Barton Juvenile Defender Clinic

Representing the Whole Child:
A Georgia Juvenile Defender Training Manual, 3rd Edition

Emory University
School of Law

REPRESENTING THE WHOLE CHILD:

A GEORGIA JUVENILE DEFENDER TRAINING MANUAL

3rd Edition

Barton Juvenile Defender Clinic
Emory University Law School

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Barton Child Law & Policy Center:

The Barton Child Law and Policy Center is a program of Emory Law School. Our mission is to promote and protect the legal rights and interests of children involved with the juvenile court, child welfare and juvenile justice systems; to inspire excellence and integrity among the professionals and within the institutions that serve children; and to prepare the next generation of lawyers.

The Center's work is directed by Emory Law faculty and performed by law and other graduate students who participate in reform initiatives and holistic client representation by conducting research; advocating for individual clients; writing articles, policy papers, and other informational materials; and analyzing and drafting legislation and policy directives.

Barton Juvenile Defender Clinic:

The Barton Juvenile Defender Clinic (JDC), a clinical offering of the Barton Child Law & Policy Center, is an in-house legal clinic dedicated to providing holistic legal representation for children in delinquency and status offense proceedings. Student attorneys represent child clients in juvenile court and provide legal advocacy in the areas of school discipline, special education, and mental health, when such advocacy is derivative of a client's juvenile court case.

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I. Introduction

SECTION I: Introduction

Juvenile Defense is a specialty within the legal field. The ability to provide competent and zealous advocacy is enhanced by specialized knowledge of law, adolescent development, and the unique legal considerations for young clients. Young clients should be given the same respect and autonomy as their adult counterparts.

The juvenile justice system exists to ensure appropriate care, treatment, and rehabilitation of court-involved youth.* Despite a trend towards stricter penalties for delinquent behavior, the Georgia Juvenile Code retains the goals of providing treatment and rehabilitation, and of equipping juvenile offenders with the ability to live responsibly and productively.[1] Young people coming within the jurisdiction of the court should receive, *preferably in their own home*, such care and guidance as will secure their moral, emotional, mental, and physical welfare as well as the safety of both the child and community.[2] With this in mind, attorneys handling juvenile court cases need to be equipped with an understanding of the law, court procedure, alternatives to detention and the special needs of the client, to ensure the purpose of the Juvenile Code is carried out.

This manual was originally created in 2005 to provide defense attorneys in juvenile court with a general guide to appropriate and zealous advocacy on behalf of young people in juvenile court. Since that time, much has changed in juvenile defense, both nationally and here in Georgia. Nationally, the U.S. Supreme Court has issued five important decisions on the treatment of young people in the justice system. Locally, in 2014 Georgia implemented a new Juvenile Code. Since then, the system continues to evolve. This 3rd Edition encompasses this evolution.

This manual is an introduction to juvenile defense but not a complete reference. It is our intent to make this manual as widely applicable throughout the state as possible. However, we recognize that Georgia has 159 counties and many different local practices and procedures. Local practices and procedures may differ from what is described in the manual. Take the time to talk with court clerks, probation officers, and other defense attorneys to discover local approaches.

Our intention is to equip juvenile defense attorneys with the knowledge and resources to ensure youth receive zealous advocacy in all arenas. The manual takes a holistic approach to juvenile defense, evaluating all the factors that may have contributed to delinquent behavior to assist with proper representation and handling throughout the system. Our goal is to help defense attorneys in juvenile court to recognize a young person's many areas of need so they may zealously advocate for their clients at every stage of a juvenile proceeding.

* The terms "youth" and "young people" will be used to describe individuals who may or have come within the jurisdiction of the juvenile court with allegations of delinquent behavior. Georgia law generally refers to "child" or "children." Youth, young people, child and children will be used interchangeably throughout this manual.

II. History of the Juvenile Court

SECTION II: History of the Juvenile Court

The first juvenile court was created by the Illinois legislature in 1899.[3] The court was founded upon a belief in community responsibility to care for society's children.[4] Based upon the theory that youth were amenable to rehabilitation, the court was created to support proper adolescent development and was described as benign, non-punitive, and therapeutic.[5] Further, the court's ideology recognized the limited responsibility of young people and the need for treatment rather than punishment.[6] The state adopted the legal doctrine of *parens patrie,* the state as parent, to authorize state intervention where parents had lost control of or were unable to provide adequately for their children. The state would informally adopt these young people and act as their guardians to consider their best interest.[7]

The courts were created to remove the punitive aspects of the adult criminal courts to which young people had previously been subject. As a result, the structure and proceedings were informal and were used to identify the cause of delinquency and address it through treatment and rehabilitative alternatives to punishment.[8] Lawyers were rarely involved in the proceedings. The court's additional handling of dependency matters created an umbrella characterization over all the court's proceedings as civil.[9] Young people involved in these civil proceedings did not have the same procedural safeguards that due process required in adult cases, even in instances where a loss of liberty was at stake.[10] The court's temporary custody of children was not considered as a loss of a constitutionally protected right to liberty, but rather as being in their best interest.[11]

The passage of time has greatly altered juvenile court proceedings. In re Gault, the United States Supreme Court recognized due process as an indispensable foundation of individual freedom.[12] In re Gault provided juveniles in delinquency proceedings certain procedural rights.[13] These rights include notice of charges, right to counsel, right to confrontation and cross-examination, and privilege against self-incrimination.[14] The Court held that the hearing must measure up to the essentials of due process and fair treatment.[15]

The Supreme Court recognized that the lack of constitutional protections did not further the Court's objectives but rather hindered them.[16] The Court went further, stating that a lack of fairness in any of the court's procedures could prevent the thorough administration of the juvenile court's purpose. If a youth views the process as unfairly applied, they may reject both the treatment and rehabilitation.[17] Therefore, in determining whether a right applies in juvenile court, the court has an obligation to determine whether that right is essential to fundamental fairness.[18]

However, juvenile courts are not required to provide all the same procedural safeguards as adult courts. For example, while some states allow juveniles the right to a jury trial, the Supreme Court does not require this,[19] and Georgia does not statutorily provide youth in juvenile court with the right to a jury trial.

A new trend in juvenile justice followed the series of due process cases in the 1960s. From the mid-1980s through the 1990s, the system shifted away from rehabilitation and treatment, towards stricter penalties and punishments. This shift was predicated on the mythology of the juvenile "super-predator," which served to instill in the general public a fear of juvenile offenders.[20] During this time, Georgia enacted Senate Bill 440, which afforded the superior courts exclusive jurisdiction over a group of different offenses if committed by youth at least 13 years old.[21] In addition to this jurisdictional change, there was also an erosion of confidentiality provisions and an overall attitudinal shift towards a get-tough approach to juvenile delinquency.

While the shift that occurred in the 1990s has had long-lasting effects on the juvenile justice system, the most recent trend in juvenile justice is a more positive one for young people in the system. Beginning with the abolition of the death penalty for minors in 2005, the U.S. Supreme Court has begun to recognize the developmental differences between young people and adults.[22] Notably, the Court has recognized that juveniles are more susceptible to immature and irresponsible behavior than adults, more vulnerable to peer pressure than adults, and more amenable to rehabilitation than adults.[23]

Despite this positive trend, the consequences for youth involved in the justice system remain great. The potential for loss of liberty for court-involved youth should be taken seriously, and every effort should be made to prevent this from occurring. The creators of the juvenile court recognized the unique potential for rehabilitation among young people. Juvenile defense should embody the original doctrine of the juvenile court with belief in the developing adolescent mind and person. The

main opportunity for a young person to grow and become a productive citizen after a delinquent offense will be facilitated by zealous and appropriate defense advocacy.

IMPORTANT SUPREME COURT DECISIONS ON JUVENILE JUSTICE: DUE PROCESS

Kent v. United States, 383 U.S. 541 (1966)

There is a right to a judicial hearing before a discretionary transfer of jurisdiction to criminal court. In that hearing, the youth is entitled to notice, representation by an attorney who has been granted access to relevant records and a written ruling from the court on the transfer decision.

In re Gault, 387 U.S. 1 (1967)

Young people are guaranteed due process rights essential to fundamental fairness in juvenile delinquency proceedings, including the right to counsel, the right to adequate and timely notice of the charges against them, the right to confront and cross-examine witnesses, and the protection against self-incrimination.

In re Winship, 397 U.S. 358 (1970)

The "beyond a reasonable doubt" standard of proof applies to adjudication hearings in delinquency cases.

McKeiver v. Pennsylvania, 403 U.S. 528 (1971)

Young people in the juvenile justice system are *not* constitutionally entitled to trial by jury.

Breed v. Jones, 421 U.S. 519 (1975)

The Double Jeopardy Clause prevents trial in criminal court of a young person who was previously subjected to a delinquency proceeding concerning the same acts.

Schall v. Martin, 467 U.S. 253 (1984)

Preventive detention of young people accused of delinquent acts pending trial is constitutional.

IMPORTANT SUPREME COURT DECISIONS ON JUVENILE JUSTICE: ADOLESCENT DEVELOPMENT

Roper v. Simmons, 543 U.S. 551 (2005)

The Eighth and Fourteenth Amendments forbid the imposition of the death penalty on offenders who were under the age of 18 when their crimes were committed.

Graham v. Florida, 560 U.S. 48 (2010)

The Eighth Amendment prohibits the imposition of a life without parole sentence for offenders under the age of 18 who did not commit homicide. Any such offender must be provided a meaningful opportunity to obtain release.

J.D.B. v. North Carolina, 564 U.S. 261 (2011)

A child's age properly informs the *Miranda* custody analysis, so long as the child's age was known to the officer at the time of police questioning, or would have been objectively apparent to a reasonable officer.

Miller v. Alabama, 567 U.S. 460 (2012)

Mandatory life imprisonment without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on cruel and unusual punishments. A judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles.

Montgomery v. Louisiana, 136 S.Ct. 718 (2016)

Because *Miller* announced a substantive rule of constitutional law, it applies retroactively to sentences where mandatory LWOP was imposed before the *Miller* holding. Either a new sentencing hearing or automatic parole eligibility are required.

III. Definition of a Child

SECTION III: Definition of a Child

The legal age of majority in Georgia is 18.[24] For purposes of the Georgia Juvenile Code, a child is defined as any individual who is:

- Under the age of 18 years;[25]
- Under the age of 17 years when alleged to have committed a delinquent act;[26]
- Between 18 and 21 years of age and receiving extended care youth services from DFCS;[27] or
- Under the age of 21 years who committed an act of delinquency before reaching the age of 17 years and who has been placed under the supervision of the court or on probation to the court for the purpose of enforcing orders of the court.[28]

The minimum age for criminal responsibility for an act, omission, or negligence is 13.[29]

The juvenile court has concurrent jurisdiction with the superior court over a youth who commits an act that would be a crime if committed by an adult and for which an adult may be punished by death, life without parole, or life imprisonment.[30]

The superior court has exclusive original jurisdiction over the trial of any child 13 to 17 years of age who is alleged to have committed: (1) murder; (2) murder in the second degree; (3) voluntary manslaughter; (4) rape; (5) aggravated sodomy; (6) aggravated child molestation; (7) aggravated sexual battery; (8) armed robbery if committed with a firearm; (9) aggravated assault if committed with a firearm upon a public safety officer; or (10) aggravated battery upon a public safety officer.[31]

There is no statutory minimum age for delinquency actions.

For definitions and explanations of other commonly-used terms, please see the glossary at the end of this document.

IV. Attorney-Client Relationship

SECTION IV: Attorney-Client Relationship

Role of the Defense Attorney in Juvenile Court[32]

A defense attorney is a critical player in the juvenile justice system – charged with protecting a child's right to due process and zealously advocating for the child-client's expressed interest. The juvenile defender is the only person in the juvenile justice system responsible for understanding and articulating the young person's expressed interests.[33] In this sense, the role of a juvenile defender mimics the role of a criminal defense attorney. However, unique to the role of the juvenile defender is the need for child-focused counseling such that the client is empowered to make informed decisions about their case, despite the client's vulnerable age.

In the courtroom, the most fundamental responsibility of the juvenile defender is zealous advocacy for the expressed interest of the child-client.[34] A defense attorney should act as the youth's voice to the court at every stage of the proceedings, recognizing the client as the ultimate authority in making their own decisions. Such decisions could include the decision to accept an adjudication of delinquency by admitting to the delinquent act, or to bring the case before the judge in a bench trial. Even if the decision made by the client strikes counsel as ill-considered or contrary to the best interest of the child, a juvenile defender is bound to articulate the client's decision to the court, and do everything within their power to achieve the goals of the client.

The young age of a client does not affect the vigor with which a defense attorney should pursue the client's interests and goals.[35] However, the special status of childhood remains a factor that affects the role of a juvenile defender.[36] Child-clients do require a degree of counseling, informing, and advising that adult clients may not. For instance, it is essential that a child understand their release conditions, or what it means to waive certain rights.[37]

Therefore, outside of the courtroom, a juvenile defender must seek to empower the client to make informed decisions that reflect an understanding of the juvenile court system and of the potential consequences for certain decisions. In doing so, counsel must take into account the unique susceptibilities of youth, the nuances of the juvenile court system, the consequences of adjudication, and the social, familial, psychological, emotional, and educational needs of the client.

Interviewing Your Juvenile Client

The initial client 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 prior to the court date. This is important not only for case preparation but also as a means of establishing trust with the client. It is also important that you schedule the interview to allow for ample time to speak with the client so that you can establish rapport with the client, learn about the client's objectives, gather information about the case, and answer any questions the client may have. Make it clear to the client that the more you know about them and their family the more helpful it can be in court. How the interview is conducted may have a tremendous impact on the ability to establish trust and rapport with the client.

When a client is detained prior to the initial court date, lengthy meetings prior to court might be impossible. However, it is still essential that you meet with the client prior to the hearing, and that you learn as much about the client as you can at that time. These interviews will focus primarily on gathering information essential to the court date – is there probable cause and, if so, can you present an argument for release from detention. A follow-up meeting with the client will be necessary after the detention hearing.

Interviewing a child client shares many of the same characteristics as interviewing an adult client. The basic goals include: (1) developing an effective relationship with the client and (2) acquiring an accurate account of the client's situation, as well as an understanding of their wants and needs.

Building Rapport with the Client

While rapport building is necessary with all clients, the inherent distrust of adults makes this an even more essential component of an interview with a young person. The best way to begin to build rapport with the client is to begin the interview by trying to make the client feel at ease. You can ask them how they'd like to be addressed, and what their strengths and interests are. Make sure your interactions are genuine, and that you are actively listening and asking the young person follow-up questions. Do not immediately expect to connect with the client; it will take time to establish trust. However, your initial interview may begin this process. Over time, maintaining contact with and interest in the client will build their trust. Regular contact with the client will also keep them up to date on deadlines, responsibilities, and progress of the case. It also allows the attorney to monitor the progress of the client's post-release or post-disposition supervision and to provide guidance or advocacy prior to further court involvement.

Some of your clients, particularly those with mental health issues, may feel uncomfortable during the interview process. Some helpful practices include providing the client with a "fidget" toy during the interview, giving the client pen and paper to draw on while interviewing them, and permitting the client to avoid eye contact – perhaps even by sitting side-by-side rather than face-to-face.

Explaining Confidentiality

Early in the interview, explain to both the client and parent(s)/guardian the role of defense counsel and the court process generally. It is important to clarify that a juvenile defense attorney represents the legal interests of the young person and not the parent/guardian. Also, make sure to thoroughly explain confidentiality and privilege to both the client and parent/guardian. The young person may feel empowered by having this explained with the parent/guardian present. Explain that privilege is broken by the presence of another, making the interview alone with the client necessary.[38] Make sure to clarify the exceptions for confidentiality for future crimes and misrepresentations to the court.[39]

Explain that you will speak with the client about the case alone and that, afterward, you can speak with the parent/guardian if they have any concerns or anything additional they would like to add. Be prepared for the parent/guardian to feel resentment or mistrust when excluded from meetings between counsel and the child-client. It is important to try not to alienate the parent/guardian because they may often be the only means to access the client.

In some cases the parent/guardian is the complainant and is still very hostile about the situation leading to the charges. Try to diffuse potential animus on the part of the parent/guardian and explain the larger repercussions of detention or probation that may increase the likelihood of future charges and court involvement – including additional obligations placed upon the parent/guardian.

You may need to speak with the parent/guardian to gather important background information that only the parent/guardian may know. However, as much as possible, direct these questions to the client and allow the client to answer.

Communication

Conducting a thorough interview with a young person can be challenging. When interviewing a young person, it is essential that you adjust your expectations of the interview. You should be prepared for unorganized thinking, incomplete narratives, lack of specificity, and even some lack of cooperation or open hostility to your presence. The young person may have a limited understanding of legal terms and may be too intimidated to ask questions. When you counsel your client with respect to legal options, you should also anticipate that your client may ask you to make the decisions for them.[40]

To overcome some of these obstacles, have the young person describe the process in their own words; limit the use of legal terms and complex questions, and keep language simple and concise. Young people may describe the events that culminated in the charges like a child would; they may omit names, times, and other pertinent information. They often do not know the last names or telephone numbers of their friends or acquaintances that could be helpful witnesses. You will probably need to be creative in asking questions and interviewing other sources to get at the heart of your case.

The most commonly used interview method for speaking with youth is the T-Funnel method.[41] In order to hear the client's account of the allegations, ask them to describe what took place without interruption. Let the client finish talking before you

begin to ask follow-up questions. Continue asking open-ended questions that become narrower in scope. These will help you draw out additional facts to fill out the narrative. Once all of the questions are complete, go over the client's account detail by detail and make sure nothing has been omitted or misunderstood.[42]

Given the imprecise nature of language, it is often helpful to have the client provide drawings of the incident – a map identifying locations, a diagram of where people were standing, etc. Similarly, when a client is faced with a decision to be made (trial or accepting a plea, testify or not), it can be helpful to work with the client to create a chart highlighting the pros and cons. The client should keep the chart as a reference guide leading up to the court date.

Preparing the Client for Court

The explanation of court procedure during the initial interview is a useful way to prepare the client for court. Assist the client with developing realistic expectations about the court process, including possible options and outcomes. This may help lessen anxiety and make the client more able to direct or assist in their defense. Explain who the different players in the courtroom are, along with the roles of each of these players.

Explain your court's expectations with respect to appropriate courtroom attire. Make sure to explain what is and is not appropriate. For example, clarify that more material and less skin is better, meaning no shorts or small tops. In most juvenile courts, belts are required, and shirts must be tucked in.

Let the client know that they should stand when the judge is speaking to them and that they cannot answer with nods but must speak audibly. Many judges also require that the defendant address the court with either "ma'am" or "sir." Advise the client to think about what they will say to the judge when asked to explain what happened in relation to the charges. Perhaps, have the client consider writing a letter of remorse for disposition and taking some steps towards restorative justice on their own.

Keep in mind that the client may say that they want to admit to the charges, but have in fact been pressured by a parent/guardian to admit to charges and accept their punishment as the consequences for their actions. Also, be aware that the parent/guardian in many cases is the complainant and may be pressuring the young person to accept responsibility.

PREPARING THE CLIENT FOR COURT

- Stand when addressed by the judge.
- Address the judge as "sir" or "ma'am."
- Review all questions the judge may ask before accepting an admission.
- Practice what they will say to the judge.
- Bring family, friends, teachers, ministers, coaches.
- Review required courtroom attire;
- Politeness counts.
- Turn cell phones off.

As the attorney, it is your responsibility to investigate the client's case, even if the client initially informs you that they wish to enter an admission.[43] It is also your responsibility to advise your client as to the best course of action.[44]

CHECKLIST FOR THE CLIENT INTERVIEW

- ☐ Introductions and building rapport
- ☐ Explain the role of a defense attorney
- ☐ Explain confidentiality / privilege and note taking
- ☐ Explain what you will need from the client and their parent
- ☐ Get the release of information signed
- ☐ Speak with client alone to discuss their account of the events
- ☐ Learn client's objectives for the representation
- ☐ Explain court procedure
- ☐ Explain possible adjudication and disposition outcomes
- ☐ Gather social background information
- ☐ Answer any questions the client has
- ☐ Schedule next meeting or discuss next court date
- ☐ Make sure the client has transportation and directions to court
- ☐ Explain dress/behavior expectations of the court
- ☐ Advise the client to arrive early on the day of court
- ☐ Let the client know there may be a long wait on the day of court

Juvenile Defense Top 10[45]

1. Maintain your ethical obligations as an attorney.

A client accused of a delinquent offense has the same civil liberties at risk as a person accused of a criminal offense. Although the consequences of delinquent offense may appear less significant or detrimental than those for criminal offenses, the effect of detention on a young person can be extremely damaging. An attorney's ethical duties are applicable to young clients and the responsibility of juvenile defense must be taken very seriously.

2. Do not cloud defense strategies with personal judgments about the client.

Avoid the impulse to impose personal judgments regarding what is best for the client. The judge is the ultimate decision maker as to what is in the best interest of the child and the public. It is the defense attorney's responsibility to present the facts and arguments on behalf of the client in a light most favorable to the client. As an attorney, the duty is to the client and to protect the objectives and expressed interests of the client. It is the judge who determines what is in the best interest of the client.

3. The client is the *young person* - not the parent(s).

The defense attorney should make it clear to the client and the parent/guardian that they will be advocating on behalf of the young person, not the parent/guardian. It is useful to clarify this relationship in front of the client. Be mindful that this can create tension between the attorney and the parent/guardian, but it can also create an atmosphere of trust with the client.

4. Communicate with and listen to the client.

Communicating with the client is an ethical obligation of attorneys. It is essential to listen to what your client has to say. Speak with the client without the parent/guardian present. Make sure to speak with the client and identify the client's interests and objectives for the case. It is critical to speak with the client before speaking on their behalf in open court. Make sure to explain the process to the client and ascertain whether they understand the court process and possible outcomes for the case. Assure the client that if at any time there is any confusion they can ask questions. Be sure to explain the rules of confidentiality. Make it clear to the client that the defense attorney advocates on their behalf, not for the court, and that every effort will be made to get the desired outcome. Communicate with the client before and after appearances in court to ensure clarity of the client's interests and the client's understanding of the process and outcomes.

5. Know the client behind the offense.

Establish rapport with the client. This can be done in many ways, including talking about hobbies or interests, or visiting the client outside of a court or office atmosphere. Demonstrate to the client that, as their attorney, you care about their opinions and concerns. Be clear about the client's concerns and interests in the outcome of their case. Be aware of the client's needs, strengths and weaknesses; make every effort to present the court with the person behind the charges. Understanding the client's interests, strengths, and challenges will be critical in arguing that the client is not in need of treatment, rehabilitation or supervision, or in the development of a sound dispositional plan.

6. Don't forget about disposition.

Does the client need treatment and/or rehabilitation? This is a crucial question for a critical stage in the advocacy by a juvenile defense attorney. If the client is not in need of treatment and/or rehabilitation, argue for dismissal of the charges. Otherwise, make the court aware of every positive aspect of the client. Create a dispositional plan that includes the client's strengths and helps to address their challenges in a way that the client can achieve success, not further court involvement. Present the court with a picture of the young person and their life beyond the offense. If necessary, schedule disposition at a later date to provide time to establish the best arguments for the client.

7. Advocate for the least restrictive environment.

Work to prevent the detention of the client. Most judges use detention out of frustration and/or absence of argument for other community based alternatives. Learn about programs or alternatives that are available and suitable for the client's needs. Suggest support for the family in addition to the client. Work with the family to create a system for in-home supervision, reporting, and community services. Be clear that detention can irreparably harm the client; it is the responsibility of a defense attorney to avoid this to the best of their ability.

8. Remember what it was like to be young.

Try to place yourself in the client's shoes and remember what it was like to relate with adults when you were a young person. Attain an understanding of adolescent brain and social development. Remember that the client is probably very scared, despite whatever tough exterior they may display. Keep in mind that the client is a young person in the midst of growing up and has made mistakes, but needs an opportunity to make better choices in the future. It is also important to keep in mind that the client may be growing up in an environment with challenges distinct from what the attorney has experienced or is familiar with. Do your best to relate with the client but also accept the differences between yourself and the client.

9. Be a persistent and patient advocate.

Do not give up on the client. The client may not always immediately acknowledge the benefits of your advocacy and efforts. There may be a need to try different approaches to aid the client towards success in life. Be persistent in attempting to achieve positive outcomes. Be diligent in attempting to locate the client. Do not give up if there is not an immediate connection with the client. Be patient with the client. Understand that the lessons learned during adolescence may not immediately integrate into a young person's decision-making and actions.

10. Celebrate every victory and accomplishment.

There will be many moments where a defense attorney may have feelings of not achieving overall success. It is important to create manageable and attainable measures of success and celebrate when they are achieved. The client may not have felt much success in their life. Ensure that they are aware that even minor accomplishments are big. Remember that an attorney's efforts today will have the potential for lasting impact on the life and future of the client. Share a client's successes with others in the juvenile field that will be able to appreciate the significance of those accomplishments.

Ethical Responsibilities of a Juvenile Defense Attorney

A juvenile defender, like any other licensed attorney, is bound by the rules of ethics as laid out by the State Bar of Georgia. Accordingly, a juvenile defender must provide competent, diligent, and zealous advocacy to protect their client's constitutional right to due process.[46] This takes on special importance with regard to juvenile clients, as young people can be particularly vulnerable to being lost in the complexities of a complex juvenile justice system. It is critical that counsel have the skills and knowledge to fiercely protect their client's procedural and substantive rights through what can be a confusing and overwhelming process, especially for a child.

To meet the ethical requirement of competence, counsel must demonstrate the legal knowledge, skill, thoroughness and preparation reasonably necessary for representation.[47] In seeking to provide competent representation, it is important for juvenile defense attorneys to recognize juvenile defense is a specialized field, requiring specialized knowledge and specialized training.[48] A juvenile defender must also possess thorough knowledge of adolescent development, the status of youth in the legal system, the unique procedures of juvenile court, and the long-term consequences of juvenile adjudication.[49] Defense attorneys in juvenile court are further bound to represent their child-clients' expressed wishes with the same diligence and zeal as would be expected of any other attorney.

Beyond the need for competence, diligence, and zealous advocacy, certain ethical requirements are triggered by the unique position of young people in the justice system. For instance, the attorney must maintain a normal attorney-client relationship with the client, regardless of the wishes of the child's parents or guardians.[50]

Juvenile defenders are obligated to advocate for the expressed desires of their child-client, as opposed to the "best interests" of a child.[51] "Best interest" is a term generally used in juvenile court to refer to the assessment of what types of services, actions, and orders will best serve a child, whether or not these are aligned with the child's wishes.[52] While the role of a guardian ad litem in juvenile court is to advocate for what they believe to be in the *best interest* of the child, a juvenile defender is bound to safeguard the child-client's substantive rights, by acting as the child's voice to the court. This is vital to the ethical obligations of a juvenile defender, as the "best interests" and expressed interest may stand in distinct opposition to one another.

When a defense attorney substitutes their own perception of what is in the child's best interest for the client's expressed wishes, they dilute the child's constitutional right to counsel. The same holds true when a defense attorney substitutes the parent's/guardian's perceptions of what is in the child's best interest for the child's expressed wishes. At the same time, it is not uncommon for a young person to look to their parent/guardian to make legal decisions for them. As their attorney, it is appropriate to remind the young person that their voice is central to their own case, and that you are there to advocate for them and what they want. If a juvenile client demonstrates a lack of developmental maturity in their decision-making, counsel should offer advice and guidance to their client, but still ultimately remain ethically-bound to advocate for the client's expressed goals.[53]

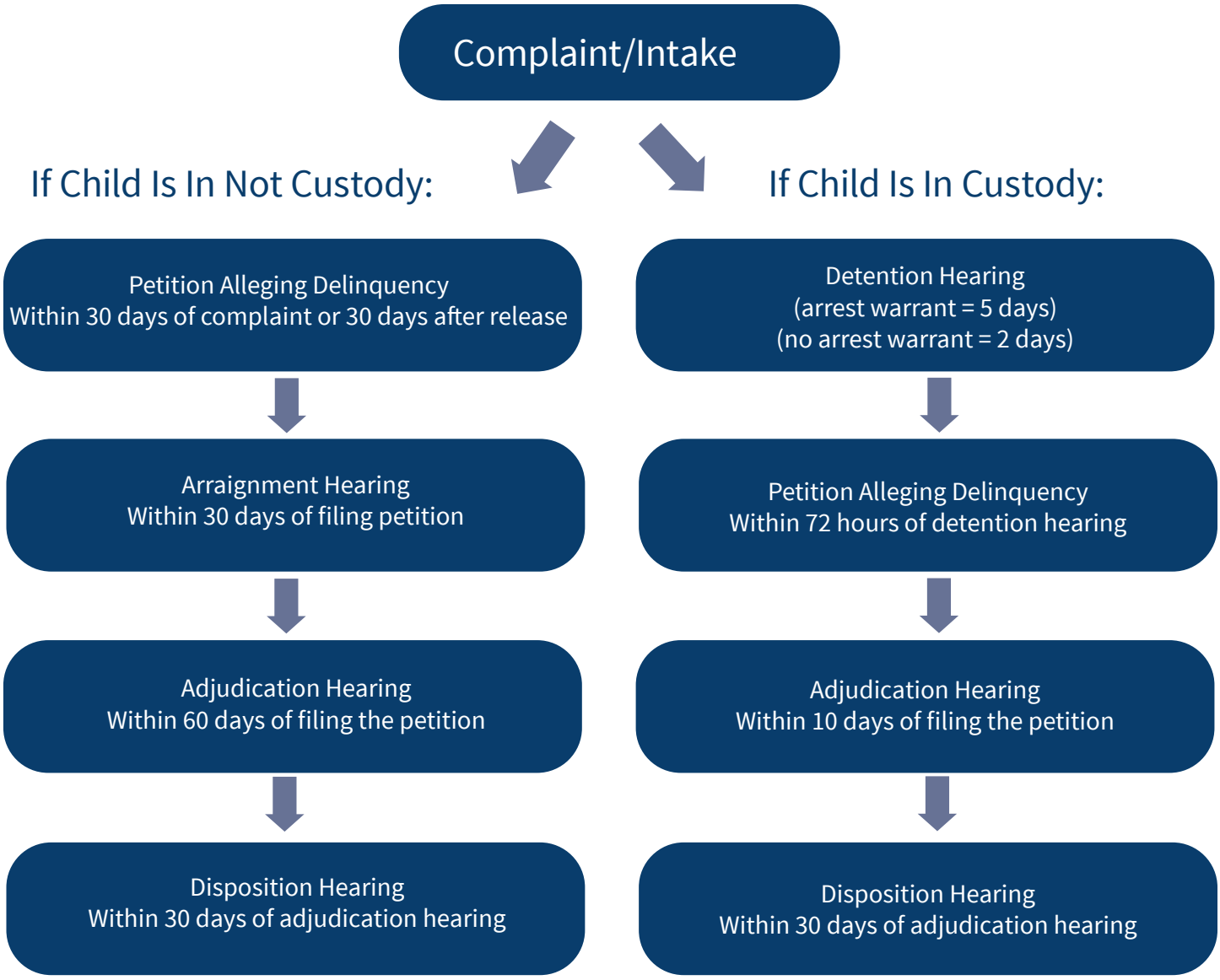
Even where the wishes of a client collide with the wishes of the child's parents, the juvenile defender's duty is to their client, not the child's parents. This ethical duty applies further to what the child-client tells a juvenile defense attorney in confidence. The child-client is entitled to a normal attorney-client relationship, including the attorney-client privilege. Therefore, a juvenile defender is bound to maintain the confidences of their client, even from the child's parent/guardian, unless the client gives informed consent to the exposure of such confidential disclosures.[54] Juvenile defenders must ensure that their child-client understands the meaning and concept of confidentiality. This should include explaining to the client that you as their attorney will not reveal case-related information to their parent/guardian. This same message should be relayed to the client's parent/guardian. The only exception to maintaining confidence arises when an attorney believes the disclosure necessary to prevent reasonably certain death or substantial bodily harm to the client, or to prevent harm or substantial financial loss to another as a result of client criminal conduct or third party criminal conduct clearly in violation of the law.[55]

As with adult clients, juvenile defenders hold an ethical obligation to ensure their juvenile client is fully informed about their case.[56] This includes informing the client of any decision requiring their informed consent, reasonably consulting with the client about the means by which you will advocate for their objectives in the case, keeping the client informed about the status of their case, complying with the client's reasonable requests for information, and consulting with the client about any expectations they may have of you that go beyond what is permitted by the Rules of Professional Conduct.

