evidence)
- opinion on ultimate issue
- personal knowledge of lay witness lacking (see lack of personal knowledge)
- privileged communication (e.g., attorney-client; doctor-patient (if any); clergy; informant's identity; spousal capacity; spousal or marital communication; self-incrimination)
- question has been answered by witness and is now giving an answer that goes beyond the question posed (see witness has answered)
- question on cross-examination goes beyond scope of direct and issues of witness credibility (applies only in jurisdictions, e.g., federal court, where scope of cross is limited to subject of direct and issues related to witness credibility)
- relevance lacking (see irrelevant) (e.g., has no tendency to make existence of any fact of consequence to the case more or less probable than it would be without the evidence)
- religious beliefs or opinions of witness inadmissible to show witness' credibility impaired or enhanced (e.g., see rule 610 fre)
- 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 (e.g. rule 403 fre - potential danger of "*unfair*" prejudice substantially outweighs probative value - objecting party has bop; object that the otherwise arguably relevant evidence unfairly exaggerates the truth and tends to improperly stir the passions or sympathy of the court) even though arguably relevant
- vague
- waste of time
- witness has answered the question and is now volunteering an answer to a question that hasn't been asked

PSYCHOLOGICAL ISSUES

DSM-IV™ Multiaxial System - Disorders Diagnostic Criteria

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.

Classifications of Diagnostic Criteria include:

- [Axis I:](#) Clinical Disorders, acute or chronic, and conditions that need Clinical treatment.
- [Axis II:](#) [Personality Disorders](#) and Mental Retardation (persistent require clinical treatment).
- [Axis III:](#) General Medical Conditions.
- [Axis IV:](#) Psychosocial and Environmental Problems.
- [Axis V:](#) Global Assessment of Functioning Scale.

Axis I-

Clinical Disorders / conditions that need clinical attention.

Clinical (Mental) Disorders is used to report various disorders or conditions, as well as noting other conditions that may be a focus of clinical attention.

Axis I categories include:

- [Clinical Disorders:](#)
- [Adjustment Disorders](#)-can be with: Anxiety, Depressed Mood, Disturbance of Conduct, Mixed Anxiety and Depressed Mood, Mixed Disturbance of Emotions and Conduct, or Unspecified.
- [Anxiety Disorders](#) include:
- [Acute Stress Disorder](#)
- (acute psychological consequences of previous trauma)
- [Agoraphobia](#) (generalized irrational fear)
- [Generalized Anxiety Disorder](#) (nonspecific anxiety)
- Obsessive Compulsive Disorder
- (obsessive thoughts and compulsive rituals)
- [Panic Disorder](#) (unprovoked panic attacks)
- [Posttraumatic Stress Disorder](#)
- (nonacute psychological consequences of previous trauma)
- [Separation Anxiety Disorder](#)
- [Social Phobia](#) (irrational fear of embarrassment)
- [Specific Phobia](#) (other specific irrational fears)

Cognitive Disorders-Delirium, Dementia, and Amnestic.

- [Dissociative Disorders](#)
- [Eating Disorders-](#)
- [Factitious Disorders-](#)

- [Impulse-Control Disorders \(Not Classified Elsewhere\)](#)
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Mental Disorders Due to a General Medical Condition.

- [Mood Disorders-Bipolar Disorder \(I, II, NOS\)](#), [Depression \(General Overview\)](#), [Major Depressive Disorder](#), [Mood Disorder Due to a General Medical Condition](#), [Mood Disorder Not Otherwise Specified \(NOS\)](#), [Substance-Induced Mood Disorder](#).
- [Schizophrenia and other Psychotic Disorders-Paranoid Type](#), [Disorganized Type](#), [Catatonic Type](#), [Undifferentiated Type](#), Residual Type, Brief Psychotic Disorder, Delusional Disorder, Psychotic Disorder Due to a General Medical Condition.
- Psychotic Disorder Not Otherwise Specified (NOS), Schizoaffective Disorder, Schizophreniform Disorder, Substance-Induced Psychotic Disorder.

Sexual and Gender Identity Disorders.

- Paraphilias-
- Sexual Dysfunction
- Sexual Pain Disorders (Not Due to a Medical Condition)-

Sleep Disorders

- Somatoform Disorders

Substance-Related Disorders:

- [Alcohol Dependence](#) (alcoholism)
- [Amphetamine Dependence](#) (stimulants, speed, uppers, diet pills)
- [Cannabis Dependence](#) (marijuana, grass, pot, weed, reefer, hashish, bhang, ganja)
- [Cocaine Dependence](#) (coke, crack, coca leaves)
- [Hallucinogen Dependence](#) (psychedelics, LSD, mescaline, peyote, psilocybin, DMT)
- [Inhalant Dependence](#) (sniffing: glue, gasoline, toluene, solvents)
- [Nicotine Dependence](#) (tobacco)
- [Opioid Dependence](#) (heroin, methadone, morphine, demerol, percodan, opium, codeine, darvon)
- [Phencyclidine Dependence](#) (PCP, angel dust)
- [Sedative Dependence](#) (sleeping pills, barbiturates, seconal, valium, librium, ativan, xanax, quaaludes)

Axis II-Personality Disorders and Mental Retardation.

Personality Disorders and Mental Retardation are recorded so the clinician will give consideration to additional intervention and treatment choices. Personality: the qualities and traits of being a specific and unique individual. It is the enduring pattern of our thoughts, feelings, and behaviors, it is how we think, love, feel, make decisions and take actions. Personality is determined, in part, by our genetics and also, by our environment. It is the determining factor in how we live our lives.

Individuals with Personality Disorders have more difficulties in every aspect of their lives. Their individual personality traits reflect ingrained, inflexible, and maladaptive patterns of behaviors that cause discomfort, distress and impair the individual's ability to function in the daily activities of living. In Mental Retardation, problems in brain development have usually occurred and virtually will affect all aspects of the individual's cognitive functioning.

Borderline Intellectual Functioning, as well as Learning Disabilities, may also be a consideration for clinical focus.

General diagnostic criteria is an enduring pattern of inner experience and behavior that deviates markedly from the expectations of the individual's culture. This pattern is manifested in two (or more) of the following areas: cognition (i.e., ways of perceiving and interpreting self, other people, and events); affectivity (i.e., the range, intensity, liability, and inappropriateness of emotional response); interpersonal functioning; and impulse control. The enduring pattern is inflexible and pervasive across a broad range of personal and social situations. The individual's pattern is stable of long duration and its onset can be traced back at least to adolescence or early adulthood.

Axis II categories include:

- [Antisocial Personality Disorder](#) (impulsive, aggressive, manipulative)
- Avoidant Personality Disorder (shy, timid, "inferiority complex")
- [Borderline Personality Disorder](#) (impulsive, self-destructive, unstable)
- [Dependent Personality Disorder](#) (dependent, submissive, clinging)
- Histrionic Personality Disorder (emotional, dramatic, theatrical)
- [Mental Retardation](#): A developmental condition that is characterized by significantly lower than average level of general intellectual functioning. Failure to develop cognitive abilities & achieve an intelligence level that would be appropriate for their age.

Categories of persons that are mentally retarded include:

- Mild Mental Retardation-About 85% fall into this group.
IQ level 50-55 up to about 70
- Moderate Mental Retardation-About 10% fall into this group.
IQ level 35-40 to 50-55
- Severe Mental Retardation-About 3% to 4% of fall into this group.
IQ level 20-25 to 35-40
- Profound Mental Retardation-About 1% to 2% fall into this group.
IQ level below 20 or 25

- [Narcissistic Personality Disorder](#) (boastful, egotistical, "superiority complex")
- [Obsessive-Compulsive Personality Disorder](#) (perfectionistic, rigid, controlling)
- [Paranoid Personality Disorder](#) (suspicious, distrustful)
- [Schizoid Personality Disorder](#) (socially distant, detached)
- [Schizotypal Personality Disorder](#) (odd, eccentric)

Axis III-General Medical Conditions.

General Medical Conditions is for reporting current medical conditions that are potentially relevant to the understanding or management of the individual's mental disorder. First, it is clear the medical condition is directly related to the development or worsening of the symptoms of the mental disorder. Second, the relationship between the medical condition and mental disorder symptoms is insufficient. Third, there are situations in which the medical condition is important to the overall understanding or treatment of the mental disorder.