V. The Georgia Juvenile Court Delinquency Process

SECTION V: The Georgia Juvenile Court Process

This section describes the series of events that occur within the juvenile justice system.



Referral/Complaint

A referral or complaint begins the process through which the youth may be adjudicated "delinquent." Youth may be referred to the court through complaints from law enforcement, school resource officers, parents and/or other citizens.

Upon the filing of a complaint, the youth may either be referred to intake or given a date for arraignment.[57]

Intake

If a youth is referred to intake, the intake officer shall inform the youth of the following:

- The contents of the complaint
- The nature of the proceedings
- The possible consequences or dispositions that may apply to the case following adjudication
- Due process rights[58]

Any statements made by youth during their intake screening may not be used against them at the adjudication hearing except as rebuttal or impeachment evidence.[59]

The intake officer may elect to pursue the case through informal adjustment or another non-adjudicatory procedure.[60]

DUE PROCESS RIGHTS

- The right to an attorney and to an appointed attorney
- The privilege against self-incrimination
- The right to confront and cross-examine witnesses
- The right to testify and to compel the testimony of others
- The right to a speedy adjudication hearing
- The right to appeal and to receive a transcript for the purpose of appeal

The intake officer is also responsible for administering a detention assessment to determine if the child should be detained or released.[61]

Informal Adjustment

The intake officer may refer a case to informal adjustment if:

- "Counsel and advice" without an adjudication would be in the best interests of the youth and the public. The factors to be considered in making this decision include:
    - The nature of the alleged offense
    - The age and individual circumstances of the youth
    - The prior record of the youth
    - Recommendations for informal adjustment made by the complainant or victim
- The youth and their parent consents
- If the alleged offense is a Class A or Class B designated felony act, the district attorney must consent to an informal adjustment

Informal adjustment lasts for up to three months, with the opportunity for extension for one additional three-month period.[62]

Detention

Detaining a child, even for a brief period of time, can have numerous negative consequences. Among other effects, detention has been shown to increase recidivism, interrupts a young person's education, exacerbates existing mental health issues, and places young people at risk of victimization. As such, effective advocacy during the detention process is essential.[63]

Initial detention decisions are made at intake, with the guidance of a detention assessment instrument. If the intake officer finds that detention is warranted, the child is entitled to a detention hearing in front of a judge. At that hearing, the judge must first find that there is probable cause to believe that the child has committed the offense. Next, the judge determines if continued detention is necessary. The relevant standards for each stage of this process are outlined below.

Detention Assessment

When a child is brought to intake, the intake officer must administer a detention assessment to determine if the child should be held or released.[64]

A detention assessment is an actuarial tool, approved by the board of juvenile justice and validated on a targeted population, used to make detention decisions. It identifies and calculates specific facts that are likely to indicate a child's risk to public safety pending adjudication and the likelihood that such child will appear for juvenile proceedings for the act causing the detention decision to be made.[65]

Place of Detention

Youth may be detained in a licensed foster home, home approved by the court, home of a non-custodial parent or relative, a facility operated by a licensed child welfare agency, or in a secure or non-secure residential facility. If the youth is 15 or older, they may be held in jail for up to 24 hours if certain conditions are met. [66]

Placement shall be in the least restrictive facility available, consistent with the best interests of the child. [67]

Detention Hearing: Procedure

If a youth is taken into custody at intake, a detention hearing shall be held promptly, and not later than 2 days if the youth was taken into custody without an arrest warrant or 5 days if the youth was taken into custody pursuant to an arrest warrant.[68]

In the event that 2 days is longer than 48 hours, because of weekends or holidays, the court should review the detention decision and make a determination with respect to probable cause within 48 hours of the youth being taken into custody.[69]

At the beginning of the detention hearing, the court shall inform the child of:

- The contents of the complaint or petition;
- Nature of the proceedings;
- Right to make an application for bail;
- Possible consequences or dispositions of an adjudication on the charges; and
- Due process rights.

All children appearing at a detention hearing must be provided with an attorney.[70]

Detention Hearing: Probable Cause

A child may not be detained unless there is probable cause to believe that the child has committed the act of which they are accused.[71] At the probable cause hearing, the judge decides if there is adequate evidence to justify allowing the case to proceed and a petition to be filed. Probable cause hearings in Georgia take many different forms, with varying levels of formality. Attorneys are often asked to stipulate to probable cause at these hearings. While this may be the appropriate course of action in certain circumstances, before doing so, you should consider the benefits that may result from challenging probable cause. Even without a "victory" at this stage, a probable cause hearing may result in other benefits, including the potential to lock witnesses into a certain version of events and to obtain discovery.

Detention Hearing: Detention Decision

The detention decision should be based on clear and convincing evidence that the child's freedom should be restrained, that no less restrictive alternative will suffice, and that:

- The child may inflict serious bodily harm on others pending adjudication,
- The child has a demonstrated pattern of theft or destruction of property such that detention is required to protect the property of others,

- Detention is necessary to secure the child's presence in court, or
- An order for such child's detention has been made by the court.[72]

Pre-adjudication detention may not be imposed:

- To punish, treat or rehabilitate
- To allow the parents or guardian to avoid legal responsibilities
- To satisfy demands of victim, law enforcement or the community
- To permit more convenient administrative access
- To facilitate further interrogation or investigation
- Due to a lack of a more appropriate facility.[73]

Conditional or supervised release shall be favored over more intrusive alternatives.[74]

Before entering an order authorizing detention, the court shall determine whether a child's continuation in their home is contrary to their welfare and whether there are available services that would prevent or eliminate the need for detention. The court shall make that determination on a case-by-case basis and shall make written findings of fact referencing any and all evidence relied upon in reaching its decision. If an alleged delinquent child can remain in the custody of their parent, guardian, or legal custodian through the provision of services to prevent the need for removal, the court shall order that such services shall be provided.[75]

Bail

Children have the same right to bail as adults. The only difference between bail for adults and for children is that bail for a child may only be granted at intake or at the detention hearing. [76]

Bail for a child may only be posted by a person having custody of the child or an adult blood relative or step-parent. If not the custodian, the person posting bail must immediately return the child to the person having legal custody.[77]

Petition

The petition is the formal charging document alleging that a child is delinquent. The petition must be filed by the district attorney or a designee of the district attorney.[78]

Timing

Detained Youth: The petition must be filed no later than 72 hours after the detention hearing. If the petition is not filed within this timeframe, the child shall be released from detention and the complaint shall be dismissed without prejudice.[79]

Youth Not in Detention: The petition must be filed within 30 days of the filing of the complaint, or within 30 days of release from detention. An extension may be granted upon a showing of good cause.[80] Failure to file the petition within 30 days will result in dismissal of the petition without prejudice.[81]

Contents

The Petition must include:

- The facts bringing the youth within the jurisdiction of the court, including a statement that it is in the best interests of the youth and the public that the proceeding be brought and that such child is in need of supervision, treatment, or rehabilitation
- The name, age, and address of the youth

- The name and address of the youth's parent or guardian
- The place of detention at the time taken into custody
- Whether the youth is charged with a Class A or Class B Designated Felony.[82]

Amendments

The Petition may be amended at any time prior to the adjudication hearing. However, if an amendment making material changes or alleging new charges of delinquency is made, a child may request a continuance of their adjudication hearing. After jeopardy attaches, the Petition shall not be amended to include new charges.[83]

Arraignment

For a youth who is not detained prior to the adjudication hearing, an arraignment shall be scheduled within 30 days of the filing of the petition. At the arraignment, the Court must inform the youth of the contents of the petition, the nature of the proceedings, possible consequences or dispositions, and the youth's due process rights.

A represented youth may enter an admission at this time and a youth whose liberty is not in jeopardy may waive their right to counsel at the arraignment.[84]

Summons

A summons is issued to the youth and their parent or guardian requiring them to appear before the court at a certain time, and to answer the allegations of a petition alleging delinquency. It must state that a party is entitled to an attorney and that one can be appointed for them.[85]

Service

The Summons must be served personally as soon as possible and at least 72 hours before the adjudication hearing. If the parties are located in the state at a known address, but cannot be found, the summons can be served via registered mail, certified mail, or overnight mail, at least 5 days before the adjudication hearing, return receipt requested.[86]

If the parties are located out of state, but their address is known, they must be notified either personally or by mail at least 5 days before the hearing.[87]

Failure to Appear

If a parent fails to appear or fails to bring the youth, the Court may issue a rule nisi ordering the parent to show cause why they should not be held in contempt. Failure to appear in response to an order to show cause results in a bench warrant for the parent or guardian.

A bench warrant may be issued for a youth 16 years or older who fails to appear at a hearing or for a youth under age 16 who willfully refuses to appear at a hearing. Sworn testimony must be provided to support the assertion that a child under the age of 16 willfully refused to appear.[88]

Adjudication

At the outset of the adjudication hearing, the youth will be asked whether they wish to admit or deny the charges. If the child admits the charges, the judge will move to a plea colloquy to determine if there is a factual basis for the admission. If the youth denies the charges, the judge will move forward with an adjudication hearing.[89] A continuance may be granted upon a showing of good cause, only for the amount of time shown to be necessary.[90] When a continuance is granted, the facts that necessitate the continuance shall be entered into the record.[91]

Timing

The adjudication hearing for detained youth must occur no later than 10 days after the petition has been filed. For a youth who is not detained, the adjudication hearing shall be held no later than 60 days after the petition has been filed.[92]

Plea Bargaining

The United State Supreme Court has held that ineffective assistance of counsel claims extend to the plea bargaining process.[93] Accordingly, plea bargaining should be entered into only after a thorough investigation and evaluation of the case. However, appropriate plea negotiations can ultimately assist the client with reduced charges and disposition outcomes with which the client is willing to agree.

Prior to engaging in plea negotiations and proceeding forward with an admission, consider the following:[94]

- Have you completed a full investigation?
- Have you exhausted all possible defenses?
- Have you done thorough legal research on the case?
- Can you potentially prevent the introduction of damaging evidence?
- Have you interviewed all the witnesses?
- Have you reviewed the strength of the prosecution's case?
- Is this the best available option for the client?

If, after thorough contemplation of these questions, the attorney is led to the conclusion that plea negotiation is the most viable option for the client, consult with the client about their interest in pursuing a plea.

The plea bargaining process can be viewed as a contract negotiation process. It is useful to maintain written records of the negotiating process or a written document relaying the details of the agreement. To initiate the negotiation process, contact the district attorney prior to the scheduled adjudication hearing.

It is essential to consult with the client prior to initiating plea-bargaining discussions. Ensure that the client enters the plea with full understanding.[95]

Entering an Admission

The decision to admit or deny the charges rests solely with the client.[96] Clients will want to enter an admission for any number of reasons. Some want to get the process over with as quickly as possible and think that an admission is the way to achieve this result. Some want to accept responsibility for their actions. Some believe that the evidence will show that they committed the offense that was charged. No matter the reason, it is the duty of the defense attorney to provide advice and counsel to the client with respect to the entering of an admission. In the end, if the client wishes to enter an admission, the defense attorney should try to obtain the best possible outcome for the client through either plea bargaining or zealous advocacy at the disposition hearing in front of the judge.

It is useful to review the plea colloquy with the client prior to entering an admission before the court.

PLEA COLLOQUY

If, after discussion with the lawyer, the youth decides to enter an admission, the judge will next make an inquiry to determine if there is a factual basis for the admission. While every judge asks slightly different questions during the plea colloquy, listed below are some common questions to review with the client:

- What is your name?
- How old are you?
- What grade are you in?
- The judge may read the charges from the petition.
- Do you understand what you've been charged with?
- Do you understand the possible disposition outcomes if I adjudicate you delinquent of these charges?
- Have you discussed the charges with your attorney?
- Do you understand that you have the right to deny these charges?
- Do you understand that you have a right to a trial on these charges?
- Do you understand that the prosecution must produce witnesses against you in court and that you have the right to confront and cross-examine these witnesses?
- Do you understand that you have the right to subpoena witnesses to testify on your behalf in court?
- Do you wish to make an admission today?
- Have you been made any promises in exchange for your admission?
- Has any person made any promises or threats to you to force you to enter an admission?
- Are you currently under the influence of any drugs or alcohol that would make it so that you do not understand what's happening here today?
- Are you entering an admission freely and voluntarily because you committed the acts charged in the petition?
- Explain in your own words what happened.

Adjudication Hearing

If your client enters a denial of the charges, the next step is to have an adjudication hearing. These hearings are bench trials; there are no jury trials in juvenile court in Georgia. The adjudication hearing is the opportunity to test the sufficiency of the State's evidence and to present a legal defense. During the adjudication hearing the court hears evidence on the petition against the youth and formally determines whether acts alleged were committed by the youth and whether the youth is a delinquent child. Keep in mind that to be considered a "delinquent child" the youth has to have committed a delinquent act AND be in need of treatment or rehabilitation.[97]

The state has the burden to prove the case beyond a reasonable doubt.[98] The hearing shall be conducted in accordance with the rules of evidence.[99] After hearing all of the evidence, the court shall make and record its findings on whether the acts were committed by the child. If the youth does not admit to the charge, and the judge determines that the state has not proven the case beyond a reasonable doubt, the youth's case is dismissed and no further hearings are required.[100]

Motions

Although some juvenile court motion practice may take place during the adjudication hearing, it is good practice to file pre-adjudication written motions.[101] This maintains the expedited nature of the delinquency system. Pre-trial written motions can alert the court to issues related to competency, discovery, or even factors related to the theory of the case. Pre-trial motions also expedite the process when evaluations of the client are needed. Finally, pre-trial motions build the client's case for appeal, if it is necessary.

In addition to pre-adjudication motions, which are discussed in the section on Preparing Your Case, there are several motions that should be considered during the adjudication hearing:

Motion to invoke the rule of sequestration:
Each party has the right to sequester the witnesses.[102] Invoke the rule of sequestration at the beginning of the hearing to prevent having the testimony of one witness affect that of others, and to prohibit witness communication outside of the courtroom.[103] Attempt to ensure that witnesses do not revisit the specifics of the case and their testimony while waiting to testify. Usually, the court allows at least one parent to remain with the client during the course of the hearing even if they will offer testimony. However, parents are not parties to delinquency proceedings. In the event that there is a conflict, consider asking the court to appoint a guardian ad litem for purposes of the hearing and to remove the parent from the courtroom.

Keep in mind that victims have the right to remain in the courtroom, unless it has been established that they are a material and necessary witness and that the court finds that there is a substantial probability that the person's presence would impair the conduct of a fair trial. Even if the victim will be testifying, the rules of sequestration do not apply. However, the court must require that the victim be scheduled to testify as early as practical in the proceedings.[104]

Motion for Directed Verdict:
The standard for assessing the sufficiency of the prosecution's case is: "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt."[105]

In light of this standard, the court will view the evidence in the light most favorable to the prosecution. As a result, motions for directed verdict generally will not rely upon challenges to the credibility of the state's witnesses or evidence. Instead, the motion for directed verdict will usually highlight a lack of evidence to support one or more element of the offense.

Opening Statement

Opening statements are an excellent opportunity for defense attorneys to gain control of the courtroom and to present the theory and theme of the case. It is an opportunity to present your client's story of innocence at the beginning of the proceeding, and to provide a lens for the judge to view all other testimony, including that of the prosecution's witnesses.

While it is common practice to waive opening statements in juvenile court, this should only be done when there are valid strategic reasons within a given case.

Presenting Juvenile Witnesses

Take special care to prepare witnesses who are themselves juveniles, including your client if they will testify. Explain to the witnesses what an oath means and go over their testimony until the witness can adequately answer defense questions on the stand. Practice cross-examination so they have a feel for what it is like. Advise the witnesses to count to three and then answer the question, whether on cross or direct. This gives them a brief moment to really think about the question and their answer. It also provides an opportunity for objections when necessary.

Do not try to get young witnesses to speak like an adult; let them speak in their normal tone, voice, and character – anything else will appear rehearsed and false. Often a juvenile's manner of testifying will indicate to the judge the reality of the circumstances under which your client was charged and can be helpful in getting an acquittal.

Closing Argument

This is the last chance during the adjudication hearing to highlight the facts that support your theory and to present your client in a favorable light. A closing argument should contain the defense theory of the case, stated clearly and succinctly. It should then selectively review the evidence that supports the theory of the case and draw the necessary inferences from the evidence in support of your theory. When presenting to a judge, it is important for a closing argument to also incorporate the relevant law and legal principles; while a jury is provided with a set of instructions as to the relevant law, this is not typically true for a judge during a bench trial. A closing argument is a good place to remind the judge of the favorable law as well as the prosecution's burden of proof. Finally, your closing argument should explicitly ask the judge to find your client not delinquent.

Disposition

This hearing, which occurs after a juvenile has been found to have committed a delinquent act, is to determine if a youth is in need of treatment, rehabilitation, or supervision.[106]

"The role of counsel at disposition is essentially the same as at earlier stages of the proceeding: to advocate, within the bounds of the law, the best outcome available under the circumstances according to the client's view of the matter . . ."[107]

Procedure and Pre-Disposition Reports

The disposition hearing may occur immediately after adjudication or at a later date within 30 days of the adjudication hearing.[108] The disposition hearing may occur later than 30 days after the adjudication hearing only if the court makes and files written findings of fact explaining the need for delay.[109]

The court may consider any evidence, including hearsay, that the court finds to be relevant, reliable, and necessary to determine the needs of a child who committed a delinquent act and the most appropriate disposition.[110]

After a finding that a child has committed a delinquent act, the court may direct that a written predisposition report be prepared by the probation officer or other designee.[111]

The original predisposition report shall be provided to the court and copies of the report shall be provided to the attorney for the child and the prosecuting attorney at least five days prior to the disposition hearing.[112]

At any time prior to the issuance of a final dispositional order, the court may order a behavioral health evaluation of the child.[113]

Prior to the disposition hearing, and upon request, the parties and their attorneys shall be given the opportunity to examine any written reports received by the court. They shall also be given the opportunity to counter any written reports and to cross-examine the individuals making such reports.[114]

PREDISPOSITION REPORT

A predisposition investigation report shall contain such information about the characteristics, family, environment, and the circumstances affecting the child as the court determines may be helpful in its determination of the need for treatment or rehabilitation and the proper disposition of the case, including but not limited to:

- Summary of the facts of the conduct that led to the adjudication
- The sophistication and maturity of the child
- Summary of the child's home environment, family relationships and background
- The child's juvenile history
- Education status, including strengths, abilities, special education needs, and educational and vocational goals
- Summary of the results and recommendations of any significant physical or mental examinations
- Seriousness of the offense to the community
- Nature of the offense
- Whether the offense was against persons or property
- If a risk assessment was ordered, the assessment shall be included

Victim Impact Statement

The victim in a delinquency proceeding is entitled to all of the same rights, notices, and benefits as the victim of a crime committed by an adult.[115] This includes the right to notice of all hearings and the right to express an opinion with respect to the accused's release.[116]

Prior to the imposition of a disposition, the victim, the victim's family, and other witnesses with personal knowledge are permitted to testify about the impact of the delinquent act on the victim, the victim's family, and the community. As a general matter, this testimony is required to be given in front of the child who has been adjudicated for the act and is subject to cross-examination.[117]

If testifying in front of the child would cause severe physical or emotional distress or trauma, or the witness would not be able to testify in person without showing undue emotion, the evidence may be presented in alternative form, including written statement or pre-recorded statement. The witness must still be subject to cross-examination.[118]

No Need for Treatment, Rehabilitation or Supervision

It is important to remember that to be considered a "delinquent child" the youth has to have committed a delinquent act AND be in need of treatment or rehabilitation.[119] At disposition, whenever possible, you should argue that your child is not in need of treatment, rehabilitation or supervision.

If the court finds that a child who committed a delinquent act is not in need of treatment, rehabilitation, or supervision, it shall dismiss the proceedings, and release the child from detention or any other restrictions.[120] If the court finds that the child is in need of supervision, but not treatment or rehabilitation, it shall find that the child is a child in need of services (CHINS) and may enter any disposition authorized for a child in need of services.[121]

Absent evidence to the contrary, evidence sufficient to warrant a finding that felony acts have been committed shall be sufficient to sustain a finding that the child is in need of treatment or rehabilitation.[122]

Abeyance / Hold Open

Some prosecutors and judges will consider holding the disposition of a case in abeyance for a period of time, possibly with certain conditions that need to be met. At the satisfactory conclusion of that period of time, the judge will close the case out with a finding that there is no need for treatment, rehabilitation or supervision.

Informal Adjustment or Other Diversion Programs

While a defendant is often referred to a diversion program prior to the filing of the petition, such a referral may be made at any time prior to the entry of a disposition order, including after a finding that the child has committed a delinquent act.

Disposition Options for a Delinquent Child

At the conclusion of the disposition hearing, if the child is determined to be in need of treatment or rehabilitation, then the court shall enter **the least restrictive** disposition order appropriate in view of the seriousness of the delinquent act, the child's culpability, the age of the child, the child's prior record, and the child's strengths and needs.[123]

As described in more detail below, depending upon the offense for which the client has been adjudicated delinquent, the continuum of disposition options available to the judge is as follows:

- Dismissal (no need for treatment, rehabilitation or supervision)
- Abeyance or hold open
- Informal Adjustment or other diversion program
- Treatment as CHINS (no need for treatment or rehabilitation, but need for supervision)
- Probation (supervised or unsupervised; possibly with probation management program)
- Placement in a secure residential facility for up to 30 days (felony or misdemeanor (+))
- Commitment to DJJ (2 years, felony or misdemeanor (+))
- Restrictive custody with commitment to DJJ for up to 3 or 5 years (class B or class A designated felony acts).[124]

The disposition options will vary depending upon the type of offense for which the child has been adjudicated delinquent. The offenses are broken down into 4 categories: misdemeanors, felonies / misdemeanors (+)[125], class B designated felony acts and class A designated felony acts.

Misdemeanor Offenses

In general, youth who have been adjudicated delinquent of a misdemeanor offense (unless they fall into the misdemeanor (+) category described below) will be placed on probation with conditions. They may also be required to complete community service, to pay restitution, and to finish school. It is also possible that their driver's license will be suspended or that issuance of their license will be delayed.[126]

Conditions of Probation

The probation conditions imposed on a young person in juvenile court often differ from those in adult court. It is common for youth to have the following conditions: stay away from victim or co-defendant, curfews or home confinement, attend classes assigned to them by probation, write book reports or essays, complete study logs and maintain a certain average in school, submit to random drug screenings, and comply with counseling and medication recommendations. Other conditions may be imposed as deemed appropriate by the court.

As a defense attorney, you should object to any conditions that (a) are unrelated to the charges, or at least to a concern that was raised during the disposition hearing, and (b) are unobtainable by your client.

Probation Management Program

In addition to any other terms or conditions of probation, the judge may order a child to a probation management program or a secure probation sanctions program.[127] If a child is ordered to participate in one of these programs, either DJJ (dependent counties) or the probation office (independent counties) shall establish rules and regulations for graduated sanctions as an alternative to judicial modifications or revocations.[128] The restrictions may not be more restrictive than the maximum sanction set forth by the court.[129]

The secure probation sanctions program is run by DJJ, and may result in periods of secure confinement equaling 7, 14, or 30 days.[130] The Code outlines a series of procedural steps (and a requirement that the child has had three or more violations of probation) before a child can be placed in the secure probation sanctions program.[131] The Code also outlines due process protections relating to the imposition of sanctions for each violation of a condition of probation.[132]

An overview of the available disposition options is contained in the following chart:

Felony / Misdemeanor (+)

There are several additional disposition options available for youth who have been adjudicated of a felony offense, or who have been adjudicated delinquent of a misdemeanor offense where the child has had at least one prior adjudication for a felony offense, and at least three other prior adjudications for a delinquent act. Most notably, in addition to those disposition options available for those who have been adjudicated delinquent of a misdemeanor, this category of delinquent child may also be committed to DJJ for a period of 2 years, and may be ordered to serve up to 30 says in a secure residential facility (RYDC).[133]

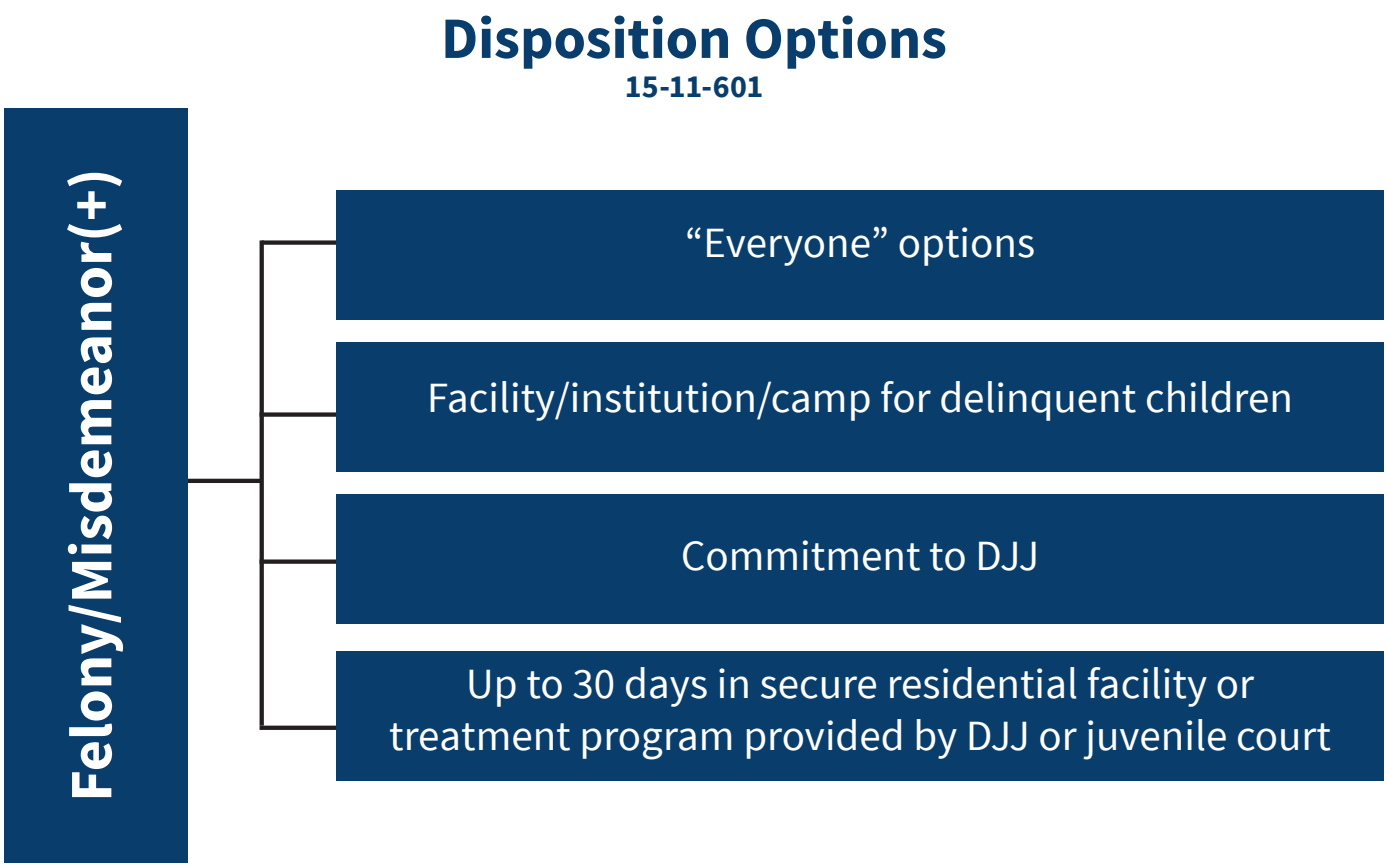
Commitment to the Department of Juvenile Justice

When a child is committed to DJJ, legal custody is transferred temporarily to the State of Georgia to create a plan for treatment and rehabilitation. DJJ, not the court, is then responsible for making placement decisions about the youth in its care. Therefore, upon commitment to DJJ, all youth are screened and assessed to determine the most appropriate, least restrictive placement that will meet the needs of the youth and public safety.[134] The screening committee will ultimately make a recommendation for 3 placements, with the "best" placement listed first.[135] For most youth, the first recommendation will

be at home in the community, akin to probation. However, this is not always the first recommendation, and it is important to make sure your client is aware that more restrictive placements might be recommended. Additional DJJ placement options include drug and alcohol treatment program, sex offender treatment program, independent living, group home, and even placement at a YDC.

It is also important to advise clients that DJJ sanctions could result in moving to a more restrictive placement. Such a move happens administratively, without need to seek approval from the Court.

An overview of the available disposition options is contained in the following chart:



Applicable for felonies and misdemeanors if child has at least one prior felony adjudication and at least three other prior adjudications for a delinquent act.

Designated Felony Act

When a child is adjudicated of committing a Class A or Class B designated felony act, the court must first consider whether restrictive custody is required.

This determination of whether restrictive custody is required is based upon a preponderance of the evidence.[136] The court shall consider and make specific written findings of fact with respect to each of the restrictive custody factors.[137]

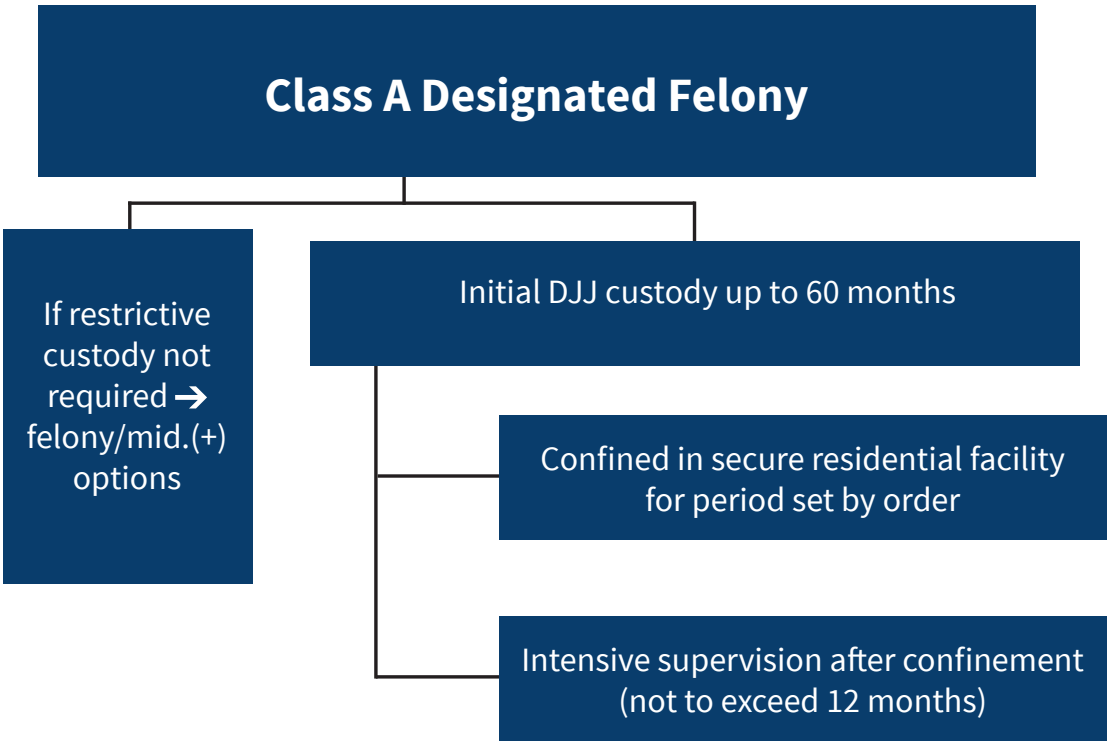
Prior to ordering a child placed in restrictive custody, the court shall order and give consideration to the results of a behavioral health evaluation, unless the court has considered the results of a prior behavioral health evaluation that had been completed within the last 6 months.[138]

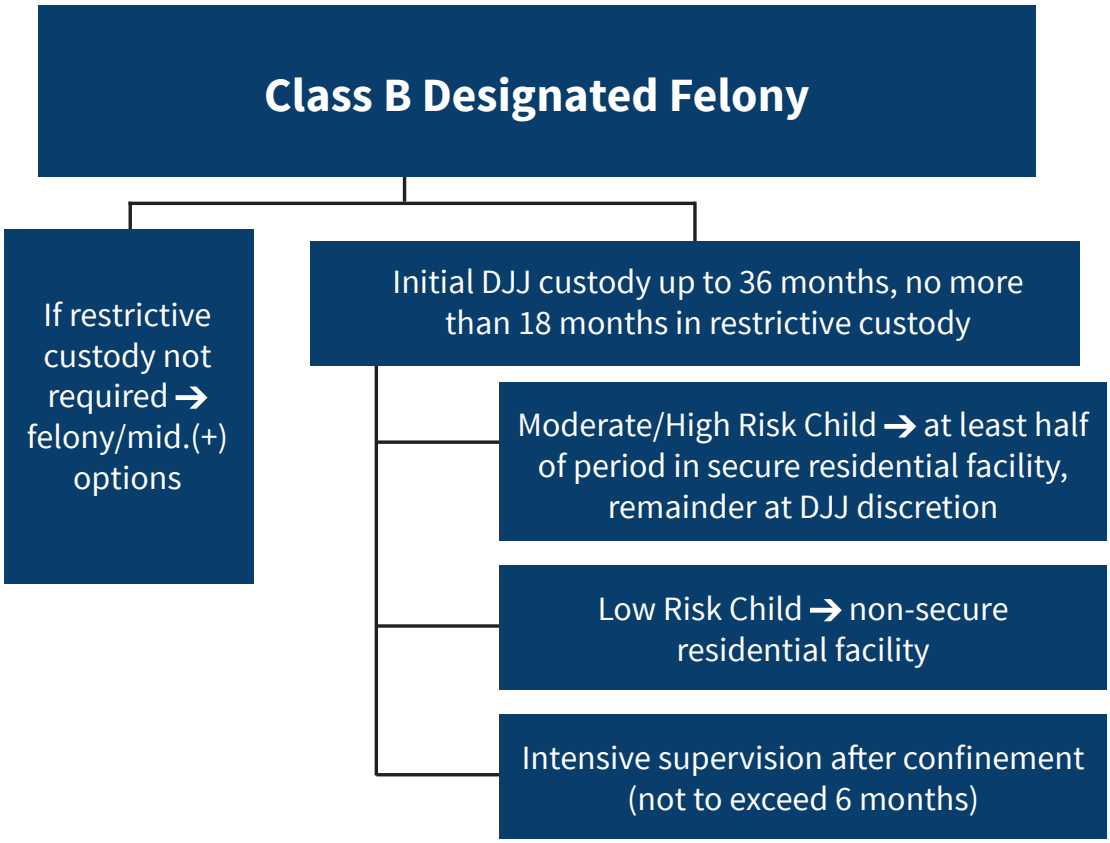
The disposition order for a child adjudicated delinquent for a class A or class B designated felony act must be issued within 20 days of the disposition hearing.[139]

If restrictive custody is not required, the court may enter any disposition order available for a child who has been adjudicated delinquent of a misdemeanor or felony offense.[140]

If the court finds that restrictive custody is required, the court may order that the child be committed to DJJ for a period of up to 5 years (Class A) or 3years (Class B), with a portion of that time to be served in restrictive custody.

An overview of the available restrictive custody options is contained in the following charts.





Credit for Time Served

A child adjudicated to have committed a delinquent act shall be given credit for time served for each day spent in a secure residential facility, a nonsecure residential facility, or any facility for the treatment or examination of a physical or mental disability. This credit applies to dispositions for all offenses.[141]

Protective Orders

On the 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.[142] Notice, the grounds for the motion and order, and an opportunity to be heard must be provided to the person against whom the order is entered.[143] The protective orders may be enforced by contempt of court.[144] Some of the requirements of the protective order may require the person to:

- Stay away from a person's home or child;
- Permit a parent to visit their child at stated periods;
- Abstain from offensive conduct against the youth;
- Give proper attention to the care of the home;
- Cooperate in good faith with the agency or association to which the youth is referred;
- Refrain from acts or omissions that tend to make the home improper for the youth;
- Ensure the youth attends school;
- Participate in counseling or treatment; and
- Enter a substance abuse program. [145]

Disposition Planning

Disposition planning should begin the moment you start to work on a case. The goal of disposition planning is to present your client to the judge in the most favorable light, and to obtain the least restrictive disposition order possible.

DISPOSITION PLANNING

- Be Proactive!
- Request the least restrictive disposition available
- Tell your client's story
- Highlight client's strengths
- Address client's weaknesses
- Bring support – letters, awards, participation in pro-social activities, etc.
- Prepare your client to address the court

From your first meeting, speak with your client about their goals and strengths, as well as any weaknesses that may need to be addressed through disposition. Request, either through a signed authorization for release of records or a subpoena, all education and mental health records relating to your client and review these records for information that will be helpful to your client. In the event that school records are less than helpful, be prepared to provide the court with information on what will change going forward. If the client has won any awards or completed any programs (including while at the RYDC or any facility), collect those documents for presentation to the court. Learn about any individuals who may be willing to speak positively about the client – family members, teachers, friends, mentors (or potential mentors), coaches, youth ministers at church, etc. If there are any services that can be put into place prior to the disposition hearing, this may help to convince the court that the underlying issues have been resolved and that there is no longer a need for court services. Finally, prepare your client for their conversation with the judge.

If your client is facing restrictive custody for a class A or class B designated felony act, you might want to consider providing the court with a written disposition letter or report of your own. This will give you an opportunity to highlight your client's strengths, present mitigating facts relating to the offense, and provide a description of how alternative community-based disposition options will address any concerns highlighted by the pre-disposition report submitted by probation.

Post Disposition Issues

Disposition does not necessarily conclude the court process; additional proceedings may occur after disposition. Additional proceedings include: appeal of any final order,[146] revocation of probation,[147] extension or termination of disposition orders,[148] a motion to modify or vacate a disposition order, [149] early termination of restrictive custody orders for youth adjudicated of a Class A or Class B designated felony act,[150] and sealing of a youth's records.[151] Each of these is discussed below.

Appeals/New Trials

A youth has the right to appeal all final orders in juvenile court.[152] As is the case with final judgments in superior court, the Georgia Court of Appeals or the Georgia Supreme Court reviews the final judgments of a juvenile court judge on appeal.[153] Adjudicatory orders by themselves are not considered final judgments.[154] In order to be appealable as a final judgment, the adjudicatory order must be accompanied by a disposition order following a disposition hearing.[155] Additionally, under state case law, objections not raised at trial are deemed to be waived and cannot be raised for the first time on appeal.[156]

Because O.C.G.A. §15-11-35 specifies that appeals from juvenile court are taken to the Court of Appeals or Supreme Court "in the same manner as appeals from the superior court", Title 5 of the Code governs appeals from juvenile court.[157] This means that a notice of appeal meeting the requirements of O.C.G.A. §5-6-37 must be filed within 30 days after entry of the appealable decision or judgment.[158] Note that "entry" of the order occurs only when the signed order is filed with the clerk of court.[159] It is important to apprise the client of the right to appeal as soon as practicable; in many cases, the court announces an order verbally some time before a written order is entered, and in these cases, the extra time should be used to discuss appellate rights with the client.

An appeal from an order of a juvenile court does not automatically trigger supersedeas.[160] The juvenile court has discretion to allow an appeal to supersede its order, or not.[161] If the juvenile court does not grant supersedeas, the judgment stands until reversed or modified by the appellate court.[162] This means that any disposition imposed will continue in effect, and that

the court may continue to review the case while the appeal runs.

In some cases, counsel might consider filing a motion for new trial. Since the motion for new trial is usually heard by the same judge who entered the judgment complained of, there must be a very clear, demonstrable ground for new trial or for reconsideration. One such ground is an allegation of ineffective assistance of counsel. In the absence of such grounds, appeals are likely to be the appropriate avenue for review. The filing of a motion for new trial suspends the time-frame for appeal, and the notice of appeal following a motion for new trial must be filed within 30 days after the entry of an order granting, overruling, or otherwise disposing of the motion.[163]

Probation Revocation

Probation revocation is distinct from a violation of probation, which is a new delinquent act, requiring a new petition, and which may not be filed after a child has turned 17.[164]

Any violation of a condition of probation may be reported to the prosecuting attorney, who may file a motion to revoke probation. The motion shall contain specific factual allegations constituting each violation of a condition of probation.[165] The motion must be served on the child, the child's attorney, and the child's parent or guardian.[166] The revocation hearing shall be scheduled to be held no later than 30 days after the filing of the motion if the child is not detained, or 10 days from the filing if the child was detained as a result of the motion.[167]

If the court finds, beyond a reasonable doubt, that the child has violated the terms and conditions of probation, the court may:

- Extend probation,
- Impose additional conditions of probation, or
- Make any disposition that could have been made at the time the probation was imposed.[168]

If the initial offense was a Class A or Class B designated felony act, the judge shall reconsider and make specific findings of fact with respect to each of the criteria relevant to the restrictive custody analysis.[169] If the court imposes restrictive custody, the child shall receive credit for all time served on probation as well as for any time in pre-adjudicative custody.[170]

Extension or Termination of Disposition Order

With the exception of orders committing a child to DJJ for the commission of a Class A or Class B designated felony act, disposition orders may last up to 2 years.[171]

DJJ (if the child is committed to DJJ or in a dependent DJJ county), the prosecuting attorney or the court, on its own, may move to extend the duration of the initial disposition order.[172] The standard for granting such a motion is slightly different depending upon whether the child has been committed to DJJ or placed on probation. For a child committed to DJJ, the motion may be granted if the court finds that the extension is necessary for the treatment or rehabilitation of the child.[173] For a child placed on probation, the court may extend the disposition order if the court finds that the extension is necessary to accomplish the purposes of the order.[174] In either case, a hearing must be held, and the child must be afforded the opportunity to be heard.[175]

A court may terminate an order of disposition, or an extension of such an order, if it appears to the court that the purposes of the order have been accomplished. This can be done either on the court's own motion, or on the application of a party.[176]

If your client is put on probation, it is important to keep up to date on their progress. If the client gets new charges while on probation, they may sink further into the court system. One way to avoid this scenario is to remain in contact with the client and their probation officer to stay abreast of the client's probation progress. When the client has met the probation conditions over a period of time, discuss with the probation officer the possibility of asking the court to terminate the disposition order. Additionally, be aware that when the client reaches age 21, all orders affecting them, with the exception

of restitution orders, terminate.[177]

Modification or Vacation of Disposition Order

Orders for disposition may be vacated if: it was obtained by fraud or mistake, the court lacked jurisdiction over either a party or the subject matter, or newly discovered evidence so requires.[178] Additionally, a disposition order may be changed, modified, or vacated on the ground that changed circumstances so require in the best interests of a child.[179]

Any time the situation or other circumstances in your client's life change to the extent that their disposition order is no longer appropriate, you should motion the court for modification. This is particularly true if there are specific restrictions on the liberty of your client that no longer seem warranted.

Motions for Early Release, or Modification or Termination of Restrictive Custody Order

Youth ordered to serve restrictive custody for a Class A or Class B designated felony act, or DJJ, may file a motion with the court seeking the youth's release from restrictive custody, modification of the order requiring restrictive custody, or termination of the disposition order.[180]

Any motion seeking early release, modification or termination of a restrictive custody order must be accompanied by a written recommendation for such action from the youth's DJJ counselor or placement supervisor.[181] DJJ has its own internal policies and procedures governing when such a recommendation will be made.[182] While these policies sometimes change, the most important factors are generally the youth's behavior and disciplinary history while in their placement, and the youth's completion of required therapeutic programming.

The initial motion should be filed in the court that committed the child to DJJ (not the court where the placement is located), and served on the prosecuting attorney for that jurisdiction.[183] At least 14 days before the hearing on the motion, the moving party (either the youth or DJJ) must serve a copy of the motion, by first-class mail, on: the victim at the victim's last known address, the child's attorney, the child's parents or guardian, and the law enforcement agency that investigated the act.[184]

At the hearing itself, the parties to the motion, the prosecuting attorney, and the victim shall all have the right to be heard and to present evidence.[185] Using a preponderance of the evidence standard, the judge is required to find whether or not the child has been rehabilitated.[186]

FACTORS TO BE CONSIDERED:

- Needs and best interest of the child
- Record and background of the child, including discipline history in placement
- Academic progress during placement
- Victim's impact statement
- Safety risk to the community
- Child's acknowledgment to the court and victim of his or her conduct being the cause of harm to others.

You should begin planning for a motion for early release as soon as your client receives an order for restrictive custody. At the outset, you should have a conversation with the client about the factors that will be considered, and the progress that needs to be made before a motion can be filed. Prior to filing a motion, you will need to have a conversation with the youth's DJJ counselor or caseworker to understand the progress the youth has made and whether DJJ is willing to file a letter in support of the motion. If not, find out exactly why DJJ believes that the client is not yet eligible for such consideration. If you disagree with this determination, you may need to challenge the determination administratively within DJJ.

Once you have the letter and have filed your motion, you should have a plan for the hearing itself. Gather your client's records from the facility, including education records, awards or certificates earned and documentation of completed programming. Identify and subpoena staff members at the facility who will speak positively about the youth. Finally, identify members in the community who will be able to talk about the plan for reintegrating the client back into the community. In particular, the judge will likely want to hear about the plan for where the youth will be living as well as whether the youth will be working or enrolled in school – with either a job or an education program lined up.

If the judge denies the motion, a new motion may only be filed after 6 months have passed.[187]

Sealing Juvenile Court Records

Although many juvenile court records are "confidential," some records are open to the public,[188] an adjudication can be used for certain purposes,[189] and the records do not automatically disappear when a juvenile reaches the age of majority. As a result, it is important that defenders advise their clients about the potential to "seal" a juvenile file. Once sealed, the proceeding shall be treated as though it never occurred.[190]

Who is Eligible

If a complaint or petition alleging delinquency is dismissed, or if a youth successfully completes a diversion program such as informal adjustment, the files and records in the case should be automatically sealed.[191]

For a youth who has been adjudicated delinquent of an offense, a petition may be filed seeking to seal the records.[192] The records to be sealed would include court records and all other law enforcement files and records.[193] Records may be sealed, if after a hearing, the court finds that:

- Two years have elapsed since the final discharge of the person;
- Since the final discharge of the person, they have not been convicted of a felony or of a misdemeanor involving moral turpitude or adjudicated for committing a delinquent act or as a child in need of service, and no proceeding is pending against the person seeking conviction or adjudication; and
- The person has been rehabilitated. [194]

Additionally, after petition and hearing, if the court finds that a youth has been adjudicated delinquent of a sexual crime, and such crime resulted from the youth being trafficked for sexual servitude or a victim of sexual exploitation, the judge shall order the records sealed.[195]

If the records are sealed, the proceedings are treated as though they never occurred and copies of the order will be sent to all relevant agencies.[196] Once a record has been sealed, access is available only in limited circumstances. The person who is the subject of the records may petition the court for an order granting inspection. Additionally, criminal justice officials may petition the court for inspection of records for criminal justice purposes.[197]

Clients should be informed of the right to petition the court for an order sealing the records at the end of every case.

Logistics

The logistics of petitioning the court to seal the records vary by jurisdiction. In some juvenile courts, there is a form that must be completed in the clerk's office to start the process. In others, the youth is permitted to go to intake, and the intake officer will assist the youth in drafting a petition. In still others, the youth (or their attorney) may file a petition on their own. It is advisable to check in with the clerk of the juvenile court in a particular jurisdiction to identify the local procedure.

In most cases, once the form or petition is completed, someone from juvenile court (the clerk's office, probation or the ADA) will run a background check on the youth to make sure that the youth is eligible for sealing of their records. It is advisable to ensure that someone has assumed responsibility for this process after the filing of the petition.

Once a hearing date has been set, the statute requires that notice be provided to: the prosecuting attorney, DJJ (if appropriate), the authority granting the discharge if the final discharge was from an institution or parole, and the law enforcement officers or department having custody of the applicable files.[198] The statute is silent as to who is responsible for providing such notice. If you represent a youth in a hearing to seal records, it is advisable for you to provide the statutorily required notice, so as to avoid unnecessary delays.

VI. Preparing Your Case

SECTION VI: Preparing Your Case

From the outset, each case should be approached as though it will go to trial, rather than end in a negotiated plea. With this mindset, the defender should engage in meaningful discovery and case investigation, should develop a theory of the case, should prepare relevant pre-trial motions, and should develop a trial strategy.

Discovery

Under the Georgia Juvenile Code, the discovery process involves the filing of a motion for discovery with the court and serving a copy of the motion on the prosecuting attorney.[199] Upon the filing of the motion, the child shall have full access to the following for inspection, copying, or photographing:

- A copy of the complaint;
- A copy of the petition for delinquency;
- The names and last known addresses and telephone numbers of each witness to the occurrence which forms the basis for the charge;
- A copy of any written statement made by such child or any witness that relates to the testimony of a person whom the prosecuting attorney intends to call as a witness;
- A copy of any written statement made by any alleged co-participant which the prosecuting attorney intends to use at a hearing;
- Transcriptions, recordings, and summaries of any oral statement of such child or of any witness, except attorney work product;
- Any scientific or other report which is intended to be introduced at the hearing or that pertains to physical evidence which is intended to be introduced;
- Photographs and any physical evidence which are intended to be introduced at the hearing; and
- Copies of the police incident report and supplemental report, if any, regarding the occurrence which forms the basis of the charge.[200]

Additionally, the prosecuting attorney is required to disclose all evidence favorable to the child and material either to guilt or punishment.[201] This information is commonly referred to as "Brady" material or disclosure.[202]

If a defense request for discovery is complied with, there is a duty to make reciprocal discovery available to the prosecuting attorney.[203] A prosecuting attorney may also submit a written request for discovery related to the intent to offer the defense of alibi.[204]

All requests for discovery must be responded to promptly, but no later than 48 hours prior to adjudication.[205] If additional information is secured by the district attorney following a request for discovery, it should be promptly presented to defense counsel.[206]

If a request for discovery is refused, an attorney may apply for an order granting discovery.[207] The motion must certify that the request for discovery was made and refused.[208] The court has discretion to deny the motion. Failure to comply with a court order for discovery may lead to a continuance, the exclusion of undiscovered evidence, or other appropriate measures.[209]

It is a common practice in many public defender offices to rely upon an "open file" agreement with the prosecuting attorney's office. Through this procedure, rather than filing a motion for discovery, a defense attorney is permitted to view the file maintained by the prosecuting attorney. Such a policy, however, shifts the burden of a continuing production and collection of evidence from the prosecution to the defendant. It is only by opting into the discovery regime that the prosecution is mandated to provide (and obtain from law enforcement) all discovery information. It is also only through such a procedure

that the defendant can obtain a court order or sanctions for failure to comply. Accordingly, a formal motion for discovery be filed in every delinquency case.

Investigation

Defense attorneys have a constitutional duty to investigate every client's case and to make reasonable decisions about what investigation is necessary. Any failure to investigate and to file appropriate motions may constitute ineffective assistance of counsel.[210]

The discovery process is not a substitute for independent investigation. Through investigation, the defender may learn that the prosecutor's case is weaker than the preliminary discovery materials may indicate. Additionally, the defender may learn that the complaining witness is not interested in pursuing the case against the defendant. Finally, the defender may be able to corroborate important parts of the client's version of events.

Witnesses

Try to speak with witnesses as soon as possible. If you have witnesses for the defense, it is important to prepare the witnesses to testify. Remember to review your questions and potential questions the district attorney will ask the witness before the witness reaches the stand.

Keeping in mind reciprocal discovery obligations, if you identify a favorable witness, or if a witness for the state provides you with favorable information, you may wish to lock the witness into a specific version of events through affidavit, signed statement, or recording.

Developing a Theory of the Case

A theory of the case is a short, written summary of the factual, emotional and legal reasons why the factfinder should return a favorable verdict. It gets at the essence of your client's story of innocence, reduced culpability, or unfairness. It provides a roadmap for you for all phases of the trial. Finally, it resolves problems or questions the judge may have about returning the verdict you want.

An effective theory of the case tells a logical, compelling story that is consistent with the evidence – both good and bad. It will also sort, organize and simplify all of the information that is being presented. Your theory will likely evolve, or even change completely, as you discover new evidence or analyze alternative legal theories.

A theory of the defense is NOT: the state can't prove guilt beyond a reasonable doubt, self-defense, alibi, etc. Instead, it is an affirmative story on behalf of your client.

Your theory of the case will differ from your theme. A theme is a word, phrase or simple sentence that captures the controlling or dominant emotion and / or reality of the theory of the case. The theme must be brief and easily remembered.

Motions Practice

Motions practice is essential to effective juvenile defense representation. The filing of motions is an opportunity to think strategically – and creatively – about your case. Commonly filed motions include:

- Motion to dismiss the petition (sometimes referred to as a demurrer in Georgia)
- Motion to release the client or alter pretrial conditions
- Discovery or investigation motions
- Motion for expert fees
- Motion to review social services file or other records

- Motion to suppress: evidence, statement, identification
- Motion to recuse the judge (bias or conflict of interest)
- Motion in limine
- Motion for informal adjustment
- Motion to remove all shackles / restraints
- Motion to appear in street clothing
- Be Creative!!!!

This is by no means an exhaustive list of the motions that can be filed in any given case.

WHY FILE A MOTION?

- May lead to dismissal of the case
- May weaken the prosecution's case
- May increase bargaining power in plea negotiations
- Offers significant opportunities for discovery
- Locks prosecution witnesses into a specific version of events
- Strengthens the attorney-client relationship
- Preserves issues for appeal
- Challenges the status quo

All motions, with the exception of discovery motions, must be made in writing and filed not later than three days, excluding weekends and holidays, before the hearing at which the motion will be considered, unless otherwise permitted by the court.[211]

Motion to Suppress Evidence

A motion to suppress evidence should be considered in every drug case, every time physical evidence has been collected, and every time your client is detained. You should also consider whether your client's statement was the result of an unlawful search or seizure.

The 4th Amendment of the U.S. Constitution, along with Article I, Section 1, Paragraph XIII of the Georgia Constitution, protect our clients from "unreasonable searches and seizures."

When preparing a motion to suppress, you should consider the following questions:[212]

- What are you trying to suppress?
    - Weapons, drugs, photos, fingerprints, statements, etc.
- Does your client have standing?
    - If police action affected the freedom of movement of the client in any way.[213] This can include the passenger of a car, not just the driver.[214]
    - If client had an expectation of privacy in the premises or object to be searched.
- What level of intrusion or seizure was there?
    - The first inquiry is whether there was a seizure, as only seizures trigger 4th amendment protections.
        - The general standard for a seizure is a show of official authority that "has in some way restrained the liberty of a citizen."[215]
    - Encounters with law enforcement fall into several categories: encounters or contacts (not a seizure), investigatory or Terry stops, Terry frisks, arrests, and searches.
    - Always attempt to categorize the encounter as a seizure. The classification (type of seizure) will depend upon the facts of your case.
- Was the seizure justified
    - Will depend on the level of the seizure, as each level requires a different level of suspicion to be present.
- Was the scope of the search following the seizure justified?
    - A fact-specific inquiry
- Which fruits are the result of the illegality or unlawful seizure?
    - In addition to the tangible evidence obtains, also consider statements, identifications, and any additional derivative evidence.

School Searches

While the 4th Amendment's probable cause standard applies to law enforcement officers in a school building, there is a modified standard that applies to searches conducted by school officials.[216]

In contrast to a law enforcement search, when a search is conducted by a school official, the legality depends on the reasonableness, under all the circumstances, of the search. Reasonableness involves a two-fold inquiry:

- Was the action justified at its inception; and
- Was the search, as conducted, reasonably related in scope to the circumstances justifying the interference in the first place?[217]

In addition to this lowered standard, Georgia Courts have also held that the exclusionary rule does not apply to illegal searches conducted by school officials.[218]

In Georgia, School Resource Officers (SROs) have been considered law enforcement officers for purposes of this analysis.[219] Thus, when an SRO conducts a search of a student, probable cause is required, and the exclusionary rule is implicated.[220]However, law enforcement's mere presence during the search of a student by a school official is not enough to implicate the higher search standard.[221] Accordingly, it is important to determine the relationship between the SRO and school official during any search. If the SRO is guiding the search of the student, or there are tangible facts that indicate coordination between the two, the search should be considered in the same category as a law enforcement officer search.[222]

Motions to Suppress Statements

A motion to suppress statements should be filed every time your client says anything to law enforcement. Keep in mind that for a statement to be admissible, it needs to be **voluntary**[223] and any waiver of Miranda needs to be **knowingly**, **intelligently** and **voluntarily** made.[224]

Georgia requires that "to make a confession admissible, it must have been made voluntarily, without being induced by another by the slightest hope of benefit or remotest fear of injury."[225]

While involuntariness may arise in a number of ways (including threats, coercion, etc), the most common allegation of involuntariness will come from the absence of the reading of Miranda warnings during a custodial interrogation.[226] Pursuant to J.D.B., when questioning a child, the child's age has a bearing on the Miranda analysis if the child's age was known to the officer, or was objectively apparent to a reasonable officer.[227] In the school setting, SRO involvement in questioning could lead to a custodial interrogation requiring the reading of Miranda warnings.[228]

With respect to the waiver of Miranda, the analysis is a subjective one, utilizing a totality of the circumstances test to determine if the individual child knowingly, intelligently, and voluntarily waived his or her Miranda rights.[229]

If you have filed a motion to suppress your client's statements due to a lack of knowing, intelligent or voluntary waiver of his or her Miranda rights, your client's school records can be an invaluable resource. Be sure to obtain the client's full education records, including any documents contained in the special education file. If your client has been in special education, the psychological evaluation and IEP will provide information on his or her current academic and cognitive functioning levels. Additionally, your client's special education teacher or the school psychologist may be a convenient way to obtain expert testimony as to your client's abilities.

RILEY FACTORS

- Age
- Education
- Knowledge as to the substance of the charge and the nature of his or her rights to consult with an attorney and remain silent
- Whether incommunicado or allowed to consult with others
- Whether interrogated before or after formal charges filed
- Methods used in interrogation
- Length of interrogations
- Whether he or she refused to voluntarily give statements on prior occasions
- Whether he or she repudiated an extra judicial statement at a later date.

VII. Transfer to Superior Court

Section VII: Transfer to Superior Court

While the majority of youth under the age of 17 who commit an offense that would be a crime if committed by an adult will be tried in juvenile court, Georgia permits the trial of certain youth to occur in superior court. In Georgia, there are 3 different methods for bringing a case against a youth in superior court: (1) exclusive jurisdiction over youth between 13 and 17 for any of seven different offenses, (2) concurrent jurisdiction over crimes that are punishable by death, LWOP, or life, and (3) discretionary transfer of jurisdiction.

Exclusive Jurisdiction

Georgia's exclusive jurisdiction (automatic transfer) statute was enacted into law in 1994 pursuant to Senate Bill 440. For this reason, those offenses that are within the exclusive jurisdiction of superior court are commonly referred to as SB440. Alternatively, because there were originally seven such offenses, they are sometimes referred to as the "Seven Deadlies" or "Seven Deadly Sins." There are now ten such offenses.