Axis IV-Psychosocial and Environmental Problems.

Psychosocial and Environmental Problems is for reporting psychosocial and environmental stressors that may affect the diagnosis, treatment, and prognosis of mental disorders. A psychosocial or environmental problem may be a negative life event, an environmental difficulty or deficiency, a familial or other interpersonal stressor, an inadequacy of social support of personal resources, or other problems relating to the context in which an individual's difficulties have developed. Positive stressors, such as a job promotion, should be listed only if they constitute or lead to a problem, as when an individual has difficulty adapting to the new situation.

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Axis I-

Clinical Disorders / conditions that need clinical attention.

Clinical (Mental) Disorders is used to report various disorders or conditions, as well as noting other conditions that may be a focus of clinical attention.

Axis I categories include:

- [Clinical Disorders:](#)
- [Adjustment Disorders](#)-can be with: Anxiety, Depressed Mood, Disturbance of Conduct, Mixed Anxiety and Depressed Mood, Mixed Disturbance of Emotions and Conduct, or Unspecified.
- [Anxiety Disorders](#) include:
- [Acute Stress Disorder](#)
- (acute psychological consequences of previous trauma)
- [Agoraphobia](#) (generalized irrational fear)
- [Generalized Anxiety Disorder](#) (nonspecific anxiety)
- Obsessive Compulsive Disorder
- (obsessive thoughts and compulsive rituals)
- [Panic Disorder](#) (unprovoked panic attacks)
- [Posttraumatic Stress Disorder](#)
- (nonacute psychological consequences of previous trauma)
- [Separation Anxiety Disorder](#)
- [Social Phobia](#) (irrational fear of embarrassment)
- [Specific Phobia](#) (other specific irrational fears)

Cognitive Disorders-Delirium, Dementia, and Amnesic.

- [Dissociative Disorders](#)
- [Eating Disorders-](#)
- [Factitious Disorders-](#)
- [Impulse-Control Disorders \(Not Classified Elsewhere\)](#)
-

Mental Disorders Due to a General Medical Condition.

- [Mood Disorders-Bipolar Disorder \(I, II, NOS\), Depression \(General Overview\), Major Depressive Disorder, Mood Disorder Due to a General Medical Condition, Mood Disorder Not Otherwise Specified \(NOS\), Substance-Induced Mood Disorder.](#)
- [Schizophrenia and other Psychotic Disorders-Paranoid Type, Disorganized Type, Catatonic Type, Undifferentiated Type.](#) Residual Type, Brief Psychotic Disorder, Delusional Disorder, Psychotic Disorder Due to a General Medical Condition.
- Psychotic Disorder Not Otherwise Specified (NOS), Schizoaffective Disorder, Schizophreniform Disorder, Substance-Induced Psychotic Disorder.

Sexual and Gender Identity Disorders.

- Paraphilias-
- Sexual Dysfunction
- Sexual Pain Disorders (Not Due to a Medical Condition)-

Sleep Disorders

- Somatoform Disorders

Substance-Related Disorders:

- Alcohol Dependence (alcoholism)
- Amphetamine Dependence (stimulants, speed, uppers, diet pills)
- Cannabis Dependence (marijuana, grass, pot, weed, reefer, hashish, bhang, ganja)
- Cocaine Dependence (coke, crack, coca leaves)
- Hallucinogen Dependence (psychedelics, LSD, mescaline, peyote, psilocybin, DMT)
- Inhalant Dependence (sniffing: glue, gasoline, toluene, solvents)
- Nicotine Dependence (tobacco)
- Opioid Dependence (heroin, methadone, morphine, demerol, percodan, opium, codeine, darvon)
- Phencyclidine Dependence (PCP, angel dust)
- Sedative Dependence (sleeping pills, barbiturates, seconal, valium, librium, ativan, xanax, quaaludes)

Axis II-Personality Disorders and Mental Retardation.

Personality Disorders and Mental Retardation are recorded so the clinician will give consideration to additional intervention and treatment choices. Personality: the qualities and traits of being a specific and unique individual. It is the enduring pattern of our thoughts, feelings, and behaviors, it is how we think, love, feel, make decisions and take actions. Personality is determined, in part, by our genetics and also, by our environment. It is the determining factor in how we live our lives.

Individuals with Personality Disorders have more difficulties in every aspect of their lives. Their individual personality traits reflect ingrained, inflexible, and maladaptive patterns of behaviors that cause discomfort, distress and impair the individual's ability to function in the daily activities of living. In Mental Retardation, problems in brain development have usually occurred and virtually will affect all aspects of the individual's cognitive functioning. Borderline Intellectual Functioning, as well as Learning Disabilities, may also be a consideration for clinical focus.

General diagnostic criteria is an enduring pattern of inner experience and behavior that deviates markedly from the expectations of the individual's

culture. This pattern is manifested in two (or more) of the following areas: cognition (i.e., ways of perceiving and interpreting self, other people, and events); affectivity (i.e., the range, intensity, liability, and inappropriateness of emotional response); interpersonal functioning; and impulse control. The enduring pattern is inflexible and pervasive across a broad range of personal and social situations. The individual's pattern is stable of long duration and its onset can be traced back at least to adolescence or early adulthood.

Axis II categories include:

- [Antisocial Personality Disorder](#) (impulsive, aggressive, manipulative)
- Avoidant Personality Disorder (shy, timid, "inferiority complex")
- [Borderline Personality Disorder](#) (impulsive, self-destructive, unstable)
- [Dependent Personality Disorder](#) (dependent, submissive, clinging)
- Histrionic Personality Disorder (emotional, dramatic, theatrical)
- [Mental Retardation](#): A developmental condition that is characterized by significantly lower than average level of general intellectual functioning. Failure to develop cognitive abilities & achieve an intelligence level that would be appropriate for their age.

Categories of persons that are mentally retarded include:

- Mild Mental Retardation-About 85% fall into this group.
IQ level 50-55 up to about 70
- Moderate Mental Retardation-About 10% fall into this group.
IQ level 35-40 to 50-55
- Severe Mental Retardation-About 3% to 4% of fall into this group.
IQ level 20-25 to 35-40
- Profound Mental Retardation-About 1% to 2% fall into this group.
IQ level below 20 or 25
- [Narcissistic Personality Disorder](#)
(boastful, egotistical, "superiority complex")
- [Obsessive-Compulsive Personality Disorder](#)
(perfectionistic, rigid, controlling)
- [Paranoid Personality Disorder](#)
(suspicious, distrustful)
- [Schizoid Personality Disorder](#)
(socially distant, detached)
- [Schizotypal Personality Disorder](#)
(odd, eccentric)

Axis III-General Medical Conditions.

General Medical Conditions is for reporting current medical conditions that are potentially relevant to the understanding or management of the individual's mental disorder. First, it is clear the medical condition is directly

related to the development or worsening of the symptoms of the mental disorder. Second, the relationship between the medical condition and mental disorder symptoms is insufficient. Third, there are situations in which the medical condition is important to the overall understanding or treatment of the mental disorder.

Axis IV-Psychosocial and Environmental Problems.

Psychosocial and Environmental Problems is for reporting psychosocial and environmental stressors that may affect the diagnosis, treatment, and prognosis of mental disorders. A psychosocial or environmental problem may be a negative life event, an environmental difficulty or deficiency, a familial or other interpersonal stressor, an inadequacy of social support or personal resources, or other problems relating to the context in which an individual's difficulties have developed. Positive stressors, such as a job promotion, should be listed only if they constitute or lead to a problem, as when an individual has difficulty adapting to the new situation.

Axis IV categories include:

- Problems with primary support group
- Problems related to the social environment
- Educational problems
- Occupational problems
- Housing problems
- Economic problems
- Problems with access to health care services
- Problems related to interaction with the legal system/crime
- Other psychosocial and environmental problems

Axis V-Global Assessment of Functioning Scale.