Pursuant to Georgia's Juvenile Code, the superior court has exclusive jurisdiction over any child ages 13 to 17 who is alleged to have committed any of the following:

- Murder
- Murder in the 2nd degree
- Voluntary manslaughter
- Rape
- Aggravated sodomy
- Aggravated child molestation
- Aggravated sexual battery
- Armed robbery if committed with a firearm
- Aggravated assault if committed with a firearm upon a public safety officer
- Aggravated battery upon a public safety officer[230]

Indictment

A child that is charged with a crime within the jurisdiction of the superior court and is detained is entitled to have a charge brought against them to the grand jury within 180 days of their detention date.[231] This time period may be extended upon a motion and a showing of good cause.[232] However, this extension will not be granted after the initial 180-day time period has expired.[233] If the grand jury does not return a true bill against the child within the time period, the child's case will be transferred to juvenile court.[234] If the child's case is transferred from superior court to juvenile court for this reason, the state is entitled to an appeal.[235] However, the state may not subsequently move for a discretionary transfer back to superior court.[236]

The 18-day indictment requirement does not apply if the child is a co-defendant to a case in which an adult is charged with the same crime and the state intends to seek the death penalty for the co-defendant.[237] Additionally, if the child is released on bond, the 180-day time period does not continue to run, and this provision does not apply.[238]

Transfer to Juvenile Court (Reverse Waiver)

If a child is in the exclusive jurisdiction of the superior court, there are two ways for a case to be transferred to juvenile court.

First, at any time before indictment, the district attorney may, after investigation and for cause, decline prosecution in the superior court. If this happens, the case is transferred to juvenile court, where a petition is to be filed. In juvenile court, the case will be treated as a Class A designated felony act.[239]

If the district attorney does not decline prosecution, for some of the SB 440 offenses there is an alternative mechanism for transferring the case to juvenile court. If the youth is charged with voluntary manslaughter, aggravated sodomy, aggravated child molestation, aggravated sexual battery, aggravated assault if committed with a firearm upon a public safety officer, or aggravated battery upon a public safety officer, the superior court may, after indictment and after investigation, transfer the case to juvenile court.[240] In making this decision, the judge must consider the transfer criteria specified in the code (see insert below).[241]

If the superior court orders a case transferred to juvenile court, the State has the right to appeal the order.[242] Additionally, any case transferred in this manner shall be treated as a Class A designated felony act.[243]

Additionally, if a child in superior court on an SB400 offense is convicted of a lesser included offense, the superior court may transfer to the case to juvenile court for disposition.[244]

TRANSFER CRITERIA

O.C.G.A. § 15-11-602 sets forth the following criteria to be considered in reverse waiver decisions as well as in decisions to transfer a case to superior court:

- The age of such child;
- The seriousness of the alleged offense, especially if personal injury resulted;
- Whether the protection of the community requires transfer of jurisdiction;
- Whether the alleged offense involved violence or was committed in an aggressive or premeditated manner;
- The impact of the alleged offense on the alleged victim, including the permanence of any physical or emotional injury sustained, health care expenses incurred, and lost earnings suffered;
- The culpability of such child including such child's level of planning and participation in the alleged offense;
- Whether the alleged offense is a part of a repetitive pattern of offenses which indicates that such child may be beyond rehabilitation in the juvenile justice system;
- The record and history of such child, including experience with the juvenile justice system, other courts, supervision, commitments to juvenile institutions, and other placements;
- The sophistication and maturity of such child as determined by consideration of his or her home and environmental situation, emotional condition, and pattern of living;
- The program and facilities available to the juvenile court in considering disposition; and
- Whether or not a child can benefit from the treatment or rehabilitative programs available to the juvenile court.

Post-conviction Review

A child who is sentenced in the superior court, but is younger than 17, will have access to juvenile detention programs and services. As a child approaches their 17th birthday, the superior court shall review their sentence and determine whether the child should be placed on probation, have their sentence reduced, be transferred to the Department of Corrections for the remainder of the original sentence, or be subject to any other determination authorized by law.[245]

This decision is within the discretion of the court and the court may rely on information from the Department of Juvenile Justice about the child's participation and progress in department programs.[246] However, the court's discretion is limited if the child was convicted of a crime with a mandatory minimum sentence.[247] These sentences are bound by O.C.G.A. § 17-10-6.1 and cannot be reduced, even for a child.[248]

Concurrent Jurisdiction

Juvenile court and superior court have concurrent jurisdiction over any child alleged to have committed a criminal act that, if committed by an adult, would be punishable by loss of life, imprisonment for life without the possibility of parole, or confinement for life in a penal institution.[249]

While the concurrent jurisdiction provision is silent with respect to an age range, the criminal code provides that "[a] person shall not be considered or found guilty of a crime unless he has attained the age of 13 years at the time of the act, omission, or negligence constituting the crime."[250] Case law has interpreted this provision as an affirmative offense, rather than as a statutory prohibition. Accordingly, the burden is on the defendant to raise the issue of age during the criminal proceedings.[251]

When concurrent jurisdiction exists, the forum decision rests with the prosecutor and jurisdiction remains with the court that first takes jurisdiction over the matter.[252]

Discretionary Transfer to Superior Court

After the filing of a petition, but prior to an adjudication hearing, the judge or prosecuting attorney may move for a hearing to transfer certain cases to superior court.[253] A transfer hearing may only be held if there is probable cause to believe that the child committed the alleged offense and the child is not committable to an institution for the developmentally disabled or mentally ill. Further, the child must have been at least 15 years old at the time of the alleged offense if the alleged offense is a felony, or 13 or 14 years old if the alleged offense is punishable by loss of life or confinement for life, or if the alleged offense is aggravated battery resulting in serious bodily injury.[254]

In issuing its ruling on decision to transfer a case to superior court, the judge must consider a probation report, a risk assessment, any evidence it deems relevant, including evidence submitted by the child, and the transfer criteria set forth in the code (see inset above).[255] The decision for the court to make is whether, because of the seriousness of the offense or the child's prior record, the welfare of the community requires that criminal proceedings against the child be instituted.[256]

The decision of the court with regards to transferring a case to superior court is considered an interlocutory judgment, which may be appealed to the Court of Appeals by either the child or the prosecuting attorney.[257] However, unlike other interlocutory judgments, the decision to transfer a juvenile's case to superior court is directly appealable to the Court of Appeals; even though this appeal is interlocutory in nature, parties have an appeal of right and are not bound by general interlocutory appeal procedures.[258] The appeal stays all criminal proceedings in superior court, and the child may only be detained in those locations authorized for the preadjudication detention of a child.[259]

Practice Considerations

The United State Supreme Court, in Kent v. United States, held that transfer to adult court is a "critically important" proceeding, thereby necessitating a series of due process protections.[260] Given the extreme disparity of treatment and consequences in the handling of a matter in juvenile court as compared to superior court, it is incumbent upon the defender to do all that is possible to keep a young person's case out of superior court.

In most cases, your first advocacy efforts in obtaining juvenile court jurisdiction will be with the prosecutor. When a case starts in juvenile court, it is the prosecutor who decides to file a motion for discretionary transfer. Similarly, when a case starts in superior court, the prosecutor has discretion to decline jurisdiction in the superior court and initiate juvenile court proceedings with the filing of a petition.

For your initial meeting with the prosecutor, you should be fully prepared with your mitigation argument. Using the transfer criteria as a guide, this will include information about your client's culpability in the offense as well as information about your client. It might be helpful to accumulate positive information from those who know your client best, including family members, supportive school personnel, coaches, mentors, youth pastors, DFCS personnel, and mental health personnel who have worked with the client. If there is a school psychological evaluation, see if it is possible to use the information contained therein to highlight your client's lessened culpability and amenability to treatment. Be mindful that the prosecutor will have information of their own, likely including your client's prior history and school records. You should be aware of this information going into the meeting, and be prepared to address any negative history that your client has.

In the event that you are unable to persuade the prosecutor of the merits of juvenile court jurisdiction, in many cases you will have the opportunity to present your case to a judge (in discretionary hearings, the juvenile court will hear the case, while in reverse waiver proceedings the transfer hearing will be heard by a superior court judge). Statutorily, a reverse waiver hearing is not currently available in cases of murder, rape, or armed robbery with a firearm.

If you have a transfer hearing, the same individuals identified above will become your primary witnesses. Additionally, you'll want to consider using expert witnesses. If your client is receiving special education services, there should be a psychological evaluation from the school district. The school psychologist should be able to discuss your client's intellectual and academic status, as well as the need for continued educational and rehabilitative services. Similarly, someone from the Department of Juvenile Justice will be able to testify as to the rehabilitative programs available in DJJ facilities, including sex offender treatment, drug treatment and counseling, anger management classes, and a full range of educational programming.

While the two experts discussed above are free, other experts will require funds. Consider making a funding request to GPDC or the court, seeking funds for a psychiatrist or psychologist to specifically assess your client's amenability to treatment. You may also consider an expert to talk about the negative effects of trying youth in adult court, including the increased risk of physical and psychological harm, the lack of rehabilitative programming, the quality of education services, and the overall recidivism rate for youth tried in adult court as compared to juvenile court.

VIII. Competency

SECTION VIII: Competency

The purpose of the juvenile competency article in the juvenile code is to set forth procedures for determining whether a child is incompetent to proceed and, where appropriate, to provide a mechanism for the development and implementation of competency remediation services, including treatment, habilitation, support or supervision services.[261]

When to Seek a Competency Evaluation

A competency evaluation should be considered any time the client's behavior, mental health condition, or developmental status leads the defender to believe that he or she may not understand the proceedings, comprehend the situation, or be able to assist in his or her defense. Factors to consider will include the client's age, the client's ability to provide information about the case, any indication that the client has limited intellectual functioning, or limited verbal or comprehension skills, placement in special education, a history of mental illness, or a history of emotional or behavioral problems.

While competence to proceed is important in all cases, it is even more critical to assess your client's competence if she or she is being tried as an adult in superior court.

INCOMPETENT TO PROCEED

O.C.G.A. § 15-11-651(3)

Lacking sufficient present ability to:

- Understand the nature and object of the proceedings;
- Comprehend his/her own situation in relation to the proceedings; and
- Assist the defense attorney in the preparation and presentation of the case in all hearings.
- Includes consideration of age or immaturity.

Procedure

At any time after the petition is filed, a request for a competency evaluation may be made by the court, the child's attorney, a GAL for the child, the child's parent or guardian, or the prosecuting attorney.[262] Once such a request is made, the judge shall order a competency evaluation of and report on the child's mental condition, and the proceedings shall be stayed.[263] In addition to the staying of proceedings, all time limits relating to adjudication and disposition are tolled during the competency proceedings.[264]

A competency evaluation must be ordered in all cases where a child under the age of 13 is alleged to have committed a serious violent felony.[265]

All motions, notices of hearing or other pleadings relating to incompetency must be served on the child, his or her attorney, a GAL (if applicable), his or her parent or guardian, and the prosecuting attorney.[266]

Before any evaluation is conducted, the court will appoint an attorney to represent the child, if one has not yet been appointed.[267]

Upon a showing of good cause by any party, or on the court's own motion, the court may order additional evaluations by other licensed psychologists or psychiatrists.[268]

Report

The court is to provide the examiner performing the evaluation and report with any law enforcement and court records necessary to understand the petition. The child's attorney and the prosecuting attorney are to provide the examiner with any other records that are deemed necessary.[269] It is our recommendation that defenders provide the examiner with any special education records that are available, including any IEPs and evaluations for special education services.

Unless the child is in an out-of-home placement, the evaluation is to be performed on an outpatient basis.[270]

The examiner is to submit his or her written report to the court within 30 days of receiving the court's order for an evaluation, although the court may grant the examiner an extension of this deadline.[271] Copies of the written report shall be provided by the court to the attorney representing the child, the prosecuting attorney, and the GAL (if one has been appointed) no later than 5 days of receiving the report.[272]

The written report is to contain the specific reason for evaluation, procedures used, available background information, and results of the mental status exam including diagnosis of any psychiatric symptoms, cognitive deficiency, or both. The evaluation will describe the abilities and deficits of the youth under the standard of competence defined above. The evaluation will state an opinion regarding the potential significance of the youth's mental competency, strengths, and weaknesses. Finally, the report will contain an opinion on whether the youth should be found competent, along with a statement in support of this opinion.[273]

If the examiner considers the youth to be incompetent, the report should include an opinion on whether the primary cause of incompetency is immaturity, mental illness, developmental disability, or a combination as well as a projection of the probability that competence will be achieved in the foreseeable future. The report should also contain recommendations for the level and type of remediation necessary and/or modification of court procedures to compensate for the client's needs.[274]

Competency Hearing

The mental competency hearing will be held within sixty days of the initial order for evaluation, unless continued for good cause shown.[275] At least ten days prior to the hearing, written notice must be provided to all parties as well as the victim.[276] Copies of the court's findings will be given to the parties within ten days of the issuance of the findings.[277]

The burden of proving mental incompetence is on the youth.[278] The standard of proof is by a preponderance of the evidence.[279] At the hearing, defense counsel and the prosecuting attorney have the opportunity to present evidence, call, examine, and cross-examine witnesses, and present arguments.[280] The examiner appointed by the court is considered the court's witness and is subject to cross-examination by both the defense attorney and the prosecuting attorney.[281] The court's findings are based upon any evaluations by court appointed examiners or independent evaluators hired by defense counsel or prosecuting attorneys, and any additional evidence presented.[282]

If the child is found competent to proceed, the proceedings which have been suspended shall be resumed, and the time limits for adjudication and disposition will begin to run.[283]

If a child is detained in a secure residential facility or nonsecure residential facility and the court determines that such child is incompetent to proceed, within five days of such determination the court shall issue an order to either (i) immediately release such child to the appropriate parent, guardian, or legal custodian or (ii) detain such child in the least restrictive setting, if the child satisfies the detention criteria.[284]

If a child is found unrestorably incompetent to proceed, the child shall not be detained after a comprehensive services plan has been adopted. If the child can be remediated to competency, such a child shall not be detained for any longer period of time than is allowed for the disposition of a delinquent act under Code Section 15-11-601 or for the disposition of a class A designated felony act or class B designated felony act under Code Section 15-11-602.[285]

Disposition of Child Incompetent to Proceed

If a child is found incompetent to proceed, the court must make a determination of whether the child's incompetence can be remediated.

Restorably Incompetent

If the court finds that an alleged delinquent child is currently incompetent to proceed, but that the child's competence can be remediated, the judge may order that competency remediation services be provided,[286] or that the petition be dismissed without prejudice.[287]

In deciding whether to order remediation services, the court will consider: whether there is probable cause to believe the allegation in the petition is true, the nature of the incompetency, the child's age, and the nature of the alleged offense.[288]

If the court orders remediation services, the order shall contain: the name and location of the service provider, a statement of the arrangements for transportation to/from the program, the length of the program, and a direction concerning the frequency of reports.[289]

At least every 6 months, DBHDD or a licensed psychologist or psychiatrist must file a written report with the court giving an opinion as to whether the child's competency can be remediated in the foreseeable future, whether additional time is needed to remediate competency, and, if a child has attained competency, the effect of any medication or treatment used to remediate competency.[290]

In addition to ordering remediation services, under certain circumstances (including that the child meets the requirements for civil commitment) the court may also order that a child be placed in a crisis stabilization unit or a psychiatric residential treatment facility operated by DBHDD if the court makes a finding by clear and convincing evidence standard there is not a less restrictive alternative.[291]

REMEDIATION SERVICES

O.C.G.A. 15-11-651(2)

Outpatient interventions directed only at facilitating the attainment of competence to proceed. These may include:

- Mental health treatment
- Specialized psychoeducational programming

If the court has ordered remediation services and the alleged delinquent act is a felony, the court shall retain jurisdiction for up to 2 years after the order of incompetency, with review hearings every 6 months.[292] If the court has ordered remediation services and the alleged delinquent act is a misdemeanor, the court shall retain jurisdiction for up to 120 days after the order of incompetency.[293]

If the court finds that a child has attained competency, the suspended proceedings shall resume and the time limits shall begin to run.[294]

Unrestorably Incompetent

If a child is found to be unrestorably incompetent to proceed – either initially, or after a period of remediation services – the court shall dismiss the petition, appoint a plan manager, and order a comprehensive services plan to be initiated under Article 5 (CHINS) of the juvenile code.[295] The court may also order that the child be referred for civil commitment or that a referral be made for appropriate adult services if the child reaches 18 years of age.[296]

Upon appointment, the plan manager will convene a meeting of all relevant parties to develop a comprehensive services plan. Those invited to the meeting shall include: the parent or guardian, the child's attorney, the prosecuting attorney, a GAL (if one has been appointed), mental health or developmental disabilities representatives, the child's caseworker, a representative from the child's school, and any family member who has shown an interest. Additional members may also be invited as appropriate.[297] The plan manager is also responsible for collecting all relevant records relating to the child.[298]

Within 30 days of the order finding the child to be unrestorably incompetent, the plan manager shall submit the comprehensive services plan to the court.[299] The plan shall include: an outline of the plan to provide supervision to the child so as to protect the community and the child; an outline of the plan to provide treatment, habilitation, support, or supervision services in the least restrictive environment, and identification of all parties responsible for each element of the plan.[300]

Within 30 days of submission of the comprehensive services plan, the court shall hold a hearing to approve the plan. Additional review hearings will be held every 6 months thereafter.[301]

The plan manager is responsible for identifying any person who should provide testimony at the comprehensive services plan hearing.[302] These individuals, as well as the victim, shall be provided 10 days' notice of the hearing, and shall be afforded the right to be heard at the hearing.[303]

IX. Shackling

SECTION IX: Shackling

Shackling child-defendants in court has long been a disturbing practice. All too often, children in custody are brought before a judge with chains weighted around their legs and bellies attached to handcuffs too big for their wrists.[304] The reliance on shackling young people does a great deal to humiliate, stigmatize, and traumatize children while seldomly used to restrain a young person who is believed to pose a public safety risk. The process of shackling runs contrary to the very principles of juvenile justice – mainly that of rehabilitation. Moreover, it interferes with a client's right to engage with their lawyer and their right to due process.[305] Further, the Supreme Court has recognized that the use of shackling is inherently prejudicial given it directly undermines the presumption of one's innocence.[306]

The prevalence of shackling is slowly but surely declining. In 2007, only two states imposed legal limitations on the use of shackling in juvenile court. By 2019, 32 states and the District of Columbia imposed limits on the use of juvenile shackling either by rules, statutes, or administrative orders.[307] Most recently, in April 2020, the Supreme Court of Georgia issued the Uniform Juvenile Court Rule 20 (relating to the physical restraint of juveniles in the courtroom). This rule became effective on July 1, 2020. It reads as follows:

> Consistent with applicable law, a juvenile may not be physically restrained during a court proceeding unless such restraint is authorized by court order or local protocol of the court. Every juvenile court shall establish a written protocol that addresses the circumstances under which a juvenile may be physically restrained while appearing in court, which considers the welfare and due process rights of the juvenile, the integrity of the judicial proceeding, and the safety of the court and public.[308]

Pursuant to this rule, each individual court is responsible for creating the policies and procedures applicable to its own courthouse. As defenders, it is incumbent upon us to participate in and advocate for model policies and procedures that respect the dignity of our clients and that work towards eliminating the use of this degrading practice altogether.[309]

Model policies and procedures advocate for a strong presumption against the use of shackling. When the use of restraints is deemed necessary, shackling should not be used if there are less restrictive means that could be used in its place.[310] Moreover, model policies require that the court provide juvenile defenders with an opportunity to speak on the use of restraints before restraints are ordered.[311]

Defenders should demand adherence to the presumption against shackling and ask for the removal of their client's shackles when circumstances clearly do not merit their use.

SECTION X: The Juvenile Justice and Delinquency Prevention Act of 2018

SECTION X: The Juvenile Justice and Delinquency Prevention Act of 2018

The Juvenile Justice and Delinquency Prevention Act was originally passed in 1974. The purposes of the Act were to support state and local programs that prevent juvenile involvement in the juvenile justice system and delinquent behavior, to promote public safety by encouraging accountability for juvenile delinquency, and to support a continuum of evidence-based promising programs designed to meet the needs of at-risk youth who come into contact with the justice system.[312] Since 1974, JJDPA has been reauthorized several times, most recently on December 21, 2018.[313] The reauthorization renewed the grant that rewards states for adhering to the four core principles of the Act. The four core principles are: (i) deinstitutionalizing status offenses, (ii) removing juvenile offenders from adult prisons and jails, (iii) enforcing sight and sound separation of juveniles from adults when a juvenile must be in an adult prison or jail under limited circumstances, and (iv) researching and addressing racial and ethnic disparities within juvenile justice systems.

Deinstitutionalizing Status Offenses

The first core principle of the JJDPA is the deinstitutionalization of status offenders.[314] Under the JJDPA, status offenders are not to be held in secure custody, although a few exceptions to this requirement are outlined in the Act.[315] Absent one of the exceptions, a status offender can only be held in a secure juvenile detention facility for up to 24 hours prior to and after their appearance before the court.[316] There are only three other times a status offender may be detained in a secure facility: (i) they are under the jurisdiction of the Youth Handgun Safety Act, (ii) if they are being held in accordance with the Interstate Compact on Juveniles, or (iii) they fall under the valid court order exception.[317]

Youth Handgun Safety Act

The Youth Handgun Safety Act made it illegal for anyone to sell handgun or handgun ammunition to a juvenile, or for a juvenile to possess a handgun or handgun ammunition.[318] This particular status offense is outlined as an express exclusion on the prohibition of placing status offenders in secure detention facilities.[319] An alleged juvenile offender who has possession of a handgun can be held in a secure facility.

Interstate Compact for Juveniles

The Interstate Compact for Juveniles regulates the movement of juveniles under supervision or runaways who have crossed state lines.[320] Juveniles being held in accordance with the Interstate Compact for Juveniles are expressly excluded from the prohibition of placing a status offender in a secure facility.[321] If an alleged juvenile offender is a runaway or moving across state lines, they can be held in a secure facility in accordance with the Compact.

Valid Court Order Exception

Of the JJDPA exceptions, the most utilized is the valid court order exception.[322] This exception allows for an alleged juvenile status offender to be placed in a secure detention facility for violating an order of the Court. In the 2018 Reauthorization, JJDPA placed some new limitations on the use of the VCO exception. Notably, youth found in violation of a valid court order may only be held in a secure facility for a maximum of seven days.[323] Moreover, in making such a placement, the Court must find that detention is necessary, and enter an order that includes the following: (1) identifies the valid court order that has been violated; (2) specifies the factual basis for determining that there is reasonable cause to believe that the status offender has violated the order; (3) includes findings of fact to support a determination that there is no appropriate less restrictive alternative available to placing the status offender in a secure facility, with due consideration to the best interest of the juvenile; (4) specifies the length of time, not to exceed seven days, that the status offender may remain in a secure facility, and includes a plan for the status offender's release from such facility.[324] This order may not be renewed.[325]

Removing Juvenile Offenders from Adult Prisons and Jails

The second core principle of the JJDPA is that juvenile offenders are to not be housed in adult facilities.[326] Under the act, there are only a limited set of circumstances when a juvenile offender can be placed in an adult facility. First, a juvenile accused

of a non-status offense can be detained for up to 6 hours in an adult facility for processing or release, awaiting transfer to a juvenile facility, or when a juvenile is making a court appearance.[327] Second, a juvenile accused of a non-status offense can be housed in an adult facility for up to 48 hours while awaiting their initial court appearance.[328]

Besides the two stated automatic exceptions, a court can hold a hearing for an individual child to determine if it is in the interest of justice to house them in an adult facility.[329] The court will analyze a bevy of factors in making its determination, including: the age of the juvenile, they physical and mental maturity of the juvenile, the nature and circumstances of the alleged offence, the juveniles history of prior delinquent acts, the relative ability of the available adult and juvenile detention facilities to meet the needs of the juvenile and protect their safety, and any other relevant factor.[330] Once a court makes a determination that a juvenile can be held in an adult jail, the court is required to hold continuous review hearings focusing on detention and the juvenile is not allowed to be in any adult jail or lock up for more than 180 days in total.[331]

Most pressing, reauthorization placed a new deadline on states to implement this goal. Three years from the enactment of reauthorization – by December 21, 2021 – states are to have ensured that no juveniles are held in adult jails or lock ups unless they satisfy one of the previous exceptions.[332] Prior to the reauthorization, and permitted to remain in force until December 21, 2021, juveniles tried as adults were not considered "juveniles" and could be housed in adult jails and lock ups.[333] The reauthorization eliminated this loophole, and now mandates that all juveniles, even those who are being tried in the adult court system, be taken out of adult jails and lock ups.[334] Therefore, under the definitions of the Act, juveniles who are tried as adults are no longer exempt from the Act's prohibition on housing juveniles in adult jails and lock-ups, and any state that does not comply and take them out of adult jails and lock-ups will be at risk of losing federal funding. However, "adult inmate" is defined as an individual who has reached the age of full criminal responsibility under applicable State law, which means until Georgia "raises the age," 17-year-olds can remain in our adult jails.[335]

Sight and Sound Separation

The third core principle of the JJDPA is that in the limited circumstances where a juvenile offender has to be placed in an adult facility, they are to have sight and sound separation from adults within the facility.[336] Moreover, any adult facility that is also housing juveniles has to have staff that is trained and certified to work with juveniles.[337] This mandate has its own section within the JJDPA and is reiterated within sections detailing when juveniles can be housed within adult facilities.[338]

Again, a court can make a determination that it is in the best interests of justice to not have sight and sound separation for specific juveniles.[339] The decision follows the same hearing process and utilizes the same factors as placing a juvenile into an adult lock-up.[340] If the court determines that the child does not need sight and sound separation, the court is still required to maintain periodic review hearings and the child cannot be in sight and sound contact for more than 180 days.[341]

The deadline that applies to states housing juveniles in adult facilities also applies to sight and sound separation; states have until Dec. 21, 2021, to ensure that juveniles have sight and sound separation in adult facilities from adult inmates.[342] Any state that does not meet this goal will fall out of compliance with the act.

Racial and ethnic disparities

The fourth and final core principle of the JJDPA is to limit the racial and ethnic disparities (formerly referred to as Disproportionate Minority Contact) within juvenile justice systems across the country.[343] States must establish or designate coordinating bodies to identify and analyze data on race and ethnicity at various decision points during the juvenile justice procedure to determine where racial and ethnic disparities exist.[344] Finally, states must develop and implement a work plan that relates to the data collection and implements policy, practice and system change.[345] All of this aims to provide the assurance that youth in the juvenile justice systems are treated equitably on the basis of race, gender, ethnicity, socioeconomic status, and disability.[346]

Racial and Ethnic Disparities in Georgia

In Georgia, the Juvenile Justice State Advisory Group (SAG) provides guidance to the Criminal Justice Coordinating Council (CJCC) about the state's compliance with this portion of the JJDPA.[347] This includes leading consistent reviews and strategic response to the racial and ethnic disparities within the juvenile justice system in Georgia.[348] The most recent study published and released by SAG was released in 2018, based on 2016 data, and was designed to answer which counties had the highest rate of disproportionate minority contact, which stages of the juvenile justice case process had the highest observed rates of disproportionate minority contact, and if there were differences in disproportionate minority contact across races and ethnicities.[349] Due to missing data points in various counties across Georgia, the SAG could not establish a statewide analysis of disproportionality, and instead focused on county-level analysis.[350]

The 2018 report identified that in Georgia, African American youth are at least twice as likely to be referred to the juvenile court as their white peers.[351] Further, the report identified a number of counties with disproportionality across multiple decision points. In the counties with persistent disproportionality at the detention stage, African American youth are detained at up three times the rate as their white peers.[352] African American youth are also petitioned up to two and a half times more often than white youth in counties with the largest and most persistent disproportionality.[353] Finally, at least thirteen counties experienced disproportionate outcomes for African American youth relating to confinement and commitment to the custody of DJJ.[354]

The second phase of SAG's research analyzed which factors are associated with disproportionate minority contact throughout the juvenile justice process.[355] They identified increased usage of out of school suspension, increased arrests for drug related crimes, and African American youth living in poverty as being the factors most associated with disproportionate contact with the juvenile justice process.[356] SAG also conducted a qualitative analysis including interviews with stakeholders to identify the causes of disproportionate minority contact.[357] SAG found that implicit police biases and cultural backgrounds and ideologies were the factors most notable in the stakeholder interviews.[358]

Other Key Provisions

Beyond the four core principles, the JJDPA of 2018 also instituted other key policy changes. First, states are required to phase out the use of shackling and restraints on juveniles known to be pregnant or in post-partum recovery.[359]

States also have to implement a plan that supports educational progress.[360] This includes ensuring that the student records of adjudicated juveniles are transferred in a timely manner to the educational program that the juvenile will be utilizing, that their credits are transferred, and that the juveniles will receive full or partial credit towards their high school or secondary school coursework completed before and during the juvenile is in custody regardless of the local education agency from where the credits were earned.[361]

States also need to make strides addressing the crossover of the commercial sexual exploitation of children into the juvenile justice system.[362] States need to screen for, identify, and document the identification of victims of domestic human trafficking or those who are at risk upon intake.[363] Then the state must divert those youth to the appropriate programs or services.[364]

SECTION XI: Department of Juvenile Justice Policies & Procedures

SECTION XI: Department of Juvenile Justice Policies & Procedures

The following is an overview of some of the DJJ policies and procedures that are most likely to impact you as a juvenile defender. Please keep in mind that these are internal agency policies that are subject to change. Therefore, if you have a question about a particular policy, it is advised that you confirm its current content on the DJJ website.[365]

Health and Medical Services

All youth admitted to a DJJ facility will receive a health appraisal and comprehensive physical examination.[366] This examination is to be used by DJJ staff in determining a youth's medical needs and the appropriate course of treatment if necessary. If a youth is admitted to DJJ and is known to have a chronic condition or is taking prescribed medications, then the comprehensive physical must be completed within three days of admission.[367]

If one of these factors is not present, then the physical must be completed within seven days of admission.[368] Additionally, DJJ staff will provide an HIV test if requested by the youth or if clinically indicated and testing for sexually transmitted infections will be performed for all admissions and transfers.[369]

All youth remaining at a secure facility over one year will receive an annual physical.[370] Youth have the opportunity to request health services daily.[371]

Youth and their parent or guardian have the right to refuse treatment or medication, unless the proposed intervention is essential to the youth's welfare and or cannot be deferred without substantial risk.[372]

DJJ must ensure that pharmaceutical services are provided at secure facilities on a 24-hour basis in order to ensure the timely dispensing of medications.[373]

Behavioral Health Services

All youth housed in DJJ secure facilities must be provided with quality behavioral health care.[374] This will be accomplished by a Designated Mental Health Authority dedicated to each secure facility.[375] Furthermore, decisions by the mental health staff regarding behavioral health services shall not be compromised for security reasons.[376] Additionally, youth have the right to request behavioral health services daily.[377]

The behavioral health staff must screen each youth entering a DJJ secure facility (no later than two hours from the time of admission) for mental health problems and suicide risk factors.[378]

Education

DJJ operates as its own special school district, subject to all applicable rules and regulations of the State Board of Education.[379] As such, DJJ is required to adhere to the curriculum and instructional standards set by the Georgia Department of Education and the Technical College System of Georgia (TCSG).[380] Instruction within the DJJ school system is developed and revised by Education Content Curriculum Specialists.[381] The school attended by youth in either a Regional Youth Detention Center (RYDC), Youth Development Campus (YDC), or an Education Transition Center (ETC) is called Georgia Preparatory Academy.[382] All DJJ-Georgia Preparatory Academy schools use a curriculum that is supposed to adhere to the Georgia Standards of Excellence.[383]

The Georgia Preparatory Academy is required to maintain an education record on behalf of each student, and to assign numerical grades in all classes where credits are earned. Further, progress reports are to be issued every nine weeks during the school year.[384] In the YDC, student will be provided with a copy of their transcript and withdrawal forms no later than 48 hours prior to the scheduled release date.[385] Upon release from the RYDC, students will be given a release letter with instructions on how to obtain a withdrawal form and transcript.[386]

DJJ-Georgia Preparatory Academy is required to follow all mandates of the Individuals with Disabilities Act (IDEA), to identify all students with a disability, and to provide all students with a disability with a Free Appropriate Public Education in the Least Restrictive Environment.[387]

Students who are at least 16 years old may request entry into the Adult Education Program (Pathway to Success) program. To gain entry, the student must obtain a qualifying score on a TABE test.[388] Students between 16 and 17 years old must obtain parent consent.[389] Students entering the Adult Education Program are withdrawn from the 6-12 curriculum, and are also removed from the special education program.[390]

Screening & Placement

DJJ is responsible for making placement decisions about the youth in its care. Therefore, upon commitment to DJJ, all youth are screened and assessed to determine the most appropriate, least restrictive placement that will meet the needs of the youth and public safety.[391] A formal screening will be held for all youth committed to DJJ either as a 2 year commitment or as a commitment pursuant to a Designated Felony order.[392] The screening committee meeting must be held within 10 business days of the disposition order committing the youth.[393] The youth and his or her parent or legal guardian have the right to appear before the screening committee to share relevant facts and to make recommendations regarding placement.[394] The youth's attorney may be present at the meeting by invitation of the parent or legal guardian.[395]

When determining placement and services, the screening committee should take the following factors into consideration, as available: Legal history; DAIs; home study report; social summary; pre-disposition risk assessment (PDRA) results; current JNA/OCCA results; discharge summaries from prior residential, psychiatric and shelter placements; mental health screening results; prior and current JTS alerts; placement history; educational records and status; psychological evaluation; sexually abusive youth assessments; mental health history; and medical history.[396]

The screening is tasked with determining the best placement for the youth, based on the youth's needs and public safety, and will ultimately make a recommendation for 3 placements.[397] The best placement must be included on the list regardless of availability.[398] Further, there is a separate set of criteria that must be met if a YDC will be recommended as one of the 3 placement recommendations.[399] Youth and their parents or guardians will be informed, in writing, of the screening recommendations as well as their right to appeal the placement recommendations. Appeals must be made within 5 business days of this notification.[400]

For Class A and Class B designated felony commitments, where restrictive custody has been ordered, the YDC will be listed as the best placement and the first placement.[401] The remaining two recommendations will be recommendations for services or placement following the restrictive services time.[402]

Graduated Sanctions

DJJ defines graduated sanctions as "[a] structured, decision-making process with a continuum of services and consequences for youth who violate the terms of their probation or commitment."[403] This means that a continuum of reinforcements and sanctions is used at each level to provide consequences for violations of probation or placement in order to motivate youth to change their behavior. Upon knowledge of a violation, the youth's case manager will determine the sanction based upon the seriousness of the violation and the youth's level of supervision.[404] Sanctions can range from a warning, to electronic monitoring, to increased reporting, to non-secure detention alternatives.