Global Assessment of Functioning is for reporting the clinician's judgment of the individual's overall level of functioning and carrying out activities of daily living. This information is useful in planning treatment and measuring its impact, and in predicting outcome. The Global Assessment of Functioning Scale is a 100-point scale that measures a patient's overall level of psychological, social, and occupational functioning on a hypothetical continuum.

Global Assessment of Functioning Scale.

- 91-100 Superior functioning in a wide range of activities, life's problems never seem to get out of hand, is sought out by others because of his or her many positive qualities. No symptoms
- 81-90 Absent or minimal symptoms (e.g., mild anxiety before an exam), good functioning in all areas, interested and involved in a wide range of

- activities, socially effective, generally satisfied with life, no more than everyday problems or concerns (e.g., an occasional argument with family members)
- 71-80 If symptoms are present, they are transient and expectable reactions to psychosocial stressors (e.g., difficulty concentrating after family argument); no more than slight impairment in social occupational, or school functioning (e.g., temporarily falling behind in schoolwork)
 - 61-70 Some mild symptoms (e.g., depressed mood and mild insomnia) OR some difficulty in social occupational, or school functioning (e.g., occasional truancy or theft within the household), but generally functioning pretty well, has some meaningful interpersonal relationships.
 - 51-60 Moderate symptoms (e.g., flat affect and circumstantial speech, occasional panic attacks) OR moderate difficulty in social, occupational, or school functioning (e.g., few friends, conflicts with peers or co-workers).
 - 41-50 Severe symptoms (e.g., suicidal ideation, severe obsessional rituals, frequent shoplifting) OR any serious impairment in social, occupational or school functioning (e.g., no friends, unable to keep a job).
 - 31-40 Some impairment in reality testing or communication (e.g., speech is at times illogical, obscure, or irrelevant) OR major impairment in several areas, such as work or school, family relations, judgment, thinking, or mood (e.g., depressed man avoids friends, neglects family, and is unable to work; child frequently beats up younger children, is defiant at home, and is failing at school).
 - 21-30 Behavior is considerably influenced by delusions or hallucinations OR serious impairment in communication or judgment (e.g., sometimes incoherent, acts grossly inappropriately, suicidal preoccupation) OR inability to function in almost all areas (e.g., stays in bed all day, no job, home, or friends).
 - 11-20 Some danger of hurting self or others (e.g., suicidal attempts without clear expectation of death; frequently violent; manic excitement) OR occasionally fails to maintain minimal personal hygiene (e.g., smears feces) OR gross impairment in communication (e.g., largely incoherent or mute).
 - 1-10 Persistent danger of severely hurting self or others (e.g., recurrent violence) OR persistent inability to maintain minimal personal hygiene OR serious suicidal act with clear expectation of death.

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CROSS-EXAMINATION QUESTIONS FOR A PSYCHOLOGIST

1. Doctor, isn't it true that psychology consists mostly of a number of theories about human behavior none of which have been scientifically proven?
2. Doctor, isn't it true that there is a substantial body of scientific and professional literature to the effect that the psychological interview is influenced by many factors which affect the conclusions that are drawn but have little to do with the actual mental condition of the person being interviewed?
3. Doctor, isn't it true that there is a substantial body of scientific and professional literature to the effect that psychological diagnosis are not very reliable and not very accurate?
4. Doctor, isn't there a substantial body of scientific and professional literature to the effect that psychologists with considerable experience are no more accurate in their diagnoses than those with little or, even, no experience?
5. Doctor, the people you treat in your private practice don't usually have anything wrong with their brain, do they?
6. In fact, they don't necessarily have anything organically wrong with them, is that correct?
7. They usually come to you with problems revolving around some sort of personal or social or interpersonal difficulty or as in this case, a referral from Department of Family and Children's Services (DFCS) is that right?
8. You don't ordinarily make a physical examination of your patient do you Doctor?
9. You don't perform any surgery, do you Doctor?
10. What is psychology?

11. What formal courses in psychology have you taken, Doctor?
12. What is a mental illness, Doctor?
13. Doctor, isn't it true that there is considerable controversy in the behavioral sciences at the present time concerning the appropriateness of a medical model for problems of adjustment?
14. Then is it correct to state that there are some medical and other authorities who contend that the medical model or the concept of mental illness is not an appropriate one for understanding or dealing with individuals having the kinds of psychological problems we are talking about here today, is that right?
15. Doctor could you describe the basic composition of the medical models used in reaching your diagnosis here today?
16. Doctor, isn't it true that the basis of the medical model used to diagnosis your patient here today, is not reflective of the contemporary times in which your conclusions are drawn?
17. Doctor, what are the topographical descriptions of the medical model used to assist you with your diagnosis here today?
18. Then is it correct to state that there are some medical and other authorities who contend that the medical model or the concept of mental illness is not an appropriate one for understanding or dealing with individuals having the kinds of psychological problems we are talking about?
19. Doctor, how much time did you take to interview my client, social workers, and any other collateral information in other to provide this court with your recommendations?
20. Doctor, how much time did spend in courses dealing with psychiatry, psychoanalysis, and each of the areas upon which your recommendations are based?
21. Doctor, how much time did you spend with understand the different Axis levels (I thru V)?
22. In other words, the evaluation you make depend to some extent upon an education much of which is either irrelevant to the subject matter of the evaluation, or is based on highly disputed theories, isn't that correct?

23. Do you also in your evaluations depend to some extent on psychoanalytic theory?
24. In other words, to some extent in making an evaluation you depend upon a theory which is highly disputed and has not been scientifically proven?
25. In making your diagnosis, do you follow the nomenclature (Definition: system or set of terms used in a particular science) as given in the American Psychiatric Association Diagnostic and Statistical Manual (DSM)?
26. Isn't there considerable dispute concerning the validity or usefulness of that nomenclature?
27. What psychological journals do you read?
28. Isn't it true that psychological journals sometimes contain research articles on diagnosis and treatment of mental or emotional disorders?
29. Have you any formal training on cross-cultural psychological examinations?
30. What information best prepares you for distinctions in time and place, as it relates to the models you are familiar with, and present day dynamics in which the client is accustomed?
31. Do you consider those dynamics in reaching your conclusions and recommendations?
32. Do you have an academic reference or model that you use in reaching your conclusions or recommendations? Or do you, simply respond to the information gathered from your collaterals and make your conclusions and recommendations based upon that information?
33. Did you examine my client in this case?
34. How many interviews did you have with my client and the approximate time of each interview?
- 35. Where were these interviews held?**
36. Doctor, can the time and place of the examination (or the general circumstances of the examination, or the purpose of the examination, etc.) affect the kind of information or data that emerges in the examination?

37. Doctor, isn't there research showing that factors such as time and place (or general circumstances) of the interview do affect the kind of information that is obtained in the interview?
38. Well, Doctor, what about the race, social class, sex, or other personal characteristics of the person being examined? Don't they have some kind of effect on the data that is obtained in the interview?
39. Isn't there some research showing that these factors do influence the kind and amount of material that is produced in the examination?
40. Doctor, does the theoretical orientation of the examiner have any effect on the kind of data that is produced in the clinical interview?
41. How does the theoretical orientation affect the material that is produced?
42. Is it possible then that an examiner with a different orientation from yours, for example, might obtain some different information in the clinical interview of my client than you did?
43. Is this also true for the personality of the examiner? Do examiners with different personalities tend to elicit different kinds or amounts of information from the people being examined?
44. The behavior of the client, which is used in diagnosis, might be different with a different type of psychologist?
45. Isn't there also some research showing that conscious or unconscious needs or values of the examiner can influence the data produced by the patient?
46. So then, isn't it true, that the results of an examination would differ to some extent based upon the conditions of the examination and the type of examiner conducting the examination, rather than necessarily coming from the mental status of the person being examined, is that correct, Doctor?