Electronic Monitoring

Electronic monitoring may be used by DJJ to enhance the community supervision of certain youth. As a short-term supervision tool, electronic monitoring should not be used for longer than 30 days. Extensions of this timeframe may be authorized by certain DJJ officials.[405]

Rights of Youth

Youth in facilities or programs will not be denied access to the courts and will have the right to uncensored, confidential contact with their attorney by phone, in writing, or in person. DJJ also assures that those youth who seek judicial relief will not be penalized or retaliated against from any agent of DJJ. A youth's access to counsel or the courts will not be infringed upon regardless of their disciplinary status within a facility or program.[406] In addition to the right to contact with legal counsel and the courts, juveniles in DJJ custody possess many other rights. Some of these include:

- To be free from discrimination or harassment because of race, religion, color, sex, age, national origin or disability, pregnancy, childbirth or related medical conditions;
- To be free from bullying;
- To send and receive mail, make and receive phone calls, and receive visitors;
- To be provided reasonable access to media;
- To be free to personally groom and dress as one chooses;
- To file a grievance;
- To be treated respectfully, impartially and fairly and to be addressed by name in a dignified, conversational form;
- To be informed of the rules, procedures and schedules of the facility;
- To be free from corporal punishment, physical abuse, assault, personal injury, or disease;
- To be free from interference with eating, sleeping or bathroom functions;
- To be free from mental or verbal abuse, intimidation, threats, humiliation or property damage;
- To be free from sexual abuse;
- To practice religious faith and to participate in religious services and religious counseling on a voluntary basis;
- To vote if eligible;
- To review his/her case file;
- To freedom of expression (so long as it does not interfere with the right of others or the safety and security of the facility or program);
- To due process in disciplinary proceedings;
- To equal access to programs and services; and
- To exercise on a daily basis.[407]

SECTION XII: Who Are the Clients and What Challenges Do They Face?

SECTION XII: Who Are the Clients and What Challenges Do They Face?

As juvenile defenders, we are likely to have different life circumstances than most of the young people who encounter the juvenile justice system, even if just by virtue of our education and opportunities. Because of this, it can sometimes be challenging to understand where our clients are coming from and to address some of their underlying concerns. This section provides some information about the young people who make up the juvenile justice system, and some of the challenges that they face within the system.

Adolescent Development

One significant distinction between representing adult defendants and juveniles lies in the fundamental differences between the adolescent brain and the adult brain. Adolescence is a time of significant brain development, both in terms of psychosocial functioning and basic cognitive capacity. The adolescent brain does not fully finish maturing until approximately the mid-20s, meaning every child that touches the juvenile justice system lacks emotional, social, and cognitive maturity. Research has shown that continuing brain development throughout adolescence influences a juvenile's capacity to assess risk, anticipate long-term consequences, and make reasoned decisions. Therefore, a familiarity with the basic principles of adolescent brain development is crucial both in advocating for a child-client before the court, and in appropriately counseling a child to help them understand consequences and make informed and thoughtful decisions.

During the teenage years, the brain undergoes a crucial period of development.[408] Though the brain begins to resemble an adult brain at age sixteen, neurological connections between different parts of the brain continue to form throughout childhood and into early adulthood.[409] These connections, or synapses, multiply rapidly during adolescent years, before the brain undergoes a maturing process called Myelination, which streamlines these synapses and makes them more efficient.[410] Before the brain finalizes this "pruning" process, which allows for increased intellectual capacity, adolescents are inherently less capable of balancing their emotions, and are more likely to exhibit risky behaviors.[411]

The ongoing formation of neurological connections in the brain is especially relevant for the high number of juvenile clients who have experienced childhood trauma. Traumatic stress events during childhood may include community violence, domestic violence, medical trauma, physical abuse, refugee trauma, sexual abuse, traumatic grief, and so on.[412] These experiences can become biologically encoded in the brain as the brain forms connections, which in turn impairs brain development. Studies have found among individuals who had experienced childhood trauma a significant reduction in gray matter in the hippocampus, an area associated with the regulation of threat, and the dorsolateral pre-frontal cortex, which is associated with emotion regulation.[413]

Children who are consistently exposed to extreme stress experience near-constant activation of neural systems involved in the stress response which compromises the proper development of their stress response system.[414] In other words, when these children are faced with situations that bring on an ordinary level of stress among most individuals, their systems respond as though they are under extreme stress.[415] This chronic activation can alter key neurochemical systems in the brain, which can affect brain functions such as memory and emotional processing, and can cause heightened anxiety, depression, and aggression in a juvenile.[416] Research has linked the experience of childhood trauma with the increased likeliness of engaging in high-risk behaviors.[417]

One of the last parts of the brain to fully develop is the prefrontal lobe or prefrontal cortex, which is sometimes referred to as the "control center" or the "CEO" of the body. The prefrontal cortex provides humans with advanced cognition, endowing people with the capacity to prioritize, assess risk, anticipate consequences, and control impulses such as aggression – some of the most important capacities involved in decision-making. By contrast, the limbic system, which regulates hormonal processing, is overactive during adolescence. Because the frontal lobe is underdeveloped, juveniles rely heavily on the emotional centers of the brain in decision-making, resulting in reactionary and emotional decisions.[418] Adolescents are also more present-focused and tend to engage in risky behaviors, given the lack of capacity to evaluate risk and anticipate consequences.

In the last decade and a half, the United States Supreme Court has consistently affirmed the distinctive cognitive and psychosocial capacities of youth.[419] In 2012, while abolishing mandatory life without parole sentences for juveniles in Miller v. Alabama, the Court referenced the immaturity, impetuosity, and lack of ability to appreciate risk and consequences as some unique qualities of youth, and acknowledged the capacity for change and the lessened culpability in juvenile defendants.[420] The Miller Court identified three distinct qualities of adolescence warranting a different approach to sentencing: a lack of maturity and underdeveloped sense of responsibility, greater vulnerability to negative influences, and lack of formation in a child's character.[421] In 2016, the Court in Montgomery v. Louisiana affirmed their findings from Miller and further held that the Miller decision must be applied retroactivity.[422] Montgomery went slightly further than Miller by emphasizing that the use of life without parole, whether mandatorily applied or not, should only be reserved for youth whose offenses reflect "irreparable corruption."[423] Since Miller, twenty-three states and D.C. have entirely banned the use of life without parole for juveniles, but Georgia is not among them.[424]

Ongoing brain development throughout adolescence is particularly relevant to the juvenile justice system, and an understanding of the implications of the unique features of the adolescent is crucial to the practice of juvenile defense. Because juveniles coming into the system have not reached psychosocial maturity, delinquent acts are not necessarily reflective of future delinquent patterns of behavior. In other words, juveniles have a greater capacity for rehabilitation, which can be argued in court during the disposition stage of a delinquency proceeding.[425] Further, the overreliance on emotional reactions in juvenile clients creates a compelling argument for a lack of requisite intent for the crime charged, especially for juvenile clients with a history of trauma.[426] Additionally, because juveniles tend to be very present-focused as a result of the lack of ability to use reasoned judgment and assess long-term consequences, they are especially vulnerable to police pressure.[427]

Mental Health in JJ

Young people involved in the juvenile justice system are more than three times as likely to exhibit mental health disorders than are youth in the general population.[428] Many of these young people may come into contact with the juvenile justice system because their conditions are unidentified, or there are insufficient supports in place for meeting the needs of these children. Lack of treatment for a mental health disorder after a young person enters the juvenile justice system can lead to further adjudications of delinquency and have a serious impact on a child's life. An understanding of mental health disorders among juveniles in the justice system is relevant both in advocating for a particular client, and in assessing the child-client's competency to participate in the adjudicatory process.

It has been estimated that up to 70% of young people in the juvenile justice system meet the criteria for one or more mental health disorder.[429] Compared with the 17% of children aged 6-17 in the general population living with a mental health disorder each year, this statistic is staggering.[430] Close to one in three youth within the juvenile justice system has a mental health disorder that is severe enough to impair functioning and merit immediate and significant treatment.[431] Mental health disorders among juveniles in the justice system take all forms, including psychiatric, behavioral, mood, anxiety, and substance abuse disorders.

Anxiety and stress disorders, including post-traumatic stress disorder, are especially prevalent among juvenile offenders. As many as "[s]eventy-five percent of violent juvenile offenders suffered severe abuse by a family member, eighty percent witnessed physical violence from beatings and killings, fifty percent were raised in one parent households, and over twenty-five percent had a parent who abused drugs or alcohol."[432]

Studies have shown that at least 75% percent of young people in the juvenile justice system have experienced traumatic victimization, such as sexual abuse, physical abuse, domestic violence, or traumatic neglect.[433] Juveniles who suffer from PTSD or other stress disorders as a result of these traumatic experiences may be prone to engaging in violent or aggressive behavior with little or no provocation.[434]

Coupled with the inherent susceptibilities of the adolescent brain, court-involved children with mental health disorders are extremely vulnerable. Mental health disorders, especially when left untreated, may be driving factors in a young person's offending behavior. Even where a child's disorder is less central to a delinquent act, mental health issues can still create

unique vulnerabilities for a child in the court process. For instance, detention could be especially harmful to a child already suffering from depression or PTSD. Alternatively, a child with a mental health disorder may be particularly susceptible to police questioning or lack competence to understand and participate in delinquency proceedings. Therefore, upon learning about a client-child's diagnosis, it is important to research the implications this will have on your ability to represent the client most effectively.[435]

Throughout the course of representation, it may become essential for you to learn more about your client's mental health status and to share this knowledge with the court through psychiatric evaluations and expert witnesses.

Learning and Developmental Disabilities

Young people with learning and developmental disabilities, like young people with mental health disorders, are overrepresented in the juvenile justice system.[436] Moreover, young people with learning and developmental disabilities are more likely to encounter the justice system at a younger age.[437] Learning and developmental disabilities do not only contribute to a child's likelihood of being arrested and incarcerated, but also to the obstacles that a child may face at every stage of delinquency proceedings. These disabilities may affect a young person's ability to understand the juvenile process, to communicate with counsel, and to comply with terms of probation.

Though the reason for the overrepresentation of young people with these disabilities in the juvenile justice system is unclear, these children are at increased vulnerability for a number of risk factors that predict contact with the juvenile justice system. For instance, students with learning and developmental disabilities are more than twice as likely to be suspended from school than are children without disabilities.[438] Zero-tolerance disciplinary policies in schools, which have in recent years expanded to respond to even nonviolent student behavior, also disproportionately target students with disabilities, leading to more arrests and court referrals.[439] Likewise, these children are at increased risk for dropping out of school – a very strong risk factor for children becoming involved with the juvenile justice system.[440] The perception that one has failed in school, when really it is the school that has failed the child, is often accompanied by feelings of rejection and low self-esteem, which may prompt these students to spend more time with peers who engage in delinquent activity.[441] School dropout may also lead to increased involvement with other delinquent youth.[442] Further, these children often present poorly in court as a result of their disabilities, making them more likely to be detained.[443]

While students with disabilities are entitled to education under federal law, less than half of incarcerated youth who identify as having a disability receive the special education services they are entitled to.[444] Unsurprisingly, students who receive inadequate, or worse no education services at all, are more likely to be rearrested and reincarcerated within one year from release.[445]

Race, Ethnicity, and Culture

Racial disparities in the treatment of young people involved in the juvenile justice system have existed since its inception.[446] Studies have consistently demonstrated that youth of color are detained at higher rates than white youth.[447] In 2018, 65 percent of detained young people whose cases were handled by juvenile courts identified as either Black, American Indian, Asian, or Hispanic.[448] Nationally, Black young people are more than five times as likely to be detained or committed than are white young people.[449] Georgia's disparity is right around the national average.[450] Disproportionate minority representation in most jurisdictions is not only apparent in secure detention and confinement; it is evident at nearly all stages of the juvenile justice system.[451]

The contributing factors to the racial and ethnic disparities within the juvenile justice system are numerous and complex. Therefore, reducing these disparities requires comprehensive and multilayered efforts aimed at programmatic and systemic change.[452] National and statewide changes must be made, but reforms at the local level, such as dismantling the school-to-prison pipeline and reinvesting funds in communities that are over-policed and underfunded, are also crucial. As defenders, we can also play an important role in reducing this disproportionality. First, we must challenge our own implicit biases[453]

based on race, ethnicity, culture, and other factors. Next, we must constructively address these same biases when we see them operate in the courts and in other institutions that should be supporting young people and their families.

A juvenile defender should:

1. **Become culturally competent.**

   A culturally competent juvenile defense attorney can recognize and respect the characteristics that differentiate their client from themselves. Being culturally competent means being sensitive to the racial, ethnic, and cultural differences of your clients and being respectful of those differences. Being culturally competent also requires that personal biases do not affect the defender's ability to zealously advocacy on behalf of the client. Recognize and challenge your personal assumptions and generalizations about certain groups or classes of persons and commit yourself to learning about the individual needs of the client.[454]

   Keep in mind that many young people or their families may not speak English as a first language or may come from countries where the legal system is very different. These language barriers and cultural differences may affect the client's comprehension of Miranda, court procedure, or what is required and/or expected of them.

2. **Challenge racialized narratives.**

   Courtroom interactions among judges, prosecutors, and defense attorneys are riddled with racialized narratives that bolster false stereotypes of Black criminality. These narratives reinforce a system that rewards children who most closely conform to white mainstream values.[455] These narratives are what often lead judges, prosecutors, and other decision makers to reject a defender's effort to raise developmental immaturity as a mitigating factor, which leads to more punitive outcomes.[456] As defenders, we need to be mindful of how we defend our clients and employ language that may serve them in their case, but may ultimately contribute to reinforcing racialized stereotypes about marginalized communities.

   At the same time, defenders have a number of tools at their disposal to address race.[457] These strategies include challenging racial stereotypes and biases by differentiating the client from those stereotypes, exposing racially inflammatory arguments or evidence, and reiterating and emphasizing norms of fairness and equality.[458] Defenders can also introduce issues of racial bias, prejudice, and discrimination in the court record. For example, defenders can file a motion to suppress that challenges an arresting officer's implicit racial bias, or present evidence on the fallibility of cross-racial eyewitness identifications.[459]

3. **Facilitate communication.**

   Where applicable, make sure that court and DJJ personnel can and do communicate with the client and the client's family in their first language, and make sure there are no cultural or linguistic miscommunications between the personnel and the family.

4. **Provide monitoring and support of youth in detention.**

   Monitor the young person's safety, access to relevant services, opportunity to practice their religion and ability to understand and communicate with other young people and staff. Take remedial steps if necessary.

Sex, Gender Identity, and Sexual Orientation

The legal system reduces gender to a binary: male and female. This binary dismisses those who are gender non-conforming and puts transgender individuals in danger by housing them according to their birth sex rather than in accordance with their gender identity. The majority of statistics we have on detention do not consider the fluidity of gender identity, but instead rely on a cisnormative relationship between sex and gender. The statistics included in the section below, entitled "Girls in the Juvenile Justice System," is a product of this categorization.

A client's gender identity should not be assumed, and defenders should seek to learn about a young person's experience with their gender identity and sexual orientation, and how these experiences might have led to their contact with the legal system.[460] When creating a dispositional plan, be prepared to identify programs, mentors, and resources that are responsive to the unique and complex needs of your clients.

Girls in the Juvenile Justice System

Historically, gender conforming female offenders were less frequently charged with serious law violations, as law enforcement and the judiciary instead focused on punishing "sexual misbehavior" and "immorality".[461] However, beginning in the mid- to late 1980s, the percentage of girls entering the juvenile justice system for both violent and non-violent offenses began to rise.[462]

Today, approximately one third of young people in secure detention in Georgia are categorized as female by the state.[463] Many have significant needs that differ in both degree and kind from those of boys. Many girls involved with the system have a history of trauma and sexual abuse. A study of 1000 girls in detention in California found that 88 percent had a serious mental health issue. Health needs related to pregnancy and childbirth are also common: 29 percent of the girls in this same study had been pregnant at least once and 16 percent had been pregnant while incarcerated.[464]

There is also evidence that the juvenile justice process differs for boys and girls. For example, girls are far more likely than boys to be detained for non-serious offenses. In 2006, technical probation violations and status offenses accounted for 25 percent of boys' detentions, but 41 percent of girls' detentions.[465]

LGBTIQ-GNC Youth

An estimated 20 percent of young people confined in juvenile detention identify as lesbian, gay, bisexual, transgender, intersex, queer or questioning (LGBTIQ), or gender nonconforming (GNC), which is almost three times their estimated number in the general population.[466] School exclusion, family rejection, homelessness and failed safety-net programs are among the many risk factors contributing to the disproportionate number of LGBTIQ-GNC young people entangled within the juvenile justice system.[467]

A young person's sexual orientation or gender identity is rarely brought up when a young person is brought into the juvenile justice system. However, if the client identifies as LGBTIQ-GNC, it may be an important element of the client's legal needs. A young person's sexual orientation or gender identity may be an underlying factor or directly related to their encounter with the legal system. A young person's sexual orientation or gender identity will also be an important consideration during disposition planning and it may affect the client's success or progress in a placement or program.

Charges and LGBTIQ-GNC Youth

In some instances, charges against LGBTIQ-GNC youth may be directly related to their sexual orientation or gender identity. LGBTIQ-GNC youth may be charged with sex offenses for age-appropriate, consensual same-sex activities after a parent or guardian discovers the young person exploring their sexuality. In fact, LGBTIQ-GNC youth face more criminal charges for sex offenses for consensual sexual activity than do straight and cisgender youth.[468] Parents or guardians also may consider a young person incorrigible based entirely on their LGBTIQ-GNC identity and bring forward complaints. For some young people, strife at home due to sexual orientation or gender identity may lead to runaway charges or homelessness.[469] Once on the streets, homelessness often leads to "survival crimes," like theft or prostitution.[470] Police are also known to arrest young people for prostitution based solely on their transgender status, gender nonconforming appearance, possession of condoms, or presence in specific neighborhoods.[471]

Broadly speaking, LGBTIQ-GNC youth, particularly youth of color, are disproportionately policed. They are more likely to be subjected to profiling, indiscriminate stops and searches, verbal, physical or sexual harassment, and arrests for "quality of life" offenses.[472]

LGBTIQ youth often experience harassment and violence in school as well. This treatment may be an underlying factor for delinquent behavior. Schools have long been an ostracizing and punitive setting for LGBTIQ-GNC youth. LGBTIQ-GNC

youth report higher levels of verbal or physical harassment and receive harsher punishments than those administered to heterosexual and cisgender youth.[473] A LGBTIQ-GNC youth with truancy charges may have been attempting to escape excessive bullying, harassment, or discrimination at school by peers or teachers rather than having a lack of interest in attending school or a desire to act out.[474] Young people who are bullied for being LGBTIQ-GNC may also fight back against assailants and end up with assault and battery charges. An estimated 90 percent of LGBTIQ-GNC youth in juvenile detention have been suspended or expelled from school on at least one occasion.[475]

Dispositional Planning and LGBTIQ-GNC Youth

LGBTIQ-GNC youth are confined for nonviolent offenses at twice the rate of their gender conforming peers.[476] The delinquent behaviors of LGBTIQ-GNC youth may be a direct response to their experiences with harassment or rejection. When discerning the type of rehabilitative services the client may need, defenders should consider the client's LGBTIQ-GNC identity and provide a supportive environment where the client can express this identity. If available, look for programming or disposition plan elements that are responsive to these needs. If there is limited availability of resources for LGBTIQ-GNC youth in the area, at least take steps to ensure the potential placement will not present a risk to the client's physical safety and/or mental well-being. Placement in a detention facility may expose the client to further bullying by staff and peers. Transgender young people are often housed according to their sex assigned at birth, which is inapposite to their gender expression, and often leads to violence against them. Also, when considering that LGBTIQ-GNC youth are at higher risk of suicide, placing a young person in such a facility could have tremendous implications. Finally, the dispositional plan for the client's case should consider mitigating factors and provide for an outcome that is appropriate to the behavior considering these factors.

Immigration Status

Immigration law is a specialty area. Since this area of the law has so many nuances and changes so rapidly, it would be prudent to consult an attorney who specializes in immigration law if your client is not a U.S. citizen.

The United States Supreme Court held in Padilla v. Kentucky[477] that defenders have a constitutional duty to provide affirmative, competent advice regarding the immigration consequences of a guilty plea to a non-citizen defendant. This is because deportation (removal) is a penalty, and not a collateral consequence of a criminal proceeding. Failure to perform this duty constitutes ineffective assistance of counsel under the Sixth Amendment.[478]

Several Georgia cases—pre- and post-Padilla—have examined when a defense attorney's incorrect or inadequate advice about the immigration consequences of a plea constitutes ineffective assistance of counsel. Before Padilla was decided, two Georgia Supreme Court cases—which are still good law—held that a defense attorney's incorrect advice, that a first offender plea would not result in any immigration consequences, entitled the defendant to an ineffective assistance of counsel claim under the Sixth Amendment.[479] Similarly—two years after Padilla was decided—the Georgia Supreme Court held that defense counsel's advice that a guilty plea to burglary *may* have an impact on the petitioner's immigration status constituted ineffective assistance of counsel, as it would have been clear from reading both the Georgia statute and the Immigration and Nationality Act that a burglary conviction *would* make the defendant deportable.[480]

Immigration law provides separate grounds of inadmissibility[481] and deportability[482] that can determine whether a person may enter or remain in the United States with legal status. Among the grounds for both inadmissibility and deportability are criminal grounds. However, according to the Board of Immigration Appeals, juvenile delinquency adjudications are not convictions under the Immigration and Nationality Act.[483] Therefore, most juvenile dispositions do not, in and of themselves, result in immigration consequences. However, if a juvenile is tried and convicted as an adult, then the conviction will count for immigration purposes.[484]

Nevertheless, "bad acts" underlying some juvenile findings may result in immigration consequences. Juvenile dispositions will serve as strong evidence of those "bad acts," even though they are not convictions for immigration purposes. Conduct-based offenses to be on the look-out for include: engaging in prostitution, making false claims to U.S. citizenship, lying or using false documents for immigration benefits, illegally smuggling people across the border or "encouraging" them to cross, being or having been a drug trafficker, drug addict or drug "abuser," behavior showing a mental condition that poses a current threat to self or others, and being found by a civil court to have violated a domestic temporary restraining order.[485]

Similarly, a noncitizen child can be found inadmissible merely if the government has "reason to believe" that the child has participated or assisted in drug trafficking.[486] If the child is undocumented, becoming inadmissible on this ground can result in a *permanent bar* to ever obtaining lawful status, including through a valid asylum claim or Special Immigrant Juvenile Status.[487]

It is important to educate judges about the immigration consequences that may arise from juvenile court adjudications and the disastrous effects that deportation can have on the client and their family, including poverty, homelessness, emotional or physical violence, and/or separation from U.S. citizen relatives, if any.

There are several forms of relief available to non-citizen young people, each of which is explained briefly below.

DACA

Deferred Action for Childhood Arrivals (DACA) is a relief available to individuals who (A) were under the age of 31 as of June 15, 2012; (B) came to the United States before reaching their 16th birthday; (C) have continuously resided in the United States since June 15, 2007 until the present; (D) were physically present in the United States on June 15, 2012, and at the time of applying for DACA with USCIS; (E) had no lawful status on June 15, 2012; (F) are currently in school, have graduated or obtained a certificate of completion from high school, have obtained a GED certificate, or are an honorable discharged veteran of the Coast Guard or Armed Forces of the United States; and (F) have not been convicted of a felony, significant misdemeanor, or three or more other misdemeanors, and do not otherwise pose a threat to national security or public safety.

Deferred action does not provide legal status in the United States, but rather is an exercise of prosecutorial discretion to defer removal action against an individual. DACA is granted for a period of two years, subject to renewal. Individuals who are approved for DACA are eligible for work authorization.

On September 5, 2017, the Acting Secretary of Homeland Security issued a memorandum rescinding the 2012 memorandum that established DACA and outlined a plan for phasing DACA out.[488] Currently, U.S. Citizenship and Immigration Services (USCIS) "is not accepting requests from individuals who have never before been granted deferred action under DACA," but is still accepting applications requesting renewals of grants of deferred action under DACA.[489] Thus, it is imperative that children whose deferred action under DACA has expired or is set to expire soon file a renewal application as soon as possible.

On November 12, 2019, the United States Supreme Court heard oral arguments on whether the Trump Administration had proper justification for cancelling DACA. On June 18, 2020, the Court ruled that the Trump Administration's efforts to upend DACA were "arbitrary and capricious."[490] This victory will allow hundreds of thousands DACA recipients to continue to live and work in the United States without the constant fear of deportation.

DAPA

Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) was a form of relief available to individuals who (A) were the parent of a U.S. citizen or lawful permanent resident; (B) had continuously resided in the United States since January 1, 2010; (C) were present in the United States on November 20, 2014; (D) did not have lawful status in the United States on November 20, 2014; (E) had not been convicted of certain criminal offenses, including felonies and misdemeanors. As with DACA, deferred action was not designed to provide legal status in the United States. Rather, DAPA was an exercise of prosecutorial discretion to defer removal action against an individual. Individuals who were approved for DAPA would be eligible for work authorization.

Implementation of DAPA was temporarily delayed by an injunction issued by the Fifth Circuit Court of Appeals in 2015 **and has since been rescinded by the Department of Homeland Security (DHS)**.[491] The appeal court's ruling was affirmed by the U.S. Supreme Court in 2016.[492] On June 15, 2017, then-DHS Secretary John Kelly signed a memo rescinding DAPA.[493] Thus, **DAPA no longer exists as a form of relief**.

SIJS[494]

Special Immigrant Juvenile Status (SIJS) is a legal status available to non-citizen children who have suffered abuse, abandonment, or neglect and sometimes those children who have been delinquent. Minor children applying for SIJS status may simultaneously apply for legal permanent residence and work authorization. SIJS Status is mandated to be determined by USCIS in no more than 180 days. Within 90 days of application, the child will receive a work permit and can apply for a Social Security Number. This is particularly vital because if the child is in State care, Federal Reimbursements can be applied for immediately after obtaining the Social Security Number.

For a child to be eligible for SIJS, a state juvenile (or in some states probate, district or circuit) court in the United States must first (A) find the child is unmarried and under the age of 21 years old; (B) declare the child was born in _____ [country] on _____[date] (C) declare that the child is in need of the protection of the Court and is dependent upon the court or placed with a state agency, private agency, or private person; (D) find it is not in the best interest of the child to be returned to her previous country of nationality or country of last habitual residence; and (E) find that reunification with one or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law.

Once the appropriate court has made the required findings and issued an order, an individual is eligible to apply for SIJS with USCIS if he or she meets the following requirements: (A) the individual is under 21 years old on the date of filing; (B) the juvenile court order is valid and in effect on the date of filing, and on the date USCIS makes a decision on the application, unless the individual aged out of the court's jurisdiction by no fault of his or her own; (C) the individual is not married on the date of filing and on the date USCIS makes a decision on the application; and (D) the individual is present in the United States at the time of filing. *Children who are in immigration detention must request permission from the U.S. Department of Health and Human Services (HHS) to be legally placed somewhere else by a state court.*

Individuals who are approved for SIJS are immediately eligible to apply for legal permanent residence. However, even after being approved for SIJS, an individual child will never be able to petition for his or her parents to have legal status—there is a lifetime bar.

U Visa[495]

U Nonimmigrant Status (U Visa) is available to victims of qualifying crimes, who have suffered physical or mental harm as a result, and who have assisted in either the investigation or prosecution of the crime. An individual may be eligible for a U Visa if (A) they have been the victim in the United States of a qualifying criminal activity; (B) they have suffered substantial physical or mental harm as a result of the crime; (C) they have information about the criminal activity; (D) they were, are, or are likely to be helpful to law enforcement in the investigation or prosecution of the crime; (E) the crime occurred in the United States or violated United States law; and (F) they are admissible to the United States. U Visas are granted for a period of four years. Extensions are available in certain limited circumstances.

To apply for a U Visa with USCIS, an individual must submit a U Nonimmigrant Status Certification (U Visa Certification) signed by an authorized official of the certifying law enforcement agency, confirming that the individual was helpful, is being helpful, or will likely be helpful in the investigation or prosecution of the case. If an individual is not admissible to the United States, due to immigration violations or criminal convictions for example, then they may still apply for a U Visa by also filing an Application for Advance Permission to Enter as Nonimmigrant to request a waiver of the inadmissibility. U Visa applicants may also file derivative applications for qualifying family members.

Individuals who have been approved for a U Visa have legal status in the United States for four years. U Visa recipients and derivative family members are eligible for work authorization during that time. U Visa recipients and derivative family members are eligible to apply for legal permanent residence after three years.

T Visa[496]

T Nonimmigrant Status (T Visa) is available to victims of severe forms of human trafficking. The T Visa was created to protect victims of human trafficking and allow them to remain in the United States in order to assist in the investigation and/or prosecution of the crime. "Severe forms of trafficking in persons" is defined as sex trafficking in which commercial sex is induced by force, fraud, or coercion, or in which the victim is under the age of 18 years old; or the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

An individual qualifies for a T Visa by demonstrating that they (A) have been a victim of a severe form of trafficking in persons; (B) are physically present in the United States or at a port of entry as a result of trafficking; (C) have complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking in persons, unless they are under 18 years old; and (D) would suffer extreme hardship involving unusual and severe harm upon removal.

As with the U Visa, a Declaration of Law Enforcement Officer for Victim of Trafficking in Persons (I-914, Supplement B) is primary evidence that an individual has been a victim of a severe form of human trafficking and has assisted in the investigation or prosecution of the crime. The Declaration is not required, but strongly advised. If an individual applies for a T Visa without the Declaration, they should explain why it is not included.

SECTION XIII: Other Areas of Client Advocacy

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During the course of representation, it may become apparent that the client has needs beyond the delinquency charges that led to juvenile court involvement. For the purposes of preparing a defense or disposition planning it may be worthwhile to consider the client's education, housing situation, medical concerns, benefits, or other areas of need. For example, the client or their family may be homeless or otherwise in need of safe and secure housing or a client may have a learning disability that makes school a very frustrating experience. It is a good practice to maintain familiarity with the availability of various social/community resources in order to better serve the needs of the client and create a more comprehensive disposition plan that will ensure the client's success.

Education for Students with a Disability

There are two primary statutes that govern the provision of services to students with disabilities – the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act of 1973. While each provide for the provision of a Free Appropriate Public Education in the Least Restrictive Environment, the mechanisms by which such services are provided varies depending on the applicable statute.[497]

Individuals with Disabilities Education Act (IDEA)[498]

The Individuals with Disabilities Education Act (IDEA) is the main federal statute that authorizes federal aid for the education of children with disabilities. The stated purpose of the IDEA is "to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living; to ensure that the rights of children with disabilities and parents of such children are protected; and to assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities."[499]

This purpose is achieved through detailed due process provisions to ensure parental rights and participation, as well as a federal funding scheme to ensure that each child with a disability receives a "free appropriate public education" in the "least restrictive environment."

GEORGIA DISABILITY CATEGORIES

- Autism spectrum disorder
- Deafblind
- Deaf/hard of hearing
- Emotional and behavioral disorder
- Intellectual disability (mild, moderate, severe, profound)
- Orthopedic impairment
- Other health impairment (OHI): this can include ADHD
- Significant developmental delay
- Specific learning disability
- Speech-language impairment
- Traumatic brain injury
- Visual impairment

Under the IDEA, a student is disabled if he or she falls into one of thirteen disability categories, and the disability has a negative impact on educational performance such that special education and related services are required.[500] Georgia's disability classifications vary slightly from the federal classifications.[501]

Prior to making a determination of whether a child is a child with a disability, the school district must evaluate the child in all areas of suspected disability.[502] The request for such an evaluation can come from the school system, pursuant to its child find obligations, or a request for evaluation can be made by the child's parent or guardian.[503] While others, such as a doctor, teacher, judge, or social worker, may place the school system on notice that a child is suspected of having a disability, they cannot directly make the request for an evaluation. Accordingly, professionals writing letters on behalf of a parent should have the parent sign each copy whenever possible, in addition to their own signature, to make sure the referral is accepted. Prior to conducting an evaluation, the district must receive informed consent from the child's parent or guardian.[504]

Once a student is found eligible for special education services, the district must abide by a series of procedural steps, including the creation of an IEP.[505] The IDEA requires that students with disabilities be placed in the least restrictive environment. In other words, to the maximum extent appropriate, children with disabilities must be educated with children who are nondisabled.[506]

Students with disabilities also receive protections with respect to discipline. For all disciplinary actions removing a student from school for 10 days or more (or shorter-term disciplinary actions that add up to 10 days if there's a pattern or practice of removals), the district must hold a manifestation determination review to determine if the behavior in question was a manifestation of the disability. The behavior is a manifestation if the conduct in question (1) was caused by, or had a direct and substantial relationship to, the child's disability, or (2) was the direct result of the district's failure to implement the child's IEP. If the behavior is a manifestation, the child should not be disciplined further (some exception apply for seriously dangerous behavior, weapons, and drugs). If the behavior is not a manifestation, the child may be disciplined, but must continue to receive FAPE.[507]

It is recommended that you assist the parent in seeking a special education evaluation whenever the child exhibits poor academic performance, long-standing behavioral difficulties, school avoidance, or a diagnosis of a medical or psychiatric condition, so that the client may receive the services and protections afforded by the IDEA.

Section 504 of the Rehabilitation Act of 1973[508]

Section 504 of the Rehabilitation Act is a federal civil rights law that prohibits discrimination by school districts receiving federal financial assistance against persons with disabilities. Included in the U.S. Department of Education regulations for Section 504 is the requirement that students with disabilities be provided with a "free appropriate public education" in the "least restrictive environment."

Students are eligible for Section 504 services if they (1) have a physical or mental impairment that substantially limits one or more major life activities, (2) have a record of such an impairment or (3) are regarded as having such an impairment. Major life activities include walking, seeing, hearing, speaking, breathing, learning, working, caring for oneself, and performing manual tasks.[509] Section 504 has a broader definition of a disability than IDEA. As a result, a child who does not qualify for an IEP might still be eligible for a 504 plan.

While there are many fewer procedures in place under Section 504, the statute and corresponding regulations still provide for the basic requirements of the provision of FAPE[510] in the least restrictive environment.[511] Additionally, case law and federal guidance with respect to Section 504 interprets the statute as mandating a manifestation review under the same circumstances as those included in the IDEA.[512]

Disability Services While in Detention and Correctional Facilities

Students do not lose their rights under the IDEA and Section 504 when they are placed in RYDCs, YDCs or even jails and prisons.

In December 2014, the Office of Special Education Programs (OSEP) and the Office of Special Education and Rehabilitative Services (OSERS) issued a "Dear Colleague" letter outlining the responsibilities of states and public agencies with respect to their responsibilities to students with disabilities in correctional facilities.[513] For purposes of the letter, correctional facilities refers to juvenile justice facilities, detention facilities, jails and prisons.[514] As outlined in the letter, absent specific exceptions, all provisions of the IDEA apply to students in correctional facilities and their parents.

The only exceptions that are written into the IDEA apply to certain provisions for children in adult prisons. If a youth is **convicted as an adult and incarcerated in an adult prison**, the provisions of the IDEA relating to participation in general assessments, transition planning (if the child will age out of the IDEA protections before the end of their sentence), and certain aspects of LRE (if there are bona fide security or penological interests that cannot otherwise be accommodated) do not apply.[515] Further, the obligation to provide FAPE does not apply to children aged 18-21 in adult correctional facilities if the child was not identified as a child with a disability or did not have an IEP in his or her last educational placement before incarceration.[516]

Notably, except as indicated above for students above the age of 18 in adult facilities, the state's child find and evaluation obligations remain in place when young people are placed in correctional facilities. If a student transfers between a district school and a correctional facility while in the midst of an evaluation, the agencies must coordinate to make sure that timely

evaluation occurs.[517] Similarly, discipline protections apply, and a manifestation determination must be made if the child is removed from the educational environment for more than 10 days.[518]

Pursuant to the guidance, states must have interagency agreements or other methods for ensuring interagency coordination in place so that it is clear which agency or agencies are responsible for providing or paying for services necessary to ensure FAPE.[519] Ultimately, it is the State that is responsible for ensuring that FAPE is provided to all students with disabilities in all juvenile and adult correctional facilities.[520]

School Discipline

Under the Georgia Education Code, each local school board is required to have in place policies designed to improve the student learning environment by improving student behavior and discipline.[521] The policies, or student codes of conduct, are required to be age appropriate and include a student support process, a progressive discipline process, and a parental involvement process.[522] The code of conduct must be distributed to each student upon enrollment.[523] The local school board determines the disciplinary action that will be taken for violations of the code of conduct.[524]

Students facing school disciplinary action of longer than 10 days have the right to notice, a hearing, legal representation, and to present and respond to evidence during a disciplinary hearing.[525] These hearings may be held in front of a disciplinary hearing officer, a panel, or a tribunal of school officials.[526] After hearing all of the evidence, the disciplinary hearing officer, panel or tribunal of school officials shall determine what, if any, disciplinary action shall be taken. Such action may include short-term suspension, long-term suspension or expulsion.[527] Students may appeal within twenty days of the decision of the hearing officer, panel or tribunal to the local school board by filing a written notice of appeal.[528]

Should a suspended or expelled student try to enroll in another school system, the new school system has the authority to honor the disciplinary orders of the original school and refuse enrollment.[529]

Expulsion Policy for Students Bringing Weapons to School

Each local school board must establish a policy requiring at least a one-year expulsion of any student who brings a firearm or dangerous weapon to school.[530] A hearing officer, tribunal, panel, administrator, superintendent, or local board of education shall have the authority to modify such expulsion requirement on a case-by-case basis.[531] The hearing officer, tribunal, panel, superintendent, or local board of education may also place a student in an alternative educational setting.[532]

Disciplinary Policy for Students Committing Physical Acts of Violence against a School Official or Employee

Georgia law mandates that local districts adopt specific discipline policies for students who commit an act of physical violence against a school official, school employee, or school bus driver.[533] The term “physical violence” is defined to establish two categories, with differing consequences: (1) intentionally making physical contact of an insulting or provoking nature with the person of another; or (2) intentionally making physical contact which causes physical harm to another unless the student can make a valid self-defense claim.[534]

The law requires that a student accused of either category of physical violence must be suspended pending a disciplinary hearing.[535]

If a student is found to have committed physical violence as defined in category (1), the student may be disciplined by expulsion, long-term suspension, or short-term suspension.[536]

If a student is found to have committed physical violence as defined in category (2), the student must be expelled from the public school system for the remainder of that student’s eligibility to attend public school. The district may, but is not required to, allow the student to attend an alternative education program for the period of expulsion. If the student is in kindergarten through eighth grade at the time of the offense, the district may allow the student to return to public school for the ninth through twelfth grade if the hearing officer, tribunal or panel so recommends.[537]

Any student who is found to have committed physical violence as defined in category (2) against a teacher, school bus driver, school official, or school employee must be referred to juvenile court with a request for a petition alleging delinquent behavior.[538]

Disrupting Public Schools

O.C.G.A. § 20-2-1181 makes it "unlawful for any person to knowingly, intentionally, or recklessly disrupt or interfere with the operation of any public school, public school bus, or public school bus stop."[539]

The statute requires that local boards of education develop a system of progressive discipline, which may be used prior to initiating a complaint alleging a violation of this statute. Further, when a complaint is filed, it must include information showing that the local board of education sought to: (A) resolve the expressed problem through available educational approaches; and (B) engage the child's parent, guardian, or legal custodian to resolve the expressed problem and that such individual has been unable or unwilling to resolve the expressed problem, that the expressed problem remains, and that court intervention is necessary.[540]

If the complaint is being made against a student with a disability, or suspected of having a disability, in addition to the above, the complaint must also allege that the district has reviewed for appropriateness the student's current IEP and placement and has made modifications where appropriate.[541]

Due to the broad and vague nature of this statute, it is often used as a tack-on charge to other school-based offenses. Although narrowed in the last decade with a requirement that acts be done knowingly, intentionally, or recklessly, and again by compelling schools to handle disciplinary issues internally as much as possible, the statute remains broad, inviting potential abuse and legal challenge.

School Denials after Juvenile Court Charges

School districts often refuse to allow students to return to their schools after the student has had a complaint or petition filed, and especially after detention. When doing so, districts generally rely upon two provision in the Education Code: (1) O.C.G.A. § 20-2-751.5(c) and (2) O.C.G.A. § 20-2-768. Each, though, has specific requirements that must be satisfied to be applicable.

Off-Campus Conduct (O.C.G.A. § 20-2-751.5(c))

Georgia law requires each student code of conduct to contain provisions that address any off-campus behavior of a student that (i) could result in the student being criminally charged with a felony *and* (ii) makes the student's continued presence at school a potential danger to persons or property at the school or which disrupts the educational process.[542]

With respect to the first requirement – the student could be criminally charged with a felony – for juvenile court cases, the State Department of Education has interpreted this to apply only to Designated Felonies, as defined by the Juvenile Code.[543]

When taking disciplinary action based on off-campus behavior, the school must prove the nexus between the off-campus felony and an alleged danger or school disruption.[544] Additionally, a school that seeks to implement such a punishment, must tailor the notice with specificity, identifying the nature of the alleged felonious action.[545]

Re-Admission to School after Suspension or Expulsion for Committing a Felony (O.C.G.A. § 20-2-768)

Each local board of education is authorized to refuse to readmit or enroll any student who has been suspended or expelled for being convicted of, being adjudicated to have committed, being indicted for, or having information filed for the commission of any felony or any delinquent act under Code Section 15-11-602 and 15-11-707, which would be a felony if committed by an adult.[546] If refused readmission or enrollment, the student or the student's parent or legal guardian has the right to request a hearing.[547]

Embedded within this provision are several qualifications for when a district may refuse to readmit or enroll a student. First, the statute requires that the student has been suspended or expelled for their felonious behavior. If a suspension has not happened as a result of the behavior, the statute, by its very language, is inapplicable.

Second, by reference to 15-11-602 (disposition for designated felony acts) and 15-11-707 (when notice must be provided to the superintendent – designated felonies or second or subsequent adjudication) the statute qualifies the delinquent acts that are eligible for this treatment.

In the event that refusal to readmit or enroll is proper under the statute, you should seek placement in an alternative school rather than expulsion. Pursuant to the statute, a hearing officer, tribunal, panel, superintendent, or local board of education is authorized to place a student in an alternative educational system as they deem appropriate in this circumstance.[548] The statute further notes that it is preferred to reassign disruptive students to alternative educational settings, rather than to suspend or expel such students.[549]

Housing

Housing Authorities

Housing authorities are governed by O.C.G.A. § 8-3-1, also known as the "Housing Authorities Law."[550] Housing authorities exist in all counties, as well as in some cities – i.e. Atlanta Housing Authority. The purpose of a housing authority is to provide affordable, decent, safe and sanitary urban or rural dwellings, apartments, or other living accommodations for persons of low income.[551] The applicable housing authority determines whether a particular family/person meets the "low income" standard.[552] Additionally, the housing authority is responsible for the administration of public housing and in some counties the Housing Choice voucher program.

Legally, the housing authority has the power to prohibit any person reasonably suspected of committing a criminal act on the premises, who is not a resident, from entering, loitering or remaining on the land.[553] The housing authority is also subject to the Fair Housing Act (FHA), which prohibits discrimination in the sale or rental of dwellings based on an individual's race, color, religion, sex, disability, handicap, familial status, or national origin.[554] Importantly, "disability" does not include alcoholism or drug addiction under the FHA.[555] The statute of limitations on a discriminatory housing complaint is one year. [556]

Public Housing

Public housing is funded and governed by federal law and regulations but built and operated by cities. Under the public housing program, rent is based primarily on family size and income. The legal issues involved in public housing generally relate to leases and eviction. While many housing authorities have set a minimum rent requirement that must be paid regardless of the tenant's income, but a tenant can apply for an exemption. Once an exemption is requested, the minimum rent payment is suspended until the housing authority makes a decision on the request. A tenant cannot be evicted for nonpayment of rent during the 90 days pending a decision, even if the exemption is ultimately not granted. Furthermore, whenever a housing authority seeks to evict a tenant it must provide written notice terminating the tenancy, demand possession of the unit, and only then can it file an eviction action in court to regain possession of the unit. As to notice, a housing authority can terminate a lease with 14 days' notice for failure to pay rent and with 30 days' notice for a lease violation. A tenant is entitled to file a formal complaint through a grievance procedure, as outlined by the PHA.

Housing Choice Program (Formerly Section 8)

The Georgia Department of Community Affairs provides many of the Housing Choice Vouchers outside of the Atlanta area. Within the Atlanta area and in the cities of Savannah, Augusta, Columbus, Brunswick, Macon, and Americus the local housing authority administers the Housing Choice Voucher Program. The Housing Choice Voucher Program is a type of rental assistance which allows participants to rent from private landlords. The landlord then receives direct rental payments from the housing authority administering the tenant's housing voucher. Program participants normally pay approximately 30 percent of their adjusted income toward rent. The landlord's subsidy is paid monthly by the housing authority or DCA and normally consists of the difference between the gross rent, which includes an allowance for tenant paid utilities, and 30 percent of the tenant's adjusted income.

A potential tenant must apply for Housing Choice rental vouchers. If it is found that they are not eligible, then they are entitled to an informal review of that determination. Public Benefits Georgia's refugee youth.[557]

Health Coverage for Young Georgians

Almost all Georgia children and youth under age 19 should be eligible for health coverage if they are citizens or are legal permanent residents who have been in the U.S. at least five years. Certain other children who are refugees, asylees or other lawful entrants may qualify without a wait, and even undocumented children may qualify for Medicaid to pay for emergency care they have received. Most children should be able to get coverage through Medicaid, PeachCare for Kids, or the Affordable Care Act, if not through a parent's or their own employment. Children and youth who cannot qualify for coverage because of immigration status may be able to get care through federally qualified health centers in their communities. Medicaid and PeachCare cover 40% of all Georgia children, but not all who qualify are enrolled, so it is important to check and to help with an application if there is no current coverage.

Medicaid

Medicaid is a federal/state medical assistance program, run by the Georgia Department of Community Health, designed to help eligible people obtain medical care who would not otherwise be able to afford it.[558] Medicaid covers roughly 1 million Georgia children and youth. Among those eligible are low-income children under age 19 and pregnant women.[559] Some disabled children get Medicaid because they receive Supplemental Security Income or qualify without regard to parental income through a program called Katie Beckett.[560] Children who are in foster care at age 18 can continue getting Medicaid until they reach age 26. There are no monthly premiums and no copayments for enrollees under age 21, for pregnant women, or for those aging out of foster care. Medicaid pays participating doctors, pharmacies, hospitals, dentists, psychologists or other providers directly and also pays for non-emergency transportation. See the chart for Right from the Start Medicaid and PeachCare income limits based on the age of the child. There are no limits on assets for this coverage.

GA MEDICAID ELIGIBILITY FOR CHILDREN INCOME LIMIT (YEARLY) 2019

	Children Ages 0-1	Children Ages 1-5	Children Ages 6-18	CHIP (Peachcare for Kids)
Household Size	205% of FPL	149% of FPL	133% of FPL	247% of FPL
1	$25,608	$18,612	$16,620	$30,852
2	$34,668	$25,200	$22,500	$41,772
3	$43,728	$31,788	$28,380	$52,692
4	$52,788	$38,376	$34,248	$63,612
Each Additional Person	Add $9,060 per year	Add $6,588 per year	Add $5,800 per year	

Children Income Limit, Georgia Medicaid Income Limits 2020, iGeorgia Food Stamps, (last updated Jan. 7, 2020), https://igeorgiafoodstamps.com/georgia-medicaid-income-limits/.

Robust Services for Children and Youth – Medicaid EPSDT

Critical to helping children and youth succeed is the fact that those with Medicaid have a right to screenings and to all treatment that is necessary to correct or ameliorate any physical, dental, mental health, or addictive conditions that are discovered whether or not the services are usually covered by Medicaid. This Medicaid EPSDT (Early and Periodic Screening, Diagnosis and Treatment) benefit is a powerful tool; however, it often requires advocacy by parents, teachers, court officials or others to make sure the children are properly screened and treated.[561] Anyone working with the child can trigger a screening to determine whether and what types of conditions need further diagnosis and treatment.

Note also that otherwise-eligible children can qualify for Medicaid even if they have insurance through a parent's employer. Often such plans are not designed for children's special needs, so Medicaid/EPSDT can fill in the gaps.

Non-disabled children with Medicaid are generally required to enroll in a care management organization (CMO): currently they are Amerigroup, Caresource, Peach State (not to be confused with the PeachCare program discussed below), and WellCare.[562] Children in foster care or adoption assistance or in the custody of Juvenile Justice enroll in a special CMO, Georgia Families 360°.[563] It is equipped to provide special services to these populations and coordinates with the Department of Behavioral Health and Developmental Disabilities, the Department of Education and others.

Medicaid Application Process

The easiest way to apply is online at https://gateway.ga.gov/access/. People can also apply at the County Department of Family and Children's Services. A minor living on her/his own may apply on his/her own behalf. If the client is pregnant, she may be eligible for immediate coverage, as opposed to waiting through the application process. She can contact her local health department, primary health care center, or hospital and if eligible, receive a certification form that day in order to obtain immediate pre-natal care.

Medicaid Rights and Responsibilities

If the client is receiving Medicaid, it may be helpful to be familiar with the rights and responsibilities that govern the program. The role as defense counsel is to ensure that, if necessary, the dispositional plan includes getting the client on Medicaid, and determining whether certain needs or programs ordered by the court are covered.

Medicaid applicants have a right to:[564]

- A timely determination of eligibility (45 days or less if not applying on the basis of disability). As noted above, pregnant women can get Medicaid presumptively. In addition, some hospitals are qualified to determine Medicaid eligibility presumptively for children and some others.
- Written notice of the specific reasons for denial and citation to the applicable regulations.
- A fair hearing through the Office of State Administrative Hearings (OSAH) if the applicant disagrees with the decision.

Medicaid recipients have a right to:

- Timely and adequate notice in writing before any action is taken to terminate eligibility or to delay, deny or reduce services
- A fair hearing through OSAH if the recipient disagrees with a termination of eligibility
- A fair hearing through OSAH if medical needs are not properly being served, although it is necessary to exhaust the CMO's process first. Expedited appeals are available. NOTE: In order to continue receiving services during the appeal, the recipient must request a hearing within 10 days from the date of the notice.

Medicaid applicants and recipients have a responsibility to:

Provide true and complete information about their circumstances.

Report changes in circumstances

Cooperate with annual renewals to make sure Medicaid coverage is continuous.

PeachCare for Kids

Under the Balanced Budget Act of 1997, as amended, the federal government created and funded a new children's health insurance program (CHIP) that enabled states to initiate and/or expand health insurance coverage for uninsured children. In Georgia, the state created "PeachCare for Kids." a health insurance program designed to cover children under age 19 whose family income is too high for Medicaid, but who lack health insurance.[565] Again, see the chart for the income limits. Like Medicaid, it is operated by the Department of Community Health. PeachCare covers roughly 200,000 Georgia children and youth. For more information, call 1-877-427-3224. There is an online application and information about the program at

http://www.peachcare.org. PeachCare members are enrolled in the same care management organizations as most of those with Medicaid and can get most of the same services.

PeachCare is known as a Medicaid "look-alike," but there are a few differences between the programs:[566]

- While Medicaid is an entitlement, PeachCare funding is a block grant to the state with even more latitude for states to design it, and thus fewer protections.
- Eligibility is determined through a private vendor rather than through DFCS. Although income is considered in exactly the same way for children's Medicaid and PeachCare, applicants sometimes get bounced between the two because of differences in verification or other issues. Processes are being improved somewhat because of changes in the system due to the Affordable Care Act.
- Medicaid enrollees are entitled to three months' retroactive coverage if they would have been eligible before they applied, but PeachCare eligibility begins the month a complete application is submitted.
- Georgia decided not to cover non-emergency transportation or targeted case management under PeachCare. Otherwise, the CMO contracts treat Medicaid and PeachCare substantially the same regarding services. See the link to the services manuals in the Medicaid section, above.
- Unlike Medicaid, PeachCare requires monthly premiums and service copayments for children over age five.
- Disputes about eligibility and about provision of service (after exhausting the CMO process for the latter) are handled through a Department of Community Health appeals process rather than through OSAH fair hearings.
- While children with Medicaid can have other insurance, PeachCare generally requires that applicants must have been uninsured for two months; however, there are many exceptions, such as when employer coverage terminates, insurance cost-sharing is more than 5% of income, a family loses coverage by reducing working hours or quitting a job, or the child's has special needs.

Affordable Care Act Coverage through the Insurance Marketplace[567]

Georgians whose income is between 100-400% FPL may be eligible for federal tax credits that help pay for health insurance premiums. If their income is between 100-250% FPL, they may also qualify for cost sharing reduction for assistance with out of pocket costs associated with health insurance. For assistance, consumers can contact a Navigator who provides unbiased, free assistance with the application and enrollment process.

ACA Application Process

In order to apply for ACA coverage, consumers must visit www.healthcare.gov or call the Insurance Marketplace at 1-800-318-2596. They can also contact a state and federally certified Navigator for unbiased and free assistance. Usually, consumers will need to apply during the Open Enrollment Period, which runs generally, from November until January. During this time, they can complete an application for the Premium Tax Credits and get an immediate determination of how much assistance they will receive. At this point they can compare health care plans and choose the one that works best for themselves and their families. The rest of the year is known as the Special Enrollment Period, which means a consumer can only enroll if they have a special circumstance, a life change, such as getting married, having a baby, moving, getting a job, or losing healthcare coverage. They would still need to apply through www.healthcare.gov, over the phone at 1-800-318-2596, or with the help of a Navigator.

How ACA Coverage Works

ACA coverage works the same as traditional health insurance. The plans are divided along what is called Metal Tier Levels. These plans are broken down into metals: bronze, silver, gold, platinum, and catastrophic:

Bronze:	Health plan pays 60% on average. Consumer pays about 40%.
Silver:	Health plan pays 70% on average. Consumer pays about 30%.
Gold:	Health plan pays 80% on average. Consumer pays about 20%.
Platinum:	Health plan pays 90% on average. Consumer pays about 10%.
Catastrophic:	Catastrophic coverage plans pay less than 60% of the total average cost of care on average. They're available only to people who are under 30 years old or have a hardship exemption. https://www.healthcare.gov/choose-a-plan/plans-categories/

Plans are also required to provide Minimum Essential Coverage, which means they MUST provide the following ten essential health benefits:

- Ambulatory patient services (outpatient care you get without being admitted to a hospital)
- Emergency services
- Hospitalization (such as surgery)
- Pregnancy, maternity, and newborn care (care before and after your baby is born)
- Mental health and substance use disorder services, including behavioral health treatment (this includes counseling and psychotherapy)
- Prescription drugs
- Rehabilitative and habilitative services and devices (services and devices to help people with injuries, disabilities, or chronic conditions gain or recover mental and physical skills)
- Laboratory services
- Preventive and wellness services and chronic disease management
- Pediatric services, including oral and vision care[568]

Changes for All Insurers Due to the ACA

No insurance company can charge a consumer more for health insurance because of a pre-existing condition after the establishment of the ACA. The only factors insurance companies may consider when determining the price of a plan is zip code, age, and smoking status. Insurance plans must cover children on their parents' plan up to age 26.

Individual Responsibility Mandate and Exceptions:

Individuals who choose not to get health insurance but who could afford to get it will have to pay the individual responsibility mandate with their taxes. For more information visit https://www.healthcare.gov.

Indigent Care Trust Fund and Other Free or Discounted Hospital Care

Georgians without other coverage may be able to get free or discounted hospital care. Most hospitals participate at some level in the state's Indigent Care Trust Fund through which they receive enhanced payments for Medicaid patients.[569] The rules for participation require that they provide a certain amount of free or discounted care to other people with incomes below 200% of the federal poverty level. The amounts vary by hospital, but there are certain rules facilities must follow such as publishing notices; accepting written applications; making written eligibility determinations, giving reasons for any denial; and providing an appeals process. Some people apply in advance to qualify for free care to gain access to the hospital.

More commonly, patients apply upon or after discharge. The doctor bills usually are not covered. https://dch.georgia.gov/providers/provider-types/hospital-providers/indigent-care-trust-fund.

Even if a hospital has exhausted its ICTF obligation for the year or does not participate in the ICTF, it may have another "charity" program of its own. Both for-profit and not-for-profit hospitals may have such programs, but some do not mention them without being asked. New Treasury/Internal Revenue Service regulations require 501(c)(3) facilities to adopt and publicize a Financial Assistance Policy (FAP), although the regulations specify very little about the substance.[570] They do require these hospitals to bill patients who meet their FAP guidelines no more than Amounts Generally Billed (AGB) and to publish information on how they calculate AGB. This provision is meant to stop the practice of billing uninsured patients at full charges even though no insurer pays the full price.

Other Free or Low-Cost Health Services

Federally Qualified Community Health Centers, of which there are dozens around Georgia in otherwise underserved areas operate as nonprofit organizations with community boards and employ doctors, nurses, and sometimes dentists to provide health care on a sliding scale fee basis. They are open at regular hours, and many provide a comprehensive array of primary care services. They serve patients without discrimination, including those who are undocumented. Some county health departments provide primary care services. Also, there are free clinics in many counties that provide some level of service using physician, nurse and sometimes dentist volunteers, mainly to people with chronic health conditions like hypertension or diabetes. Each has its own policies, and may be open from a few hours to a few days per week.