Emancipation & Rescission of Emancipation

Authority/Definitions *Minor., at least 16 but less than 18.*
O.C.G.A. § 15-11-200 et seq. (effective July 1, 2006)

Purpose establish procedure for a minor to be emancipated by law (valid marriage, 18 years, active duty in the armed forces) and
Emancipation through Petition filed by minor

Jurisdiction Juvenile Court

Venue County of minor's residence

Pleading Petition for Emancipation

- Signed & verified by the minor.
- **Petition shall include (O.C.G.A. § 15-11-202):**
 1. Minors full name and birth date
 2. Certified copy of minor's birth certificate.
 3. Name and last known address of minor's parents or guardians. If no parent: the name and address of the minors nearest living relative residing in the state
 4. A declaration by the minor indicating that he or she can manage his or her financial affairs.
 5. A declaration that the minor has the ability to manage his or her personal or social affairs.
 6. The names of adults who know the child and believe that emancipation is in the child's best interest. **Adults may include:** physician, osteopath, nurse, psychologist, counselor, social worker, family therapist, school social worker, school psych., school admin., principal, teacher, member of clergy, Law enforcement officer, or attorney. These person shall provide an affidavit.
- **Answer** A person served with a petition for emancipation may file an answer within 30 days of being served.

Parties Minor & Parents (Guardian)

Notice Upon filing the petition for emancipation, a copy of the petition for emancipation and a summons to appear at the hearing shall be served on the minor's parents or guardians (and any other person who provided an affidavit or was named in the petition). O.C.G.A. § 15-11-203(a).

Std Proof Minor has the burden
by **a preponderance of the evidence** that emancipation is
in their best interest

Rt to an Atty Yes, Child & parents

Decision Points

- The hearing shall take place in front of a Judge (not associate).
- **An order for emancipation should be granted only if the court feels that emancipation is in the best interest of the child and the minor establishes:**
 1. That the minors parent or guardian does not object to the petition; or if a parent or guardian objects to the petition, that the best interest of the child is served by allowing the emancipation to occur by court order.
 2. That the minor is a resident of the state.
 3. Minor has demonstrated the ability to manage financial affairs, including proof of employment or other means of support (*other means of support does not include general assistance or aid received from means-tested public assistance programs such as Temporary Assistance for Needy Families or similar programs under Title IV-A of the federal Social Security Act.*)
 4. Minor has the ability to manage personal and social affairs, including (but not limited to) proof of housing.
 5. Minor understands his or her rights as an emancipated minor.
(O.C.G.A. § 15-11-205(a)-(b)):
 - If the court orders emancipation, the court shall retain the order until the minor turns 25.
 - A minor or parent or guardian may appeal the court's granting or denial of the emancipation petition to the state court of appeals.

Practice Points

- After a petition for emancipation is filed, the court may:
 1. Assign an employee of the court or appoint a GAL to investigate the allegations of the petition and to file a report containing the results of the investigation with the court, **including a recommendation as to whether it is in the best interest of the child that the petition for emancipation be granted.**
 2. Appoint an attorney for the minor.
 3. Appoint an attorney for the minor's parents or guardian if they are indigent and if they oppose the petition.
- After a petition for emancipation is filed, the court shall seek an affidavit from each individual identified in the petition, which describes why the individual feels the minor should be emancipated.
(OCGA § 15-11-204(a)-(b)).

RESCISSION OF EMANCIPATION

- A minor emancipated by the juvenile court may petition the juvenile court that issued the emancipation order to rescind such order.
- ***The court shall grant the petition to rescind if:***
 1. The minor is indigent and has no means of support.
 2. That the minor and minor's parents or guardian agrees that the order should be rescinded; or
 3. That there is a resumption of family relations inconsistent with the existing emancipation order. (O.C.G.A. § 15-11-206(a)-(c)).

Glossary of Terms

GLOSSARY OF TERMS COMMONLY HEARD IN JUVENILE COURT PROCEEDINGS

10-DAY HEARING (Adjudicatory Hearing, Formal Hearing)- must be set on the calendar within 10 days of filing the petition if the child is detained.

72-HOUR HEARING (Probable Cause Hearing, Detention Hearing) - must be held within 72 hours after the juvenile is taken into custody (excluding week-ends and holidays). Also called emergency shelter care hearing (in deprivation proceedings). In delinquency cases, a probable cause hearing is technically a separate proceeding.

30-DAY CASE PLAN- Initial case plan required to be presented to the court within 30 days after the child is taken into protective custody in a deprivation case.

IV Eligibility – federal funding reimbursement to the State for dollars spent on children in foster care if the Juvenile Court Orders specifically find DFACS 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.

ADJUDICATION- Fact-finding proceeding to determine whether the facts alleged in the petition or other pleadings are true. This is the juvenile court equivalent to a trial in civil cases. Standard of proof is clear and convincing evidence in deprivation proceedings and beyond a reasonable doubt in delinquency proceedings.

ADOPTION AND SAFE FAMILIES ACT OF 1997- ASFA, Federal law signed November 09, 1997, which significantly changes federal laws concerning foster care. Among other things, changes states’ obligations regarding reasonable efforts, encourages termination of parental rights if children have been in agency foster care for 15 out of 22 months, requires a “permanency hearing” after a child has been in foster care for 12 out of the last 15 months, calculates time in foster care from earlier of adjudication of deprivation or 60 days after child is removed from home.

ADOPTION SUPPLEMENT – monthly per diem paid to foster parents who adopt children from foster with “special needs”.

ANOTHER PLANNED PERMANENT LIVING ARRANGEMENT (APPLA) – for children where reunification with family / relatives or adoption is not an option, basically a long term foster care agreement.

BABIES CAN'T WAIT (BCW) – part of the CAPTA legislation, federally funded State program which provides and coordinates assessments and rehabilitative services to developmentally delayed or disabled children ages 0 to 3 years at no cost to the parents. Requires every child 0 to 3 years who is found by the Juvenile Court to be “deprived” to receive a developmental assessment and rehabilitative services as needed.

BEST INTEREST OF THE CHILD- The legal standard, which the judge must use in deciding disposition, custody, and other matters. What is the best interest of the child is not always the same as the child’s wishes. It is not a standard of proof.

CAPTA – CHILD ABUSE PREVENTION AND TREATMENT ACT – mandates, coordinates, funds programs at State and Federal level designed to prevent and treat child abuse. Initiatives include Babies Can’t Wait, training for GALs and attorneys representing children in deprivation cases, educational plans for special needs children, Juvenile Court in Improvement Projects.

CASA – Court Appointed Special Advocate – community members who are specially trained and appointed by the court as officers of the court to represent the best interests of the child in deprivation proceedings; sometimes referred to as a lay guardian.

CASE PLAN – Document developed in a deprivation case by DFCS, parents, and sometimes the citizen review panel, which states the reasons a child is brought into protective custody and the exact steps which must be taken by everyone involved to alleviate the conditions of deprivation and allow the parent to provide a safe and stable home for the child. This plan must be reviewed by the juvenile court at least every six months.

CCFA – Comprehensive Child and Family Assessment, formerly First Placement Best Placement assessment; private providers under contract with DFACS are given child / family referrals within 48 hours of the child entering DFACS custody; the CCFA includes psychological / 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

CHILD – Any individual who is:
Under the age of 17 years;
Under the age of 21 years, who committed an act of delinquency before reaching the age of 17 years, and who has been placed under the supervision of the court or on probation to the court; or
Under the age of 18 years, if alleged to be a “deprived child” as defined by this article.

CITIZEN REVIEW PANEL - Community members who are specially trained and appointed by the court to conduct periodic reviews of the cases of children who are in foster care. The Citizen Review Panel serves a judicial function. The Panel reviews progress on the case plan and makes recommendations to the parties and to the judge regarding changes that may need to be made in the case plan or the placement of the child. Any party may request an in-court review of the Panel's recommendations within 5 days of receiving a copy of the revised case plan.

CONCURRENT PLANNING - Caseplan which allows for the simultaneous planning and delivery of services to the family for reunification with the family and a permanent plan outside the family

CPS – Child Protective Services – the section of DFCS, which receives initial calls alleging child abuse and neglect and which is responsible for investigating the initial complaints (often heard as “CPS worker”). Also referred to as an “Intake” or “Investigations Unit”. CPS unit also provides “ongoing services” to families where the child remains in the home.

CUSTODIAN – A person, other than a parent or legal guardian, who stands in loco parentis to the child or a person to whom legal custody of the child has been given by order of a court, and who has the rights and duties provided in Code Section 15-11-13.

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

DELINQUENT ACT –

An act designated as a crime by the laws of this state, or by the laws of another state if the act occurred in that state, under federal laws, or by local ordinance, and the act is not an unruly offense or a juvenile traffic offense as defined in Code Section 15-11-731

The act of disobeying the terms of supervision contained in a court order which has been directed to a child who has been adjudged to have committed a delinquent act; or

Failing to appear as required by a citation issued with regard to a violation of Code Section 3-3-23, (offenses involving alcoholic beverages and persons under age 21).

DELINQUENT CHILD – Child who has committed a delinquent act and is in need of treatment or rehabilitation.

DEPENDENCY – Term used in other jurisdictions to refer to child abuse and neglect cases (synonym for deprivation)

DEPRIVED CHILD – A child who:

Is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his physical, mental, or emotional health or morals;
Has been placed for care or adoption in violation of law;
Has been abandoned by his parents or other legal custodian; or
Is without a parent, guardian, or custodian.

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

DEPRIVATION PROCEEDINGS – Juvenile court proceedings held when there are allegations of abuse or neglect of a child.

DETENTION – confinement of a minor by a public officer pursuant to law. Holding a juvenile in the custody of the county or state, whether in a jail, a youth detention facility, a shelter, a foster home, or another placement other than placement with the child’s custodian.

DENTENTION HEARING- Proceeding, which must be held within 72 hours of taking a juvenile into custody (excluding week-ends and holidays) to determine whether the juvenile shall be held in custody (detained) or released.

DFCS (DFACS) – Department of Family and Children Services, the department of DHR charged with delivering child protective services, family rehabilitation services, and other related services.

DHR – Department of Human Resources.

DILIGENT SEARCH for relatives or others who have shown an ongoing commitment to the child.

DISPOSITION - Term used to describe outcome of case or placement of child; i.e. the disposition in a deprivation case may be that custody is placed with DFCS and the parent must accomplish the tasks described in the case plan.

DISPOSITION HEARING – (DISPOSITIONAL) – proceeding to determine what placement is best suited to the protection and physical, mental, and moral welfare of a child adjudicated deprived, delinquent, or unruly. Held after the adjudication; can be in the same proceeding as the adjudication or held within a reasonable time after the adjudication. DFACS must present “Diligent Search for Relatives” to proceed to a final disposition of the case.

DJJ – Department of Juvenile Justice – Formerly the Department of Children and Youth Services – The state agency charged with providing for the needs of children who are adjudicated delinquent or unruly. In the disposition stage of a

delinquency or unruly hearing, juveniles are “committed to the custody” of DJJ and DJJ then has responsibility for placing the child. DJJ placement options include Youth Development Campuses, community treatment facilities, group homes, therapeutic residential placements, boot camps, community schools, a wilderness program, court-based programs, and others.

DSM – IV – The Diagnostic and Statistical Manual of Mental Disorders – the standard classification of mental disorders used by mental health providers in the US. Includes 5 axis for Clinical Disorders, Personality Disorders, General Medical Conditions, Psychosocial & Environmental Problems and Global Assessment of Functioning Scale (GAF).

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 TEAM MEETING (FTM) DFACS policy requires a FTM to occur within 9 days of the child coming into care to discuss the critical issues and circumstances which led to the child’s placement; needs / strengths of the child / family, relative resources, placement resources

FOSTER CARE – Temporary residential care provided to a juvenile pursuant to a court order from a deprivation proceeding; can include care by a non-biological foster family, group care, residential care, or institutional care.

FOSTER CARE PER DIEM – On July 1, 2005 the foster care per diem rates in Georgia raised to the following:

\$13.78 for a child age 0-6

\$15.50 for a child age 7-12

\$17.75 for a child age 13 and older

GLOBAL ASSESSMENT OF FUNCTIONING SCALE (GAF) – mental health clinician’s subjective judgment of the individual’s overall level of functioning and carrying out activities of daily life. A 100 point scale measures a patient’s overall level of psychological, social & occupational functioning on a hypothetical continuum with 100 being the highest.

GUARDIAN AD LITEM – Officer of the court who is appointed to represent the best interest of the child in abuse and neglect proceedings, custody proceedings, and sometimes in delinquency or unruly proceedings. May be an attorney or layperson. Often referred to as “G.A.L.”.

GUARDIANSHIP – Term describing the legal status of a custodian of a juvenile which confers certain rights and responsibilities, including the requirement to provide for the child’s physical, spiritual, and mental needs and the ability to register the child for school, obtain medical care, and provide legal consent when

needed. May be granted by Probate Court or Juvenile Court. See Chapter 14. The guardian caregiver may be eligible for financial subsidy from DFACS.

IMPACT TRAINING – formerly MAPP training, DFACS training for foster parents and adoptive parents

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.

INDEPENDENT LIVING PROGRAM (ILP) – DFCS program for older teens in DFCS custody; county ILP coordinator assists teens with housing, school, and job arrangements and teaches life skills; is transitional program for teens in non-traditional foster care settings who are becoming adults. Each foster child 14 and older must have a written transitional ILP.

IN LOCO PARENTIS - Latin term – “in the place of the parent”; refers to actions of a custodian, guardian, or other person acting in the parent's stead.

INTERSTATE COMPACT (ICPC)– Interstate Compact on the Placement of Children is a uniform law enacted by all states, Washington D.C., and the U.S. Virgin Islands. It establishes orderly procedures for the placement of children across state lines for foster care or adoption and fixes responsibilities for those involved in placing the child. See

JUDGE IN THE FIRST INSTANCE – Term used in some courts to refer to a juvenile court judge other than an associate judge. A judge pro-tem is considered a judge in the first instance.

LEGAL FATHER - Unless otherwise indicated by a court, a man whose wife had a child during the marriage or within 9 months after dissolution of the marriage; or a putative father who has acknowledged paternity and legitimated the child; or a biological father who later marries the mother and acknowledges paternity; and has not surrendered or had his parental rights to the child terminated.

LEGITIMATION – The legal process by which a child born out of wedlock is “put on equal footing” with a child born within a legal marriage. Establishes a legally recognized parent-child relationship between a father and child. If pending deprivation action, may be filed in Juvenile Court.

LEVEL OF CARE (LOC) – DFACS & DJJ system of assessing the placement needs of a child and determining with providers the costs for these placement services. The system establishes six levels of care required by children in out of home placement and the corresponding rates of payment for these placements.

This system is scheduled to be abolished effective July 1, 2007. Services previously obtained through LOC will be available through Medicaid and Department of Human Resources Division of Mental Health, Developmental Disabilities and Addictive Disorders. Contact 1-800-715-4225 for additional assistance.

LONG TERM FOSTER CARE – Extended residential care provided to a juvenile who has been adjudicated deprived. This term has been replaced with the term Another Planned Permanent Living Arrangement.

MAPP (Model Approach to Partnerships in Parenting) – DFCS training program for foster parents, now called IMPACT training.

MATCH (Multi-Agency Team for Children) – Representatives from different agencies who meet to identify placement options for multi-needs children; often heard of as “MATCH funding” because funds are available for placing special needs/ multi-needs children in residential treatment facilities, special group homes, etc.. **This system is scheduled to be abolished effective July 1, 2007. Services previously obtained through LOC will be available through Medicaid and Department of Human Resources Division of Mental Health, Developmental Disabilities and Addictive Disorders. Contact 1-800-715-4225 for additional assistance.**

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

NEGLECT – Failure of a custodian to adequately provide for the physical, emotional or spiritual needs of a child either by acts of commission or omission.

NONREUNIFICATION PLAN – Case plan developed by DFCS with input from the parents and the citizen review panel which states that reunification of the family is not in the best interest of the child, which alleviates DFCS from being responsible for providing reunification services, and which provides for a permanent plan for the child other than placement in the birth family.

NUNC PRO TUNC ORDER – Latin term – “now for then”; an order used by the courts to protect the record. It supplements a prior judgment or order in any matter over which the court originally had jurisdiction.

PARENTING ASSESSMENT - Battery of psychological tests which evaluates a parent’s current parenting skills, any deficits in parenting skills and the parent’s potential or ability to correct the parenting deficits.