Public Benefits

Supplemental Nutrition Assistance Program (SNAP) (Food Stamps)[571]

SNAP/Food Stamps is a monthly amount for individuals or families that can be used to purchase food and is paid out through an EBT card. Applications for SNAP/Food Stamps can be filed in writing through the local Department of Family and Children's Services office in the client's county or online at https://gateway.ga.gov/.[572]

SNAP Eligibility

A client and their family may be eligible for SNAP benefits if:

- They are a citizen of the United States or have a certain legal alien status
- They provide all of the required documents as proof of the household's situation
- Household members comply with work requirements
- The household's monthly income does not exceed the income limits based on the number of people who live in the household,
    - The rent or mortgage payment, utility bills, and in some cases medical, child care and child support expenses are considered in the eligibility determination process if proof of these expenses are provided.

How Long Does it Take to Get Benefits?

The application must be processed and benefits available within 30 days from the date the application is filed. If the household has little or no income and meets specific criteria, the application must be processed and benefits available within 7 days. A notice is sent to each household stating whether the household is eligible for food stamp benefits. If eligible, the notice states the amount of benefits the household will receive and how long the household will receive benefits before having to reapply.

What Amount of Benefits will the Family Receive?

The amount of benefits the household receives depends upon the number of individuals in the food stamp household, the amount of household income and the amount of the deductions used in the budgeting process. The date of application

affects the amount of benefits received by the household in the first month. As long as the household remains eligible, benefits are provided each month. Benefits remaining in the EBT account can be obtained until they are used up even if the food stamp case closes.

How to Contest a Determination.

Families have the right to a fair hearing if they believe that the decision made on their case is not fair. A fair hearing can be requested by writing or calling the local county department. The local county department should be contacted within 10 days of receiving the notice of eligibility.

What Can be Purchased with SNAP Benefits?

Benefits may only be used to buy food and plants or seeds that grow food, for the household to eat. Certain food supplements, such as Ensure, may also be purchased with food stamp benefits. Additionally, ice, water, and cold or room temperature foods, which are not designed to be consumed in the store, may be purchased with food stamp benefits.

Who can apply for food stamp benefits?

Anyone may apply for food stamp benefits. The program helps households that have limited income and resources. This includes households experiencing temporary crisis as well as households whose income is at or below the poverty level.

How to apply for benefits?

To apply for benefits, the head of household, a household member, or authorized person representing the household may complete an application for assistance. An application can be received from the local County Department of Family and Children Services or from the DHS website. People can go to the office to apply, call the office to request that an application be mailed to a home address, or have someone get a form for the applicant. Blank applications are found on the website at: https://dfcs.georgia.gov/food-stamps. Applicants can complete the form and mail or fax or take it to their local county office.

How to apply for benefits online?

It is possible to apply for food stamps online via the Georgia Gateway website at https://gateway.ga.gov/access/. Georgia Gateway allows individuals to apply for Food Stamps online. Applicants who create an account online may check the status of their application and may also check their eligibility for other DHS programs via the Georgia Gateway Pre-screening Tool. Additionally, Georgia Gateway allows food stamp recipients to report changes in household circumstances and to renew their benefits online.

What happens once the application is filed?

An applicant or a member of the applicant's household (or someone authorized to make application for the household) must be interviewed by a staff person from DFCS. The individual who is interviewed must know about the applicant's household situation. A phone interview is required. For elderly/disabled individuals or individuals experiencing problems coming to the office, the interview may be completed by telephone, a pre-arranged home visit, or an office visit. Applicants contact their local department to find out about interviews.

What happens in the interview?

The caseworker will ask applicants questions about their household's income, resources, rent or mortgage, and utility costs. Certain households may also be asked about medical expenses, childcare and child support expenses. Proof of an applicant's household situation is necessary, so the following should be brought if possible:

- proof of identity
- proof of citizenship such as birth certificate, U.S. passport, hospital record, etc.
- immigration papers for persons applying for benefits who are not U.S. citizens
- social security numbers for persons applying for benefits

- proof of income for each household member (check stubs, award letters for social security or veterans administration, unemployment benefits, contributions from family or friends, child support, etc.)
- last month's rent receipt or mortgage payment book
- medical bills for persons age 60 and older and/or disabled
- childcare receipts for children whose parents are working, in school, or in training
- additional information and proof may be required depending upon an applicant's situation.

Annual Household Income Limits can be found at https://www.benefits.gov/benefit/1582

More in-depth information on SNAP, including other factors affecting eligibility, can be accessed at https://odis.dhs.ga.gov/General/Home/DownloadDoc/4000241 (revised June 2019).

Temporary Assistance to Needy Families (TANF)[573]

TANF is a federal program resulting in a small cash amount paid monthly to families with children and very low or no incomes. States receive block grants to design and operate programs that accomplish one of the purposes of the TANF program.

The four purposes of the TANF program are to:

- Provide assistance to needy families so that children can be cared for in their own homes
- Reduce the dependency of needy parents by promoting job preparation, work and marriage
- Prevent and reduce the incidence of out-of-wedlock pregnancies
- Encourage the formation and maintenance of two-parent families

Applications for TANF can be filed in writing through the local Department of Family and Children's Services office in the county of residence, or online at https://gateway.ga.gov/.

Eligibility

To be determined eligible to receive TANF benefits, the following criteria must be met by the members of the assistance unit (family):

- Age: A child must be less than 18 years of age (19 years if s/he is a full-time student).
- Application for other benefits: A TANF applicant/recipient must apply for and accept other benefits (Unemployment Compensation, Workman's Compensation, Supplemental Security Insurance (SSI), Child Support, etc) for which s/he may be eligible.
- Citizenship: A recipient must be a citizen of the U.S. or a lawful resident alien.
- Deprivation: A child must be deprived due to:
    - Continued absence from the home of at least one parent
    - Physical or mental incapacity of at least one parent
    - Death of a parent
    - In a two parent family in which both parents are able-bodied, deprivation is established if one parent has a "recent connection to the workforce."
- Enumeration: All assistance unit members must have or apply for a Social Security number.
- School Attendance: All children ages 6 through 17 who have not graduated from high school or who have not received a certificate of high school equivalency must attend school and have satisfactory attendance.

- Immunization: All preschool children must be immunized.
- Income: An assistance unit's countable net income must be below certain established limits that are adjusted for the number of persons in the AU. A family must meet the financial criteria to receive TANF. For example, in 2015 a family of three (mother and two children) must have a gross income below $784 a month and countable assets of less than $1,000.
- Lifetime Limits: Receipt of cash assistance is limited to 48 months in a lifetime. The limit may be extended if it is determined that an extension is justified due to certain hardships, including domestic violence and physical or mental incapacity.
- Paternity: The AU must cooperate in the establishment of paternity. The paternity of a child must be established at application and whenever a child is added to an active case.
- Work Requirement: All work-eligible individuals (defined below) have a work requirement and are required to participate in work activities and training for at least 30 hours weekly. These work activities help recipients gain the experience needed to find a job and become self-sufficient.
    - A TANF Family Service Plan (TFSP) is developed for each recipient who has a work requirement. The TFSP specifies the recipient's personal responsibilities, employment goal and the steps necessary for the achievement of the goal. Participants with a work requirement are assessed for potential barriers to employment such as hidden learning disabilities and Limited English Proficiency (LEP).[574]
    - The only exemption to the work requirement is that a single custodial parent can be exempt from these work requirements if there is a child in the home under twelve months of age. This exemption can be used for a period of 12 weeks (3 months). If there are additional children that enter the home, who are under the age of 12 months, the parent can request to be exempt from work activities at that time. However, the total exemption is not to exceed 12 months during the TANF lifetime limit of 48-months for the parent.[575]
- Cooperation with Office of Child Support Services is a requirement for receiving TANF benefits.
- The TANF Program has a Family Violence Option to waive, in accordance with a determination of good cause, certain program requirements where compliance with such requirements would make it more difficult for individual receiving cash assistance to escape domestic violence.[576]
- A family receiving TANF for ten months might not receive increased cash assistance for the birth of additional children.

Work Eligible Individual – A work eligible individual is an adult (or minor child head-of-household) receiving assistance under TANF or a Separate State Program (SSP) or a non-recipient parent living with a child receiving cash assistance.

- A non-recipient parent living with a child could be a disqualified parent, a parent who is penalized for failing to meet an eligibility requirement or a parent who is ineligible for TANF receipt due to certain regulations
- **Exceptions to work eligible adults:**
    - A recipient parent who is:
        - Providing care for a disabled family member living in the home provided that the need for such care be supported by medical documentation.
        - Receiving Social Security Disability Insurance (SSDI) benefits.
    - A non-recipient parent who is:
        - A minor parent and not the head-of-household;
        - A parent who is ineligible to receive assistance due to his/her immigration status; or

- A parent who receives Supplemental Security Income (SSI). A non-parent relative or a legal guardian who is included in the AU would be a work eligible adult.[577]

More in-depth information on TANF, including other factors affecting eligibility, can be accessed at https://odis.dhs.ga.gov/General/Home/DownloadDoc/4002878 (revised December 2019). Additional reports and statistics on TANF through 2019 available at https://dfcs.georgia.gov/document/document/senate-bill-104-report/download.

Women, Infants, and Children (WIC) Supplemental Nutrition Program

The Women, Infants, and Children (WIC) Supplemental Nutrition Program is a federally-funded health and nutrition program for:

- Infants and Children age 1 to 5 years (including foster children)
- Pregnant Women
- Breastfeeding Mothers (up to 1 year)
- Postpartum Women (up to 6 months)

What WIC Provides

- Special checks to buy healthy foods from WIC-authorized vendors – milk, eggs, bread, cereal, juice, peanut butter, and much more
- Information about nutrition and health to help you and your family eat well and be healthy
- Support and information about breastfeeding your baby
- Help in finding health care and other community services[578]

Details and eligibility:

- WIC serves women, infants, and children in families with income at or below 185 percent of the federal poverty level or enrolled in Medicaid; and who are at risk for nutritional deficiencies. Participant categories consist of pregnant, postpartum and breastfeeding women; infants and children up to their fifth birthday.
- Services: Participants receive a nutrition assessment, health screening, medical history, body measurements (weight and height), hemoglobin check, nutrition education, breastfeeding support, referrals to other health and social services, and vouchers for healthy foods.
- Program Objectives:
    - Increase entry into care for prenatals, infants and children
    - Increase infant breastfeeding initiation and duration
    - Decrease number of children who are overweight or obese
    - Increase nutrition education of participants
    - Utilize technology to maximize efficiency[579]

A WIC eligibility assessment can be completed at https://dph.georgia.gov/wic-eligibility-assessment

WIC clinics and authorized store locations can be found at https://sendss.state.ga.us/sendss/!wicclinic.SCREEN

Refugee Assistance

The Georgia Division of Family and Children Services provides resources for refugee families, including Refugee Youth Programs focused on the special needs of refugee youth and their families. Included in this service are:

- After-school programs
- Summer youth programs and enrichment activities
- Gang-prevention programs

These services are provided to refugee youth who have lived in the U.S. for less than 5 years. International Rescue Committee and Refugee Family Services provide Refugee Youth Programs to Georgia's refugee youth.[580]

Employment

The minimum age for employment in Georgia is twelve years of age.[581] One exception to this minimum age requirement arises when a minor under age twelve works for their parent or a person standing in the place of their parent.[582] Furthermore, the age requirement does not apply to the employment of a minor in agriculture or domestic service in private homes.[583] If a minor is between the ages of twelve and sixteen, they must obtain an employment certificate issued by an appropriate issuing officer.[584] Appropriate issuing officers are school superintendents for minors enrolled in public school, the principal administrative officer for minors enrolled in private school, or the person providing the home study program if the minor is enrolled in home school.[585] Additionally, Georgia law sets out certain restrictions for working minors. For example, minors under age 16 may not work in a "hazardous" or "dangerous" workplace environment.[586] Georgia law also sets out working hour limitations for minors. Minors under age 16 are not permitted to work during regular school hours, nor are they permitted to work between the hours of 9:00 p.m. and 6:00 a.m.[587] Finally, minors under 16 may not work more than four hours on any school day, eight hours on a non-school day, or forty hours in any one week.[588]

Studies suggest that "work experience can promote the healthy development of some young people, especially when it is moderate in intensity and steady in duration—attributes that assure that employment does not interfere with other important elements in a teen's life, and instead foster an appropriate balance between school and work."[589] Further, data suggests that youth employment improves conflict resolution skills in minors.[590] For court-involved youth, employment may look good to the judge at disposition, and can help to pay restitution if necessary. Employment may occupy a youth's time or provide income that might minimize the likelihood of further court involvement.

While jobs are sometimes plentiful, during times of economic downturn young people have a harder time finding employment as shown in the aftermath of the 2008 financial crisis; even entry level jobs end up going to adults creating a scarcity of available employment for young people.[591] This leaves many young people without practical employment options. There are, however, things an advocate can do to help the client find employment:

- Help clients brainstorm job options. Fast food restaurants, grocery stores, malls, and movie theatres are great places for clients to look for part-time employment as these types of employers are generally responsive to the needs and circumstances of part-time teen workers. However, in hard economic times, many of these jobs are being filled with adult workers. Young people may have more luck working for neighbors babysitting, dog walking, doing yard work, or completing odd jobs.
- Local county and city governments often offer summer job programs for young adults (typically 16-24). Check with your local juvenile court or department of labor for such opportunities.
- If a young person cannot find work, suggest that they find a volunteer position in an area that interests them. Not only does volunteer work look great to a judge at disposition, but it could also lead to a paid position for the client down the road.
- Help young people through the application process. Emphasize the importance of filling out an application even if a particular employer is not hiring at the time. Emphasize the need for follow through with a potential employer and to wear appropriate attire when applying.

Counsel the client about the obligations, responsibilities, and general etiquette involved with employment. Stress to the client that they need to show up to work on time, dress appropriately, and treat co-workers and supervisors with respect.

Abuse/Neglect

The Division of Children and Family Services (DFCS) is the agency responsible in Georgia for investigating cases of child abuse and neglect. The specific aim of DFCS is not the prosecution of criminal acts, but the protection of children. Therefore, if allegations of abuse or neglect also involve criminal conduct, law enforcement agencies may investigate as well.

DFCS is required by statute to provide for the protection of children in abuse and neglect cases in such a way that the abuse or neglect can be remedied, and the family reunited, if possible.[592]

When a report of abuse or neglect is made, DFCS will either begin an investigation into the report or refer the family to Family Support Services.[593] If DFCS decides to investigate, it is required to complete its investigation within 45 calendar days of the receipt of its intake report.[594] DFCS will make two determinations within each case, (1) whether the report is substantiated or unsubstantiated and (2) whether the child is safe or unsafe.[595] Even if the report of abuse or neglect is substantiated, DFCS is required to make reasonable efforts to prevent removal of a child from their caregivers household.[596]

If the DFCS finds that the report was unsubstantiated, the report is found to not be credible and the case will be closed. If DFCS finds that the report was substantiated, but that the child is ultimately safe at moment, it can initiate Family Preservation Services as part of its reasonable efforts to prevent removal.[597] Most pressing, when DFCS determines that a claim is substantiated and the child is in danger, it can initiate removal proceedings. In such a case, after receiving a court order, DFCS can remove the child from their caregivers' home.[598] Once removed, the child can be placed in foster care, placed in a temporary alternative to foster care, or remain in protective custody.[599] Within 72 hours of removal, the juvenile court is required to hold a preliminary protective hearing.[600] At this hearing, the court will determine whether there is probable cause to believe that the child is dependent and whether protective custody of the child is necessary to prevent abuse or neglect.[601] If DFCS meets this burden, the court will place the child in the temporary custody of DFCS, pending the hearing on the petition for dependency.[602] Once the child is removed, DFCS has five days from the preliminary protective hearing to file a petition alleging the child is dependent, and, if the child is in foster care, an additional 10 days to hold an adjudication hearing to determine whether the child is "dependent."[603] If the child is not in foster care but is in a temporary alternative to foster care, the adjudication hearing can be held within 30 days of filing the petition. If the child is in protective custody, but not placed in foster care or in a temporary alternative, the court has 60 days from the date the child was taken into protective custody to hold the hearing.[604]

Children are legally "dependent" if a juvenile court has found that they have been: [605]

- Abused or neglected[606] and in need of the protection of the court;
- Placed for care or adoption in violation of the law; or
- Without a parent, guardian, or legal custodian.

There is sometimes a close interplay between circumstances leading to dependency and circumstances leading to delinquency. The Juvenile Code acknowledges this reality by authorizing, after an adjudication of delinquency, "[a]ny order authorized for the disposition of a dependent child other than placement in the temporary custody of DFCS unless such child is also adjudicated as a dependent child".[607] As a result, defenders should be familiar with the dependency disposition statute (O.C.G.A. § 15-11-212). In many cases, transfer of custody to a relative or other individual authorized by the statute may serve as a viable alternative to restrictive custody.[608] Similarly, implementation of family counseling requirements may serve a rehabilitative and preventive role in delinquency dispositions.

Moreover, it is possible for a child to be "dually committed" – placed both in the custody of DFCS due to a dependency adjudication and in the custody of DJJ due to a delinquency commitment.[609] This situation is not uncommon, and draws attention to the fact that defenders should be aware of family dynamics and potential issues of abuse and neglect in the family which may have given rise to the alleged delinquent behavior.[610]

It is also not uncommon for defenders in juvenile court to learn of abuse or neglect in a client's home. When deciding how to handle such revelations, it is important to always keep in mind your ethical obligations towards your client, including the requirement that you maintain your client's confidences.

Reproductive Rights

Young people face a variety of reproductive health issues but often are afraid or do not know how to seek services. During the course of representation of young people, attorneys are likely to encounter a client who is pregnant or has another reproductive health issue. Therefore, it is important to understand the law in this area in order to appropriately counsel the client, if necessary.

Georgia youth have a slightly higher rate of teen pregnancy than the national average.[611] Georgians also have a higher incidence rate of STIs and of contracting HIV than the national average.[612] These incident rates are inextricably connected to various impediments to accessing healthcare and occur disproportionately among Georgia's minority youth.[613] While not specific to youth, data demonstrates that new HIV infections in the state of Georgia occur at a disproportionate rate to Georgia's African American population; there are approximately 12. 6 times as many African American women and 3.3 times as many Latina women living with HIV in Georgia than Caucasian women.[614]

Moreover, Sexual Health Education is lacking in Georgia. While the State mandates that schools include sex and HIV education, there is no requirement that it be medically accurate, age appropriate, or culturally appropriate or unbiased.[615] In Georgia, there is also no bar on the promotion of religion within their sex education programs, and parents are provided notice and the opportunity to opt their children out of sex education classes.[616]

Confidential Services and Parental Consent[617]

Healthcare providers are supposed to provide certain reproductive health services to minors confidentially. Confidential services mean that the doctor or nurse can provide a health service to young people without needing permission from their parent or caregiver and without telling the parent about the services.[618] Unfortunately, not all providers keep services to minors confidential. You should advise young people to be sure to ask the clinic or doctor if they will share the results with parents or guardians afterwards.

Contraceptives

A healthcare professional can speak with minors about which birth control would be the best match for them and write a prescription without permission from their parent or caregiver.[619] Many public health clinics provide at least one free form of contraception. All insurance plans, including Medicaid, must cover contraceptives at no cost to the consumer.[620] Additionally, young people of any age can purchase condoms at a pharmacy.[621] Many clinics and service centers provide free condoms.

Emergency Contraception (a.k.a. "Morning After Pill" or "EC")

Emergency contraception is a pill that reduces the chance that a woman will get pregnant after having unprotected sex.[622] Teens 17 and older (both girls and boys) can purchase EC without a prescription. Teens 16 and younger will need a prescription to get EC at the pharmacy.[623]

STI Testing and Treatment

In Georgia, minors have confidential access to STI testing and treatment.[624] A doctor or nurse can also test for HIV without parent/caregiver permission.

Pregnancy

Girls of any age may consent to medical procedures or treatment in connection with pregnancy, prevention of pregnancy, or childbirth.[625] Consent is limited by whether the treatment being offered is, in fact, being given in conjunction with pregnancy or childbirth.[626] Doctors and nurses can also administer pregnancy tests and discuss pregnancy options with young people without parent/caregiver permission.[627]

Abortion

Under the Parental Notification Act a pregnant un-emancipated minor must comply with certain requirements in order to obtain an abortion.[628] An un-emancipated minor must provide a statement signed by her parent or guardian stating that

such person has been notified of the pending abortion of such minor.[629] Alternative methods of notification include the physician providing twenty-four hours actual notice of the pending abortion and its location to the parent or guardian or by providing written notice of the pending abortion and the address of the place where it is to be performed.[630] The abortion may then be performed twenty-four hours after delivery of notice.[631]

In the event that the client wants to by-pass the parental notification requirement, the Act provides for a procedure by which the minor can petition the court for a waiver of the parental notification requirement (sometimes called a judicial bypass).[632] The court must determine whether the young person is mature enough to make a decision concerning an abortion by herself, without a parent involved. These hearings are confidential.[633] The young person can get a volunteer attorney to represent her at these hearings. Judicial bypass is rarely granted in Georgia.

Substance Abuse

Adolescence is a time when many young people experiment with drugs and alcohol. For some youth, this experimentation may lead to involvement with the court system. According to the U.S. Department of Justice, 12.4% of all juvenile arrests in 2018 were for drug abuse.[634] Drug-related arrests amongst juveniles is decreasing; the juvenile arrest rate for drug possession or use declined 47% from 2009 to 2018, and arrests for drunkenness has dropped 76% during that time.[635] The 2016 juvenile drug abuse arrest rate was only 10% higher than the 1983 recorded history low point. This decrease is in line with a general decrease in all juvenile arrests.[636]

While the number of arrests related to drug abuse is decreasing, this does not mean that drug use among juveniles is similarly decreasing. Just because a juvenile is not arrested for drug-related charges does not mean that drug use is not a factor in their narrative. In 1994, a report found that in 79% of juvenile arrests, the juvenile in question was involved with drugs to some degree. Out of those that were involved with drugs, only 3.6% of these juveniles received substance abuse treatment.[637] While not all young people who experiment with drugs are in need of substance abuse treatment, drug use amongst adolescents is more problematic than the same use amongst adults. According to the National Center for Drug Abuse Statistics, 23.9% of adolescents between the ages of 12 and 17 used illicit drugs in 2018.[638] The use of such drugs by adolescents presents significant issues as developing adolescent brains are affected more dramatically than their adult counterparts.[639] Substance abuse escalates from casual use to dependency much faster in juveniles than it does for adults. The increased plasticity of the juvenile brain habituates the neurotransmitter influx of substances much quicker than the adult brain.[640]

Because it is unlikely that an attorney will have a long-standing daily relationship with the client that would enable monitoring of their habits and behavior more closely, it is important to speak to someone who may have knowledge of the client's drug use if there is suspicion of a drug problem that could affect disposition. Although the signs vary from person to person, some indicators to look out for and/or ask about include:

- Drug or alcohol related charges
- A series of positive drug screens
- Withdrawal symptoms while in detention
- Possession of drug paraphernalia
- Extreme behavioral fluctuations or moodiness not otherwise explained
- Inability to sit still not otherwise explained
- The smell of drugs or alcohol on the client's breath, body, or clothes
- Red eyes or pupils larger or smaller than normal
- Slurred, incoherent speech
- Unexplained need for money

It is worthwhile to be mindful of indications that the client has a substance abuse problem as drugs often play a destructive role even for young people who were not detained specifically on drug charges. Substance abuse in juveniles is correlated to many other issues. Research indicates that adolescent substance abuse is linked to higher rates of depression, developmental lags, withdrawal and other psychosocial dysfunctions.[641] Additionally, adolescent substance abuse is linked to issues in school such as truancy, declining grades and higher rates of dropping out of school.[642]

Teenagers and young people often turn to drugs and alcohol to deal with emotional difficulties. Drugs can quiet anxiety for children so that they can more actively participate in peer settings and to cheer themselves up when they are feeling down. However, these solutions are temporary and only provide a momentary rush. Because their brains become dependent on substances for neurotransmitters like serotonin and dopamine, adolescents' natural production of these transmitters drops leading to depression and an increased risk of a suicide attempt.[643]

Substance abuse in juveniles with mental illness can be especially dangerous because of the way that young bodies react to substances. Unlike adults, alcohol makes children more energetic, aggressive and more likely to engage in risky behavior.[644] This is especially concerning for children with ADHD or who are already prone to impulsive behavior.[645] Partaking in substances may lead juveniles towards behaviors will involve them in the delinquency system.

Substances are often used by adolescents to self-medicate, especially if they are dealing with an untreated mental illness. Almost half of children with an untreated mental illness will turn to substances.[646] This interferes with mental health treatment for juveniles and worsens their long-term mental health prognoses. Substances may make children more disengaged in therapy and they often affect the efficacy of any prescription medication that they may take.[647]

If there is knowledge or suspicion that the client has a drug or alcohol abuse problem, consider asking them if drug rehabilitation treatment is a desired or acceptable option, particularly if it would mean not getting "locked up." Keeping in mind that your goal should always be the least restrictive restraint on your client's liberty, disposition for a juvenile adjudicated delinquent on drug charges, or a probation violation involving drug allegations, should address several issues, including:

- Does the juvenile need inpatient or outpatient treatment?
- Is the juvenile simply being a rebellious teenager or experimenting, or are there addiction issues?
- Are drugs being used to self-medicate a mental illness?

Work with the client to develop a disposition plan that addresses the treatment needs in a manner that is acceptable to the client.

Some Metro-area resources for juvenile substance abuse include:

- Westcare Foundation (404) 586-9474
  https://westcare.com/page/where-we-serve_GA_01a#GA_boggs
- New Day Treatment Center (404) 699-7774
  https://www.newdaytreatmentcenter.com/
- Youth Villages (470) 498-5600
  https://www.youthvillages.org/about-us/locations/georgia/
- Cooke Recovery Centers (678) 395-4004
  http://cookerecovery.com/

Appendix A: Glossary

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The following is a list of terms commonly heard in juvenile court in Georgia. This is not a complete list.

ADJUDICATED DELINQUENT

Analogous to an adult "conviction," it is a formal finding by the juvenile court, after an adjudication hearing or an admission, that the child has committed the act with which they are charged and that they are in need of treatment or rehabilitation.

ADJUDICATION HEARING

A fact-finding hearing, similar to a "trial" in adult court. The main differences are that adjudicatory hearings are heard by a judge, not a jury, and the child is found "delinquent," not "guilty." For young people who have not previously been adjudicated delinquent, and for whom the charge is not a designated felony, the hearing is not open to the public. To find that a child is *delinquent*, the judge must find that the child committed the act *beyond a reasonable doubt* exactly as the act is set forth in the petition, the same "burden of proof" that applies in adult criminal trials. The formal rules of evidence apply.

AFTERCARE SERVICES OR SUPERVISION

The services provided to a juvenile conditionally released from a treatment or confinement facility and placed under supervision in the community. These support services promote the smooth transition of youth into the community through supervision, counseling and assistance with networking the appropriate agencies.

BEHAVIORAL HEALTH EVALUATION

A court-ordered evaluation of a child so as to provide the juvenile court with information and recommendations relevant to the behavioral health status and mental health treatment needs of the child. It must be completed by a licensed psychologist or psychiatrist.

CHILD

For purposes of delinquency, a child is a person under the age of 17 when alleged to have committed a delinquent act. For purposes of CHINS, a child is a person under the age of 18.

CHILD IN NEED OF SERVICES

A child adjudicated to be in need of care, guidance, counseling, structure, supervision, treatment, or rehabilitation, and is adjudicated: truant, ungovernable, a runaway, to have violated curfew, to patronize a bar or possess alcohol, or to commit any offense applicable only to a child. Alternatively, a child who has committed a delinquent act and is adjudicated to be in need of supervision but not in need of treatment or rehabilitation.

CLASS A DESIGNATED FELONY ACT

A delinquent act committed by a child 13 years of age or older which, if committed by an adult, would be one or more of the following crimes:

- Aggravated assault with any object, device, or instrument which, when used offensively against a person, is likely to or actually does result in strangulation,
- Aggravated assault with intent to murder, to rape, or to rob,
- Aggravated assault by discharging a firearm from within a motor vehicle toward a person or persons *other than* a law enforcement officer,
- Aggravated assault with any object, device, or instrument which, when used offensively against a person, is likely to or actually does result in strangulation,
- Aggravated assault against a person who is 65 years of age or older,

- Aggravated assault involving the use of a firearm upon a student or teacher or other school personnel within a school safety zone,
- Aggravated assault upon an officer of the court while such officer is engaged in, or on account of the performance of, his or her official duties,
- Aggravated assault with a deadly weapon or with any object, or instrument which, when used offensively against a person, *actually does* result in serious bodily injury, provided the deadly weapon is not a firearm and that the injured person is *not* a law enforcement officer,
- Aggravated battery against any person *other than* a law enforcement officer,
- Armed robbery not involving a firearm,
- Arson in the first degree,
- Attempted murder,
- Escape, if the child has previously been adjudicated for a Class A or Class B Designated Felony,
- Hijacking a motor vehicle in the first degree,
- Home invasion in the first degree,
- Kidnapping
- Participating in criminal gang activity,
- Trafficking of controlled substances,
- Any other act which would be a violent felony, if such child has previously been adjudicated three times on felony charges,
- Any other act which would be a felony offense, if such child has previously been adjudicated three times on violent felony charges.

CLASS B DESIGNATED FELONY ACT:

A Class B designated felony is a delinquent act committed by a child 13 years of age or older which, if committed by an adult, would be one or more of the following crimes:

- Aggravated assault in a public transit vehicle or station,
- Aggravated assault during the commission of a certain kind of theft,
- Aggravated assault with intent to rape a child under 14,
- Aggravated assault involving a deadly weapon or with any instrument which, when used offensively against a person, would be likely to result in serious bodily injury but which *did not actually result in serious bodily injury*,
- Arson in the second degree,
- Attempted kidnapping,
- Battery, where the victim is a teacher or other school personnel,
- Racketeering,
- Robbery,
- Home invasion in the second degree,

- Participation in criminal gang activity through the commission of criminal trespass or damage to property damage related to tagging, marking, painting, or creating any form of graffiti,
- Smash and grab burglary,
- Possessing, manufacturing, transporting, possessing with the intent to distribute, or offering to create a destructive device,
- Distribution of a destructive device, explosive, poison gas, or detonator to any person under 21 years old,
- A second or subsequent theft of a motor vehicle,
- A second or subsequent charge of manufacturing, possessing, transporting, distributing, or using a hoax device or replica of a destructive device or detonator with the intent to cause another to believe that such hoax device or replica is a destructive device or detonator,
- A second or subsequent charge of hindering or obstructing any explosive ordnance technician, law enforcement officer, fire official, emergency management official, animal trained to detect destructive devices, or any robot or mechanical device designed or utilized by a law enforcement officer, fire official, or emergency management official of this state or of the United States in the detection, disarming, or destruction of a destructive device,
- A second or subsequent charge of possession of a handgun under the age of 18,
- Possession of a firearm on school grounds,
- Possession of a weapon on school grounds, coupled with an assault,
- A second or subsequent charge of possession of a non-firearm weapon on school grounds,
- Any other act which would be a felony if the child has three prior adjudications.