PARENS PATRIAE – Latin term – “the father of his country”; from English law, the legal doctrine under which the Crown assumed the protection of certain minors, orphans and other persons in need of protection. Phrase used to

express the historical benevolent and rehabilitative philosophy of the juvenile court.

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

PERIODIC REVIEWS – Mandated judicial reviews of children in foster care. Reviews of children in foster care must take place at least every six months and may be conducted by citizen review panel. Every party has the right to have periodic reviews conducted by a judge. Reviews of children who are available for adoption must be conducted by a Judge every 6 months least annually. Reviews of children in relative placements must be reviewed by the Court every 36 months.

PERMANENCY PLANNING HEARING – Special type of post-dispositional proceeding designed to reach a decision concerning the permanent placement of a child; the time of the hearing symbolically represents a deadline by which a permanent placement for the child will be established. A permanency hearing; is required every 12 months the child is in foster care.

PERMANENT PLAN – 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 permanent plan which states where the child will ultimately reside (i.e. reunification with family, long-term foster care, adoption).

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.

PUP FUNDS – “Prevention of Unnecessary Placement” – discretionary funds available for DFCS to use to assist families at risk of having children placed in foster care; funds are used to remedy the situation which may result in removal of children; i.e. if a family’s utilities are cut off, PUP funds can be used to pay bills and have the utilities reinstated.

PUTATIVE FATHER – Person alleged to have fathered a child whose parentage is at issue.

RELATIVE CARE ASSESSMENT (RCA) – referral for a RCA may be made at any time during the child’s stay in foster care; generally relative options should be identified at the FTM; RCA should be completed within 30 days of referral for the RCA to the provider; includes home evaluation / safety check, CPS history check, criminal background check, DFACS policy overview & benefits for relative caregivers. Placements with relatives may be expedited & immediate pending a full RCA if there is no CPS history, satisfactory home safety check & a local criminal background check on all household members over 18 years.

RELATIVE FOSTER CARE – Residential care provided by a relative to a child who is the subject of deprivation proceedings. Relative caregiver for a child may or may not be qualified as foster parents; there are several different levels of subsidy paid to relative caregivers. See Chapter 9 for further descriptions. The financial assistance for the relative caregiver for child who remains in the custody of DFACS and placed with a relative caregiver is: subsidized as a foster parent at 100% of the foster care per diem, their home meets all foster care requirements; subsidized under the “Enhanced Relative Rate” (ERR) because their home is otherwise suitable but does not qualify as a foster home; the rate is 80% of the foster care per diem for the child’s age if the enhanced rate or \$10.00 per diem for regular RCS; receives TANF benefits & Medicaid; household may be eligible for food stamps, but no subsidy.

RELATIVE CARE SUBSIDY (RCS) – a per child, monthly supplement paid by DFACS to a “fit and willing relative” who has 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. Maybe either regular rate of \$10.00 per diem or 80% of the foster care per diem for the child’s age.

REASONABLE EFFORTS – Term used to describe the legal (federal and state) requirement placed on DFCS, the court and other providers to provide services to alleviate conditions which may result in removal of the child from the home and to provide services to reunite the family after removal has occurred. As a result of the Senate Study Committee on Foster Care and Adoption, Georgia is in the process of developing a legal definition of the term “reasonable efforts”, and some guidelines regarding what services and actions are considered “reasonable”.

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 deprivation proceedings.

SAFEKEEPING – Term used in some counties to describe process by which a child is placed into protective custody by the court in the course of another proceeding (similar to an emergency shelter care order but the court may do this sua sponte); i.e. when a parent has agreed to a relative having guardianship over a child and then seeks to revoke the guardianship, if the court believes the child will be in danger with the parent, the court may temporarily place the child in DFCS custody “for safekeeping” until further investigation can be conducted.

SENATE BILL 236 (SB 236) – Foster Parent Bill of Rights

SENATE BILL 440 (SB440) – Legislation effective May 1, 1994 which gives the superior court exclusive jurisdiction over juveniles aged 13-17 who are alleged to have committed murder, voluntary manslaughter, rape, aggravated sodomy, aggravated child molestation, aggravated sexual battery, or armed robbery if committed with a firearm. A juvenile charged in superior court may be transferred back to juvenile court at the discretion of the prosecutor before indictment or by the judge after indictment for extraordinary cause if the offense is not punishable by loss of life or life imprisonment. SB440 also provided judges authority to directly sentence a juvenile to 90 days in a detention facility.

SENATE BILL 611 (SB611) – Legislation effective July 1, 1996 which affected O.C.G.A. Sec. 15-11-58 regarding the disposition of deprived children. SB611 reduced the duration of an initial custody order to DFCS from 18 months to 12 months and allows nonreunification plans to be submitted to the court instead of reunification plans when DFCS believes that reuniting the parent and child is not in the best interest of the child and the parental behavior meets certain specific statutory requirements.

SHELTER CARE – Temporary placement for a child who is the subject of deprivation proceedings, which is:

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

A facility operated by a licensed child welfare agency.

SSI (Supplemental Security Income) – Monetary eligibility benefits provided to children and parents who are disabled but have not worked enough to receive social security disability; eligibility determination is made regarding disability; 1997 legislation changed definitions of disabilities so many children who previously received SSI benefits will no longer be eligible.

STATUS OFFENDER – A juvenile 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 juvenile. Such offenses shall include, but are not limited to, truancy, running away from home, incorrigibility, and unruly behavior.

TANF (Temporary Assistance for Needy Families) – The Georgia State Plan to implement changes in public assistance (welfare) mandated by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193) signed into law on August 22, 1996. P.L. 104-193 converted Aid to Families with Dependent Children (AFDC), the federal cash assistance program to low-income families, into block grant funds to be administered by the states. TANF provisions include a lifetime limit (in Georgia this limit is 4 years) or receipt of assistance, stringent work requirements, and strict eligibility guidelines. Juvenile court professionals must be aware of the changes in public benefits arising from

TANF because resources traditionally accessed in juvenile court proceedings may no longer be available, and will certainly be limited. Additionally, there is a possibility that parents or caretakers may be referred to a Neglect Prevention Unit to assess potential risks to children from a failure to achieve self-sufficiency within mandated time limits.

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

TRUANCY INTERVENTION PROJECT (TIP) – Delinquency prevention program provided in some juvenile courts to prevent juveniles adjudicated unruly on the basis of truancy from progressing to delinquency offenses. Juveniles in TIP are paired with volunteer attorneys who represent the juvenile and act as a mentor for the juvenile.

UNRULY CHILD – A child who:

While subject to compulsory school attendance is habitually and without justification truant; Is habitually disobedient of the reasonable and lawful commands of his parent, guardian, or other custodian and is ungovernable; Has committed an offense applicable only to a child; Without just cause and without the consent of his parent or legal custodian deserts his home or place of abode; Wanders or loiters about the streets of any city, or in or about any highway or any public place, between the hours of 12:00 Midnight and 5:00 A.M.; Disobeys the terms of supervision contained in a court order which has been directed to such child, who has been adjudicated unruly; or Patronizes any bar where alcoholic beverages are being sold, unaccompanied by such child's parents, guardian, or custodian, or possesses alcoholic beverages; and In any of the foregoing, is in need of supervision, treatment, or rehabilitation; or Has committed a delinquent act and is in need of supervision, but not of treatment or rehabilitation.

WRAPAROUND SERVICES – time limited services to a family by a provider under contract with DFACS which are designed to prevent removal of the child or to assist the family unit in the transition of the child back into the home after a stay in foster care. Includes family / individual counseling, conflict resolution and assistance to the family in locating community resources. |

WIC - Special Supplemental Food Program for Women, Infants, and Children – Federal program that provides food supplements and health care to pregnant women, breastfeeding mothers, infants, and young children. WIC participants must have incomes at or below 185% of the poverty level and must be nutritionally at risk.

YDC (Youth Development Campus) – DCYS facility for housing juveniles who are adjudicated delinquent.

DJJ-DFCS Cooperative Agreement

Duration

- The agreement will last from 4-28-06 until 4-28-07.
- The parties may renew the agreement for additional terms of a year, and changes can be made to the agreement on review for renewal.
- The agreement may be terminated by either party upon 30 day written notice to the other party in writing.

Definitions

Child in DFCS custody: a child who has been placed in the custody of DFCS by an order of the juvenile court pursuant to the Juvenile Court Code or by voluntary agreement.

Child under commitment to DJJ: a child who has been placed under the control and supervision of DJJ for purposes of treatment and rehabilitation by an order of the juvenile court.

Child: Person under the age of 18 years of age or under commitment to DJJ or in custody of DHR/DFCS.

Joint Custody/ Commitment: occurs when a child is in the custody of DFCS and is committed to DJJ.

Independent Court: A juvenile court staffed with county funded probation and intake officers rather than DJJ staff.

Dependant Court: A juvenile court staffed completely or in part by DJJ probation and intake staff.

Detention Assessment Instrument: a screening instrument used by DJJ and juvenile court staff to assist in detention decisions following the arrest of juveniles. The use of this instrument is mandated in DJJ policy.

Purpose

A Framework to promote increased cooperation, coordination, and integration at the administrative and service delivery levels for the benefit of children and families within the purview of DJJ and DHR's Division of Family and Children Services. It seeks to enhance the quality of services for troubled children in Georgia through improved coordination of resources between DJJ and DFCS.

Parties

Both DJJ and DFCS agree to operate under the principle that commitment of a youth to DJJ or placement or custody to DFCS does not relieve either party of ongoing responsibilities for a youth.

Areas of Agreement

- DFCS will provide appropriate services, in accordance with DFCS policy and procedures, to all children and their families when they are involved in the juvenile court system as a result of delinquent or unruly behavior.
- DJJ agrees to provide equivalent services to DFCS youth involved in the juvenile court system equal to services rendered to other DJJ clients.
- Before either DFCS or DJJ directly or indirectly initiates or anticipates legal action through the courts which impacts the other agency, prior notice must be given to the agency and a joint staffing must be held.
- Before prior notice is given and a joint staffing has occurred DJJ and its employees will not suggest to a juvenile court or court employee or to

- participants in juvenile court proceedings that a youth should be placed in DFCS custody.
- Before prior notice is given and a joint staffing has occurred DFCS and its employees will not suggest to a juvenile court or court employee or to participants in juvenile court proceedings that a youth should be placed in DJJ custody.
 - For the purpose of placement planning for children who are in DFCS custody and also committed to DJJ, the Departments shall share with each other all information concerning individual children subject to applicable federal and state laws.
 - Procedures
 - Upon a child's arrest, a designated intake officer provided by DJJ or an Independent Juvenile Court receives the Juvenile Complaint Form and establishes jurisdiction of the court.
 - The designated intake officer will determine the detention or release of the child. The DAI will be used as a guideline in making all intake and detention decisions.
 - If the child is not in custody of DFCS and is to be released, the intake officer should immediately contact the parent or legal guardian. In the event that the parent or legal guardian refuses to receive the child, a Child Protective Services complaint will be made with DFCS immediately. Through investigation, DFCS will determine if substantiated neglect/abuse exists, in accordance with DFCS time policy. After exhausting all efforts to find a parent within a reasonable timeframe (not to exceed 8 hours the intake officer will make a CPS complaint to DFCS. All such attempts to locate the parent or guardian will be documented and such documentation shall be provided to DFCS if a referral to DFCS is necessary.
 - The designated intake officer will make a report to the local DFCS county department Child Protective Services Intake Unit between the hours of 8am and 5pm – Monday through Friday.
 - Following a referral from the intake officer, DFCS will investigate to determine whether abuse or neglect has occurred. If deprivation is present DFCS will request that a SAAG seek an order for custody of the child pending the 72-hour deprivation detention hearing. In these cases DFCS will assure that the child is removed from detention within 8 hours after the youth is placed in DFCS custody unless the child is deemed appropriate for secure detention by the DJJ assessment process.
 - If the child is in DFCS custody, the designated intake officer will notify the county DFCS office which has custody of the child by telephone immediately, and file a detailed report as soon as possible (no later than 24 hours after youth is detained). The designated intake officer will document the date and time of notification and to whom they spoke at DFCS. DFCS shall respond to this referral within a reasonable time frame as specified in the local MOU.

- DJJ will provide case expeditors to monitor the use of secure detention and facilitate the placement of appropriate youth in non-secure detention alternatives, DFCS case workers will work in concert with DJJ case workers on all joint custody/commitment cases.
- When children score in the low range (2-7) on the DAI, youth are not normally deemed appropriate for detention. In these situations DFCS will assume prime responsibility for placement coordination, ensuring that the child is removed from secure detention within 8 hours. DFCS will also present the child for the delinquency probable cause hearing and any additional court hearings and staffings.
- In the cases involving joint custody youth who score in the medium range and high range (8+), on the DAI, DJJ will assume primary responsibilities for placement coordination and will present the child for the delinquency probable cause hearing and any additional court hearings and staffings.

Case Management and Coordination

- If the child is committed to DJJ, or is leaving a residential placement or a facility operated by DJJ and is not in DFCS custody:
- DJJ will take primary responsibility for arranging the return of the youth to his family after DJJ placement has ended.
- If parent or guardian cannot be found/refuses to accept a CPS complaint will be filed.
- DJJ must notify DFCS in the parents/guardians count of resident if it has not been able to arrange discharge to the child's family within 60 days of the projected discharge date. All pertinent case information must be shared with DFCS at the time DJJ makes its CPS report. In addition, a report concerning the efforts DJJ has made to find such a placement for the youth will be provided no later than 20 days before the child is to be released.
- At the expiration of the initial two-year commitment order to DJJ, if a child needs prohibit him from entering into the community, DJJ will continue rehabilitation and treatment pursuant to O.C.G.A. § 15-11-70.
- If the child is a joint custody case:
- DJJ will assume responsibility for providing a secure or non-secure residential placement until the child is determined appropriate for release. DJJ will be responsible for providing a discharge plan to be effective upon release. DFCS will assume primary support for the child upon release with DJJ support and assistance.
- Within 10 days of commitment to DJJ, the DJJ assessment and classification specialist shall convene a Screening Committee for the purpose of recommending placement. In joint custody cases the DJJ will provide DFCS county director written notice (fax or email) to include the date, time, and location of the screening committee meeting.
- DFCS and DJJ case managers shall visit the children residential placements, and make joint visits whenever possible and will provide each other written notice of their visits.

- DFCS will retain custody of the youth and will not petition the court for a release from custody. This provision does not obligate DFCS to file a petition or motion to extend custody.
- Where the youth is placed in a residential treatment program and committed to DJJ and in the custody of DFCS, both parties will assume 50% of the costs.
- Both Parties agree to provide a minimum of 90 days notice of expiration of custody/commitment or discharge for clinical outcome achievement.
- If a joint custody commitment, and the child is pregnant and gives birth while committed to DJJ, and in a DJJ placement.
- DJJ must work with minor mother for alternative placement for baby
- Minor mother must be involved in the team decision-making process for placement.
- If the minor mother refuses available placement, or there is no available placement, DJJ will contact DFCS to file a CPS report.
- If possible, DFCS will try to keep minor mother and baby together in same placement.

DFCS Timeline & Obligations Under Kenny A

A. FOR CHILDREN ENTERING PLACEMENT AFTER THE ENTRY OF CONSENT DECREE.

DFCS SERVICE	TIMING
Comprehensive Child & Family Assessment (CCFA)	Within 24 hours of a Detentional Hearing DFCS will make a referral to CCFA provider
Family Team Meeting (FTM)	Within 3-9 days after a child enters FC
Physical Health Screen	Within 10 days of a child's entry into FC
Dental Health Screen	Within 10 days of a child's entry into FC
Multidisciplinary Meeting (MDT)	Within 25 days of a child's entry into FC
Case Plan	Within 30 days of a child's entry into FC
CCFA	Within 30 days of a child's entry into FC, CCFA due.
Mental Health Screen (Child: 4 yrs. & older)	Within 30 days of a child's entry into FC
Developmental Assessment (Child: 4 yrs. & under)	Within 30 days of a child's entry into FC. CAA recommends Babies Can't Wait (BCW) referral be made immediately.

B. FOR CHILDREN WHO HAVE REACHED THEIR 6th MONTH IN FOSTER CARE

DFCS SERVICE	TIMING
Judicial Citizen Plan Review (JCPR)	Within 6 months of a child's entry into FC, & every six months thereafter.

C. FOR CHILDREN WHO REACH THEIR 13th MONTH IN FOSTER CARE

DFCS SERVICE	TIMING
Family Team Meeting (FTM)	By the end of the 13th month after a child's entry into FC
Permanency Report	By the end of the 13th month after a child's entry into FC, DFCS will forward the Permanency Report to the State Social Services Director.
Director Review of Permanency Report	Within 5 days after receipt of Permanency Report the Director or his designee shall either concur with the report or refer the case for a county/state staffing

D. FOR CHILDREN WHO ALREADY REACHED THEIR 13TH MONTH IN FOSTER CARE

DFCS SERVICE	TIMING
	Within 120 days from the entry of the Consent

Permanency Report	Decree, DFCS will submit a Permanency Report to State Social Service Director for a permanency review as provided above.
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E. FOR CHILDREN WHO WILL REACH, & HAVE REACHED, THEIR 18TH MONTH FC

DFCS SERVICE	TIMING
Specialized Case Manager	Within 60 days of the entry of this consent decree, all children who have reached & will reach their 18 th month in care will have a Specialized Case Manager.

Family Team Meeting:

FTM participants shall include:

- DFCS case manager
- DFCS supervisor
- Parents (**DFCS must** reasonable efforts for their attendance)
- The child if 12 or older (**DFCS must** make reasonable efforts)
- The FTM participants may include:
 - CCFA provider
 - Relatives
 - Other persons significant to the family

A meeting shall not be cancelled solely because of the absence of any participant as long as the required determinations can be made without them.

Efforts to ensure the attendance of participants shall be documented in child's file.

Participant's in the meeting will identify:

- the needs of the child & parents
- Goals for meeting those needs
- Steps for meeting the goals.
- Strengths of the family member in meeting the needs of the child.

At the meeting **DFCS must** make the following determinations & ensure the provisions of necessary services to achieve them:

- Whether the child can safely returned home.
- Whether any evaluations are necessary of child/parent to ensure development of case plan.
- If child has siblings in placement & the siblings are not placed together, **DFCS must** identify the necessary steps to place the siblings together & necessary steps to ensure visitation.
- If child is of school age, **DFCS must** identify steps that can be taken to ensure that the child:
 - Remains enrolled in school; does not miss extensive school days; &
 - Does not have to change schools if at all possible.
- The frequency with which visiting the child will take place between child & parent/significant family members.
- If DFCS is unable to secure the parents' attendance, the meeting will go on but, **DFCS must** make reasonable efforts to notify & review with the parents the goings-on at the meeting.

Multidisciplinary Meeting:

The MDT participants shall include:

- DFCS case manager
- DFCS supervisor
- Parents (**DFCS must** reasonable efforts for their attendance)
- The child if 12 or older (**DFCS must** make reasonable efforts)
- The MDT participants may include:
 - Foster Parents/ Placement Providers
 - DFCS representatives
 - School representatives
 - Therapists
 - Mental health professionals
 - Representatives from Public Health
 - Judicial Representatives

A meeting shall not be cancelled solely because of the absence of any participant as long as the required determinations can be made without them.

Efforts to ensure the attendance of participants shall be documented in child's file.

An MDT will:

- Review the CCFA & make recommendations concerning the case plan & the services to be provided to the child & family, included but not limited to the issues addressed at the FTM.
- The appropriateness of education (including special education)
- The creation & appropriateness of independent living plans & services for children 14 & older
- An appropriate permanency goal for the child & the services necessary to implement that goal.
- The Case Plan shall be an outgrowth of the CCFA assessment & shall be developed at the MDT meeting.
- **DFCS Shall** identify & ensure the provisions of necessary services to achieve the determinations made at the MDT meeting, & contained in the child's case plan, unless & until altered by the superior court.

Judicial Citizen Plan Review

Participants in JCRP or Juvenile Court Review shall include:

- the parents
- the child
- pre-adoptive parents or relatives providing care for the child
- foster parents/placement provider
- DFCS case manager
- the private provider case manager (if applicable)
- the case supervisor
- other DFCS representatives
- the CCFA providers
- medical & mental health professionals
- representatives from Public Health & the child's school
- other professionals having specific knowledge or information relative to the child's case.

JRCP or Juvenile Court Review shall not be cancelled solely because of the absence of any participant as long as the required determinations can be made with the participant's who are in attendance.

At each six month case plan review, the JRCP &/or Juvenile Court shall evaluate the following.

- The necessity & appropriateness of the child's placement
- Whether reasonable efforts have been made to obtain permanency for the child.
- The degree of compliance with the specific goals & action steps set out in the case plan.
- Whether any progress has been made in improving the conditions that caused the child's removal from the home.
- Whether changes need to be made to the case plan, including a change in permanency goal & the projected date when permanency for the child is likely to be achieved, or changes or the addition of any services needed by the child.

Permanency Report

The Permanency Report shall include:

- a profile description of the child
- the case plan
- a list of impediments for achieving permanency
- the CCFA
- a list of steps to be taken by the county to achieve permanency

County/State Staffing

The staffing shall include:

- DFCS case manager
- DFCS supervisor
- regional adoption coordinator
- regional field specialist
- county program administrator
- state social services director or his designee

Specialized Case Manager

The Specialized Case Manager provided for in this paragraph shall do the following as appropriate for the children:

- convene meetings
- access funding
- make independent decisions in order to:
- determine the continuing appropriateness & effectiveness of the child's permanency goal & to seek court approved change of the goal if appropriate.
- determine the continuing appropriateness & effectiveness of the services being provided to the child; whether new or different services are necessary for the child; &, if so, by whom & when they will be provided.
- partner with the county Independent Living Coordinator to determine whether adequate independent living services & plans are being provided for all children age 14 or older.
- evaluate the continuing appropriateness & effectiveness of services to biological parents & relatives, & determine whether new or different services are necessary

to assist the biological parents & relatives in achieving the child's permanency goal.

- consult with public & private professionals & take all steps necessary to ensure the provision of services leading to the child achieving permanency.
- No sooner than 30 days prior to discharge, convene a special discharge planning meeting that shall be held to ensure that appropriate services & plans are in place to ensure a successful discharge.

Sample Motions

DFCS POLICY SELECTIONS

footnotes: Standards for Parent Attorneys

- ¹ See GA RULES OF PROF'L CONDUCT R. 1.3. See In Interest of M. S., 178 Ga. App. 380 (Ga. Ct. App. 1986) for discussion of fundamental liberty interest.
- ² American Bar Association Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases, 2006, Standard 8 (hereinafter ABA standards)
- ³ See id. Standard 10 and 11
- ⁴ Id.
- ⁵ See GA RULES OF PROF'L CONDUCT R. 1.6
- ⁶ ABA Standards, supra note 2, Standard 16.
- ⁷ Id, Standard 17.
- ⁸ Id, Standard 17.
- ⁹ Id. Standard 18 commentary
- ¹⁰ See MODEL RULES OF PROF'L CONDUCT R. 1.14 cmt. 5
- ¹¹ ABA Standards, supra note 2, Standard 18 commentary.
- ¹² Oregon Performance Standards for Representation in Juvenile Dependency Cases Standard 3.5 (hereinafter Oregon Standards), See State of Georgia Performance Standards for Representation in Indigent Delinquency and Unruly Cases, 2005 Standard 5.1 (hereinafter Georgia Standards)
- ¹³ Georgia Standards, supra note 12, Standard 5.2
- ¹⁴ Oregon Standards, supra note 12, Standard 3.5.2.
- ¹⁵ Also called the probable cause hearing or the shelter care hearing.
- ¹⁶ Georgia Aspirational Guidelines for Attorneys Representing Parents in Child Deprivation at 10.
- ¹⁷ ABA Standards, supra note 2, Standard 19.
- ¹⁸ Oregon Performance Standards, supra note 12, Standard 3.12
- ¹⁹ Id.