COLLATERAL CONSEQUENCES

Consequences beyond the immediate court case. These may include, but are not limited to, loss of driving privileges, the requirement to register as a sex offender, the loss or restriction of a professional license, eviction from public housing, ineligibility for public funds including welfare benefits and student loans, prohibitions against owning a firearm, limitations on joining the military, and immigration consequences.

COMMITMENT (TO DJJ)

A juvenile court disposition that places a youth in the custody of the Department of Juvenile Justice for supervision, treatment, and rehabilitation for up to two, three or five years depending upon the offense for which the youth was adjudicated.

COMPLAINT

The initial document setting out the circumstances that resulted in a child being brought before the court. Filed by either a police officer, parent or private citizen, it is analogous to an arrest warrant in the adult system.

DELINQUENT ACT

An act that would be a crime by state, federal or local ordinance if committed by an adult, or disobeying the terms of court supervision.

DELINQUENT CHILD

A child who has committed a delinquent act and is in need of treatment or rehabilitation.

DEPARTMENT OF BEHAVIORAL HEALTH AND DEVELOPMENTAL DISABILITIES (DBHDD)

The state agency that focuses solely on policies, programs, and services for people with mental illness, substance use disorders, and developmental disabilities. DBHDD operates state hospitals and provides community-based services across the state through contracted providers.

DEPARTMENT OF HUMAN SERVICES (DHS)

DHS delivers a wide range of human services designed to promote self-sufficiency, safety and well-being for all Georgians. Its mission is to provide Georgia with customer-focused human services that promote child and adult protection, child welfare, stronger families and self-sufficiency. DHS includes the Division of Aging Services, the Division of Child Support Services, and the Division of Family and Children Services.

DEPARTMENT OF JUVENILE JUSTICE (DJJ)

The Department of Juvenile Justice provides supervision, detention, and a wide range of treatment and educational services for youth referred to the Department by the juvenile courts. DJJ also provides assistance or delinquency prevention services for at-risk youth through collaborative efforts with other public and private entities.

DEPENDENT CHILD

A child who: has been abused or neglected and is in need of the protection of the court, has been placed for care or adoption in violation of law, or is without their parent, guardian, or legal custodian.

DEPENDENT COURT

Court in which DJJ handles intake services and case management and oversees probation services. There are 134 dependent juvenile courts.

DETENTION

The temporary custody of juveniles who are accused of a delinquent offense in a secure environment for their own or the community's protection or to make sure they appear at their next court appearance while awaiting a final court disposition. In some circumstances, detention may also be used as a sanction for probation violations or as a disposition option.

DETENTION ASSESSMENT

An actuarial tool, approved by the board of DJJ and validated on a targeted population, used to make detention decisions and that identifies and calculates specific factors that are likely to indicate a child's risk to public safety pending adjudication and the likelihood that such child will appear for juvenile proceedings for the act causing the detention decision to be made.

DEVELOPMENTAL IMMATURITY

A term used to refer to deficits in adolescents' thinking, reasoning, and/or decision-making that are a result of normative developmental processes. As adolescents mature, their thinking, reasoning, and decision-making begins to resemble that of adults.

DIVISION OF FAMILY AND CHILDREN SERVICES (DFCS or DFACS)

The Division of Family and Children Services (DFCS) is the division of the Department of Human Services (DHS) that investigates child abuse; finds foster homes for abused and neglected children; helps low income, out-of-work parents get back on their feet; assists with childcare costs for low-income parents who are working or in job training; and provides support services and programs to help troubled families.

DISPOSITION

The phase of delinquency proceeding similar to the "sentencing" phase of an adult trial. The judge should order the least restrictive disposition appropriate in light of the seriousness of the delinquent act, the child's culpability, the child's age, the child's prior record, and the child's strengths and needs.

DIVERSION

A system of procedures and programs designed to channel certain youth away from the formal juvenile court process. Diversion officially stops or suspends a case prior to court adjudication and refers the youth into a community education or treatment program in lieu of adjudication. Successful completion of a diversion program results in the dismissal or withdrawal of formal charges. Those who fail to comply with the diversion terms and conditions are subject to formal processing.

EARLY & PERIODIC SCREENING, DIAGNOSIS, & TREATMENT (EPSDT)

A comprehensive and preventive child health program for all Medicaid eligible children up to age 21. EPSDT includes periodic screening, vision, dental and hearing services. Under EPSDT, each state must screen children regularly and provide all necessary medical and mental health treatment for any problem discovered through screening.

GRADUATED SANCTIONS

A set of integrated intervention strategies designed to operate in unison to enhance accountability, ensure public safety, and reduce recidivism by preventing future delinquent behavior. The term graduated sanctions implies that the penalties for delinquent activity should move from limited interventions to more restrictive (i.e., graduated) penalties. Graduated sanctions include verbal and written warnings, increased restrictions and reporting requirements, community service, referral to treatment and counseling programs in the community, weekend programming, electronic monitoring, curfew, intensive supervision, or home confinement.

GROUP HOME

A community-based non-secure residential placement for youth. When placed in a group home operated by DJJ, this is often used as an alternative to detention. Dependent children may also be placed in group homes operated by DFCS.

GUARDIAN AD LITEM (GAL)

Phrase literally meaning "guardian for the proceeding." The GAL is an adult, sometimes an attorney, who is appointed to look after the welfare and represent the legal interests of the child before the court. The role of the GAL is different from defense counsel's role to represent the expressed interest of the child in delinquency cases.

INDEPENDENT COURTS

Courts in which court employees handle the intake, case management, and probation services. Independent courts also manage their own information systems, many of which are separate from the system used by the dependent counties. There are 17 independent juvenile courts.

INDIGENT PERSON

A person requesting an attorney who is unable to pay for the services due to statutorily defined financial hardship. By statute, indigency determinations in Georgia are based upon the parents' income. Individuals must apply within their county. Regardless of indigence, all children must be represented by counsel in juvenile court, unless a youth has met with counsel and their liberty is not at risk.

INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA)

A Federal law that ensures a "free and appropriate public education" in the "least restrictive environment" for all children with disabilities.

INDIVIDUALIZED EDUCATIONAL PROGRAM (IEP)

A written plan required by federal and state law for every child who is receiving special education and related services. The IEP is developed by a team of individuals including general and special educators of the child, administrators, parents, and any other individuals that have special knowledge of the child. The IEP must describe all services to be provided to the child by the school or school district for the education of the child.

INFORMAL ADJUSTMENT

The disposition of a case other than by formal adjudication and disposition. Informal adjustment is a form of diversion. If the child abides by certain conditions for a specified period of time, or completes a program offered by the Court, the case is dismissed and sealed.

INTAKE

The process following arrest or referral to the juvenile court in which court personnel or the juvenile probation department investigates a youth's charges and background and decides whether to release the youth, refer the youth to a diversion program, or formally proceed against him/her in juvenile court.

INTENSIVE SUPERVISION

The monitoring of a child's activities on a more frequent basis than regular aftercare supervision.

INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN (ICPC)

A uniform law enacted by all states, Washington D.C. and the U.S. Virgin Islands. It establishes procedures for the placement of children in foster care across state lines.

INTERSTATE COMPACT ON JUVENILES

The Interstate Compact on Juveniles provides for the transfer of juvenile probation and parole supervision across state lines in order to assure the accountability of the juvenile and provide a measure of community safety in the receiving state. It also provides for the return of juveniles who have run away, absconded or escaped from supervision or control or have been accused of an offense to the state requesting their return.

NON-SECURE RESIDENTIAL FACILITY

Community residential locations operated by or on behalf of DJJ. These may include group homes, emergency shelters, wilderness or outdoor therapeutic programs, or other facilities that provide 24 hour care in a residential setting.

PETITION

Document that formally initiates a proceeding alleging that a child is delinquent and describes the alleged offenses committed by that child. This is the functional equivalent of an accusation or indictment in the adult system.

PLEA

A youth's formal response before a judge of "guilty" or "not guilty" to a delinquency or criminal charge. In juvenile court, instead of answering "guilty" or "not guilty," the young person will either "admit" or "deny" the charges. A denial will move the case to adjudication, while an admission will result in waiver of the right to trial.

PROBATION

A disposition involving the supervision of a delinquent youth in the community rather than in a secure confinement facility. When a young person is placed on probation, they must comply with any conditions specified in the judge's order, including submission to routine drug tests, payment of restitution to a particular victim or to a crime victims' fund, participation in treatment or educational programs, and/or completion of community service.

PROBATION MANAGEMENT PROGRAM

A special condition of probation that includes graduated sanctions.

REGIONAL YOUTH DETENTION CENTER (RYDC)

Regional Youth Detention Centers provide temporary, secure care and supervision to youth who have been charged with offenses and are awaiting adjudication, or have been adjudicated delinquent and are awaiting disposition. In addition, youth who have been committed to the custody of DJJ are sometimes placed in an RYDC while awaiting treatment in a community

program or a long-term facility. Finally, youth may be placed in an RYDC for a period of up to 30 days as part of a disposition or for up to 14 days as part of secure probation management program. An RYDC can be compared in function to an adult jail.

RESTITUTION

Payments that a judge may order a young person to make to a particular victim. Restitution is part of the disposition order and is generally based on the amount of damages demonstrated by the victim. The judge is also required to take into account how much a defendant is capable of paying. Unlike the rest of a juvenile order, restitution can last beyond the child's 21st birthday if it hasn't been paid.

RESTRICTIVE CUSTODY

In the custody of DJJ for purposes of housing in a secure residential facility or nonsecure residential facility. Applicable to young people who have been adjudicated delinquent of a designated felony act.

RISK ASSESSMENT

An actuarial tool, approved by the board of DJJ and validated on a targeted population, which identifies and calculates specific factors that predict a child's likelihood of recidivating.

RISK AND NEEDS ASSESSMENT

An actuarial tool, approved by the board of DJJ and validated on a targeted population, that identifies and calculates specific factors that predict a child's likelihood of recidivating and identifies criminal risk factors that, when properly addressed, can reduce such child's likelihood of recidivating.

RULE NISI

The process by which a party must 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.

SCREENING (DJJ)

A multidisciplinary meeting for all youth committed to DJJ to determine the most appropriate, least restrictive placement that will meet the needs of the youth and public safety.

SECURE PROBATION SANCTIONS PROGRAM

A special condition of the probation management program that permits confinement in a secure residential facility or nonsecure residential facility for 7, 14, or 30 days if a child has not succeeded even with the imposition of graduated sanctions.

SECURE RESIDENTIAL FACILITY

A hardware secure residential institution operated by or on behalf of DJJ. Includes a Youth Development Center (YDC) or a Regional Youth Detention Center (RYDC).

SENATE BILL 440 (SB440)

Commonly used name for the Georgia Juvenile Code Article entitled "School Safety and Juvenile Justice Reform Act of 1994." This legislation provides the superior court with exclusive jurisdiction over children ages 13-17 who are alleged to have committed one of an enumerated list of offenses. As the initial list included seven offenses, this has also been referred to as the "Seven Deadly Sins." After the Back the Badge Act of 2017, the current list of offenses stands at 10:

1. Murder
2. Second degree murder
3. Voluntary manslaughter
4. Rape

5. Aggravated sodomy
6. Aggravated child molestation
7. Aggravated sexual battery
8. Armed robbery if committed with a firearm
9. Aggravated assault if committed with a firearm upon a public safety officer
10. Aggravated battery upon a public safety officer

SHARED COURTS

Courts that share operations between DJJ and the county. There are eight shared juvenile courts.

SHORT TERM TREATMENT PROGRAM (STTP)

A term formerly used to refer to the disposition option of placing an adjudicated child in a secure residential facility or in a treatment program for up to 30 days as permitted pursuant to O.C.G.A. § 15-11-601. This has also been referred to as boot camp. Many practitioners still use these terms to refer to such a disposition.

STATUS OFFENDER

A child who is charged with or adjudicated of an offense that would not be a crime if the child were an adult. These offenses can include: curfew violation, truancy, running away from home and habitually disobeying parents.

TRANSFER / WAIVER OF JURISDICTION

The legal procedure for determining whether the juvenile court will retain jurisdiction over a juvenile case or whether the matter will be sent to adult criminal court.

YOUTH DEVELOPMENT CAMPUS OR YOUTH DEVELOPMENT CENTER (YDC)

Department of Juvenile Justice long-term secure detention facilities for committed youth. These can be compared in function to an adult prison.

Appendix B: Resources

Appendix B: Resources

The following is a list of resources that may be able to provide further assistance.

Juvenile Justice

CAMPAIGN FOR THE FAIR SENTENCING OF YOUTH

http://fairsentencingofyouth.org/

CAMPAIGN FOR YOUTH JUSTICE

http://www.campaignforyouthjustice.org/

GEORGIA DEPARTMENT OF JUVENILE JUSTICE

http://www.djj.state.ga.us/

GIRLS' JUSTICE INITIATIVE
https://wp.nyu.edu/rise/home/girls-justice-initiative/

HAYWOOD BURNS INSTITUTE
http://www.burnsinstitute.org/

MODELS FOR CHANGE

http://www.modelsforchange.net/index.html

NATIONAL CENTER FOR JUVENILE JUSTICE
http://www.ncjj.org/

NATIONAL CENTER FOR MENTAL HEALTH AND JUVENILE JUSTICE
http://www.ncmhjj.com/

NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES
http://www.ncjfcj.org/

NATIONAL JUVENILE DEFENDER CENTER

http://njdc.info/

NATIONAL JUVENILE JUSTICE NETWORK

http://www.njjn.org/

OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION

http://www.ojjdp.gov/

SOUTHERN JUVENILE DEFENDER CENTER

http://njdc.info/southern/

Education

ADVANCEMENT PROJECT – SCHOOL TO PRISON PIPELINE

https://advancementproject.org/issues/stpp/

CENTER FOR LAW AND EDUCATION

http://www.cleweb.org/

COUNCIL OF PARENTS ATTORNEYS AND ADVOCATES

http://www.copaa.org/

DIGNITY IN SCHOOLS

http://www.dignityinschools.org/

GEORGIA APPLESEED – EFFECTIVE STUDENT DISCIPLINE INITIATIVE

https://gaappleseed.org/initiatives/esd

GEORGIA DEPARTMENT OF EDUCATION – DECISIONS

https://www.gadoe.org/External-Affairs-and-Policy/State-Board-of-Education/Pages/PEABoardDecisions.aspx

GEORGIA DEPARTMENT OF EDUCATION – RULES

http://www.gadoe.org/External-Affairs-and-Policy/State-Board-of-Education/Pages/PEABoardRules.aspx

EDUCATION DEVELOPMENT CENTER

https://www.edc.org/

NATIONAL CENTER FOR EDUCATION, DISABILITY AND JUVENILE JUSTICE

http://www.edjj.org/

WRIGHTSLAW (special education advocacy resource)

http://www.wrightslaw.com/

Mental Health

AMERICAN ACADEMY OF CHILD & ADOLESCENT PSYCHIATRY

http://www.aacap.org/

AMERICAN ACADEMY OF CHILD & ADOLESCENT PSYCHIATRY: GLOSSARY OF SYMPTOMS AND ILLNESSES

https://www.aacap.org/AACAP/Families_and_Youth/Glossary_of_Symptoms_and_Illnesses/Home.aspx

CETPA (provides mental health and substance abuse services to the Hispanic population, even if they are lacking insurance)

http://www.cetpa.org/

CHILD MIND INSTITUTE

https://childmind.org/

DEPARTMENT OF BEHAVIORAL HEALTH AND DEVELOPMENTAL DISABILITIES (DBHDD)

http://dbhdd.georgia.gov/

MENTAL HEALTH AMERICA

https://www.mhanational.org/

NATIONAL ALLIANCE ON MENTAL ILLNESS (NAMI)

http://www.nami.org/

NATIONAL CENTER FOR MENTAL HEALTH AND JUVENILE JUSTICE

http://www.ncmhjj.com/

SUBSTANCE ABUSE & MENTAL HEALTH SERVICES ADMINISTRATION

http://www.samhsa.gov/

Adolescent Development

ACT FOR YOUTH – RESOURCES FOR UNDERSTANDING ADOLESCENT DEVELOPMENT

https://www.actforyouth.net/adolescence/toolkit/

AMICUS BRIEF FILED BY AMERICAN PSYCHOLOGICAL ASSOCIATION, ET AL, IN GRAHAM V. FLORIDA

https://www.apa.org/about/offices/ogc/amicus/graham-v-florida-sullivan.pdf

NATIONAL JUVENILE DEFENDER CENTER

https://njdc.info/child-adolescent-development/

NATIONAL NETWORK OF STATE ADOLESCENT HEALTH

http://nnsahc.org/tools/adolescent-development

Disability

DISABILITY RIGHTS EDUCATION & DEFENSE FUND

https://dredf.org/

NATIONAL DISABILITY RIGHTS NETWORK

http://www.ndrn.org/index.php

SOCIAL SECURITY BENEFITS FOR PEOPLE WITH DISABILITIES

http://www.ssa.gov/disability/

Substance Abuse

GEORGIA DEPARTMENT OF BEHAVIORAL HEALTH AND DEVELOPMENTAL DISABILITIES (DBHDD) – ADDICTIVE DISEASES

https://dbhdd.georgia.gov/be-supported/help-substance-abuse/adolescent-services

GEORGIA SUBSTANCE ABUSE HELPLINE

1-800-338-6745.

METRO ATLANTA COUNCIL ON DRUGS AND ALCOHOL

http://www.livedrugfree.org/

SUBSTANCE ABUSE & MENTAL HEALTH SERVICES ADMINISTRATION

http://www.samhsa.gov/

Immigrant Youth

ACCESS TO LAW

http://accesstolawfoundation.org/

CATHOLIC CHARITIES OF ATLANTA

http://www.catholiccharitiesatlanta.org/

CETPA LATINO YOUTH CLUBHOUSE

http://www.cetpa.org/CETPA_ENG_2Clubhouse.html

THE LATIN AMERICAN ASSOCIATION

http://thelaa.org/

NATIONAL IMMIGRATION LAW CENTER

http://www.nilc.org/

IMMIGRANT LEGAL RESOURCE CENTER

http://www.ilrc.org/

NATIONAL IMMIGRATION PROJECT OF THE NATIONAL LAWYERS GUILD

http://www.nationalimmigrationproject.org/

Healthcare

AFFORDABLE CARE ACT

https://www.healthcare.gov/

COUNTY HEALTH CENERS AND CLINICS

http://freeclinicdirectory.org/georgia_care.html

FREE OR DISCOUNTED DENTAL SERVICES

http://www.freedentalcare.us/st/georgia

GEORGIA DEPARTMENT OF COMMUNITY HEALTH

https://dch.georgia.gov/

404-656-4507

GEORGIA HEALTHY FAMILIES

https://www.georgia-families.com/GASelfService/en_US/home.htm

GEORGIA MEDICAID PHONE NUMBERS:

Peachcare for Kids®	877-427-3224
Eligibility	404-651-9982
Member Services	866-211-0950
Provider Services	800-766-4456
Customer Service/Claims Resolution	404-657-5468
Medical Policy	404-651-9606
Hospital Services	404-651-9606
Long-Term Care	404-656-6862

GEORGIA MEDICAID – STATE POLICIES

For detailed policies on Georgia Medicaid eligibility, application handling, and fair hearings: http://odis.dhs.ga.gov/ChooseCategory.aspx?cid=813 (MAN3480)

For detailed policies on Georgia Medicaid services: https://www.mmis.georgia.gov/portal/PubAccess.Provider%20Information/Provider%20Manuals/tabId/54/Default.aspx (and click on the manual for the type of service)

INDIGENT CARE TRUST FUND

http://www.georgialegalaid.org/files/6FCBD72D-B465-109D-9EC1-5A4F52A74EE9/attachments/0572D10B-47AE-45F6-8589-734384AC0572/2012-ictf-brochure-eng.pdf

NATIONAL SEXUAL AND REPRODUCTIVE HEALTH INFORMATION

https://www.guttmacher.org/

SEXUAL REPRODUCTIVE HEALTH CLINIC LOCATOR

https://tmi-ga.org/resources/know-where-to-go/condom-locations/

Public Benefits

OFFICE OF FAMILY ASSISTANCE: TANF

http://www.acf.hhs.gov/programs/ofa/programs/tanf

SNAP / FOOD STAMP ELIGIBILITY AND MANAGEMENT POLICIES

http://odis.dhs.ga.gov/ChooseCategory.aspx?cid=1035

TANF ELIGIBILITY AND MANAGEMENT POLICIES http://odis.dhs.ga.gov/ChooseCategory.aspx?cid=1002

USDA FOOD AND NUTRITION SERVICES: SNAP

http://www.fns.usda.gov/snap/supplemental-nutrition-assistance-program-snap

Public Housing

ATLANTA HOUSING AUTHORITY

https://www.atlantahousing.org/

HOUSING AUTHORITY OF DEKALB COUNTY

https://www.dekalbhousing.org/

HOUSING AUTHORITY OF SAVANNAH

http://www.savannahpha.com/

HOUSING AUTHORITY OF THE CITY OF AUGUSTA

https://www.augustapha.org/

HOUSING AUTHORITY OF COLUMBUS

https://www.columbushousing.org/

BRUNSWICK HOUSING AUTHORITY

http://brunswickpha.org/

MACON HOUSING AUTHORITY

https://www.maconhousing.com/

HOUSING AUTHORITY OF AMERICUS

https://www.americuspha.org/

GEORGIA DEPARTMENT OF COMMUNITY AFFAIRS

https://www.dca.ga.gov/

Other Resources

CAMPAIGN AGAINST INDISCRIMINATE JUVENILE SHACKLING (NJDC)

https://njdc.info/campaign-against-indiscriminate-juvenile-shackling/

RACIAL JUSTICE FOR YOUTH: A TOOLKIT FOR DEFENDERS

https://defendracialjustice.org/

REPORTING CHILD ABUSE AND NEGLECT IN GEORGIA

1.855.GACHILD (+1 855-422-4453)

https://dfcs.georgia.gov/services/child-abuse-neglect

UNITED WAY – 211 COMMUNITY RESOURCE GUIDE

Dial 2-1-1 (Outside metro Atlanta, call 404-614-1000)

www.211.org or www.unitedwayatl.org

Appendix C: Selected Provisions - Georgia Rules of Professional Conduct

Appendix C: Selected Provisions - Georgia Rules of Professional Conduct

The following are some selected rules and comments that are implicated in the representation of youth in the juvenile justice system. The full rules can be found on the State Bar of Georgia website. Further, the State Bar of Georgia runs an ethics hotline in the event that you need assistance in interpreting any of the rules.

Rule 1.1: COMPETENCE

A lawyer shall provide competent representation to a client. Competent representation as used in this Rule means that a lawyer shall not handle a matter which the lawyer knows or should know to be beyond the lawyer's level of competence without associating another lawyer who the original lawyer reasonably believes to be competent to handle the matter in question. Competence requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Comments:

Thoroughness and Preparation

[5] Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more elaborate treatment than matters of lesser consequence.

Rule 1.2: SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER

a. Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the scope and objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

Comments (selected)

Allocation of Authority between Client and Lawyer

[1] Paragraph (a) confers upon the client the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. The decisions specified in paragraph (a), such as whether to settle a civil matter, must also be made by the client. See Rule 1.4(a)(1) for the lawyer's duty to communicate with the client about such decisions. With respect to the means by which the client's objectives are to be pursued, the lawyer shall consult with the client as required by Rule 1.4(a)(2) and may take such action as is impliedly authorized to carry out the representation.

[2] On occasion, however, a lawyer and a client may disagree about the means to be used to accomplish the client's objectives. Clients normally defer to the special knowledge and skill of their lawyer with respect to the means to be used to accomplish their objectives, particularly with respect to technical, legal and tactical matters. Conversely, lawyers usually defer to the client regarding such questions as the expense to be incurred and concern for third persons who might be adversely affected.

Rule 1.4: COMMUNICATION

a. A lawyer shall:

    1. promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(h), is required by these Rules;

    2. reasonably consult with the client about the means by which the client's objectives are to be accomplished;

3. keep the client reasonably informed about the status of the matter;
4. promptly comply with reasonable requests for information; and
5. consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

b. A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Rule 1.6: CONFIDENTIALITY OF INFORMATION

a. A lawyer shall maintain in confidence all information gained in the professional relationship with a client, including information which the client has requested to be held inviolate or the disclosure of which would be embarrassing or would likely be detrimental to the client, unless the client gives informed consent, except for disclosures that are impliedly authorized in order to carry out the representation, or are required by these Rules or other law, or by order of the Court.

1. A lawyer may reveal information covered by paragraph (a) which the lawyer reasonably believes necessary:
   i. to avoid or prevent harm or substantial financial loss to another as a result of client criminal conduct or third party criminal conduct clearly in violation of the law;
   ii. to prevent serious injury or death not otherwise covered by subparagraph (i) above;
   iii. to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;
   iv. to secure legal advice about the lawyer's compliance with these Rules.

Rule 1.14: CLIENT WITH DIMINISHED CAPACITY

a. When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

b. When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.

c. Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

Comment (selected)

[1] The normal client-lawyer relationship is based on the assumption that the client, when properly advised and assisted, is capable of making decisions about important matters. When the client is a minor or suffers from a diminished mental capacity, however, maintaining the ordinary client-lawyer relationship may not be possible in all respects. In particular, a severely incapacitated person may have no power to make legally binding decisions. Nevertheless, a client with diminished mental capacity often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client's own well-being. For example, children as young as five or

six years of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody. So also, it is recognized that some persons of advanced age can be quite capable of handling routine financial matters while needing special legal protection concerning major transactions.

[2] The fact that a client suffers a disability does not diminish the lawyer's obligation to treat the client with attention and respect. Even if the person does have a legal representative, the lawyer should as far as possible accord the represented person the status of client, particularly in maintaining communication.

[3] The client may wish to have family members or other persons participate in discussions with the lawyer. When necessary to assist in the representation, the lawyer should consider such participation in terms of its effect on the applicability of the attorney-client evidentiary privilege. Nevertheless, the lawyer must keep the client's interests foremost and, except for protective action authorized under paragraph (b), must look to the client, and not family members, to make decisions on the client's behalf.

[4] If a legal representative has already been appointed for the client, the lawyer should ordinarily look to the representative for decisions on behalf of the client. In matters involving a minor, whether the lawyer should look to the parents as natural guardians may depend on the type of proceeding or matter in which the lawyer is representing the minor. If the lawyer represents the guardian as distinct from the ward, and is aware that the guardian is acting adversely to the ward's interest, the lawyer may have an obligation to prevent or rectify the guardian's misconduct. See Rule 1.2(d).

Rule 2.1: ADVISOR

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. A lawyer should not be deterred from giving candid advice by the prospect that the advice will be unpalatable to the client.

Comment

Scope of Advice

[1] A client is entitled to straightforward advice expressing the lawyer's honest assessment. Legal advice often involves unpleasant facts and alternatives that a client may be disinclined to confront. In presenting advice, a lawyer endeavors to sustain the client's morale and may put advice in as acceptable a form as honesty permits. However, a lawyer should not be deterred from giving candid advice by the prospect that the advice will be unpalatable to the client.

[2] In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors that may be relevant to the client's situation. Advice couched in narrowly legal terms may be of little value to a client, especially where practical considerations, such as cost or effects on other people, are predominant. Purely technical legal advice, therefore, can sometimes be inadequate. It is proper for a lawyer to refer to relevant moral and ethical considerations in giving advice.

[3] A client may expressly or impliedly ask the lawyer for purely technical advice. When such a request is made by a client experienced in legal matters, the lawyer may accept it at face value. When such a request is made by a client inexperienced in legal matters, however, the lawyer's responsibility as advisor may include indicating that more may be involved than strictly legal considerations.

[4] Matters that go beyond strictly legal questions may also be in the domain of another profession. Family matters can involve problems within the professional competence of psychiatry, clinical psychology or social work; business matters can involve problems within the competence of the accounting profession or of financial specialists. Where consultation with a professional in another field is itself something a competent lawyer would recommend, the lawyer should make such a recommendation. At the same time, a lawyer's advice at its best often consists of recommending a course of action in the face of conflicting recommendations of experts.

Offering Advice

[5] In general, a lawyer is not expected to give advice until asked by the client. However, when a lawyer knows that a client proposes a course of action that is likely to result in substantial adverse legal consequences to the client, duty to the client under Rule 1.4: Communication may require that the lawyer act if the client's course of action is related to the representation. A lawyer ordinarily has no duty to initiate investigation of a client's affairs or to give advice that the client has indicated is unwanted, but a lawyer may initiate advice to a client when doing so appears to be in the client's interest.

Endnotes

Endnotes

1 O.C.G.A. §15-11-1.

2 Id. (emphasis added).

3 Elizabeth J. Clapp, Mothers of All Children: Women Reformers and the Rise of Juvenile Courts in Progressive Era America 1 (1998).

4 In re Gault, 387 U.S. 1, 30 (1967).

5 *Id.; See also,* Martin Gardner, Understanding Juvenile Law 182-86 (1999).

6 Martin Gardner, Understanding Juvenile Law 183 (1999).

7 Id.

8 Id.

9 Barry Feld, The Transformation of the Juvenile Court, 75 Minn. L. Rev. 691, 695 (1991), available at http://scholarship.law.umn.edu/cgi/viewcontent.cgi?article=1297&context=faculty_articles.

10 Id.

11 Id.

12 In re Gault, 387 U.S. 1, 20 (1967).

13 Id. at 19-21.

14 Id. at 33-34, 41-42, 49-50, 57.

15 Id. at 30.

16 Id. at 26-27.

17 Id. at 26.

18 McKeiver v. Pennsylvania, 403 U.S. 528, 543 (1971).

19 Id. at 545.

20 See John Dilulio, The Coming of the Super-Predators, Washington Examiner (Nov. 27, 1995), https://www.washingtonexaminer.com/weekly-standard/the-coming-of-the-super-predators.

21 The original seven offenses included murder (now, including 2nd degree murder), voluntary manslaughter, rape, armed robbery with a firearm, aggravated sexual battery, aggravated sodomy and aggravated child molestation. The code has since been amended to also include aggravated assault if committed with a firearm upon a public safety officer and aggravated battery upon a public safety officer. See O.C.G.A. § 15-11-560.

22 Roper v. Simmons, 543 U.S. 551 (2005).

23 Id. at 569-70.

24 O.C.G.A. § 39-1-1(a).

25 O.C.G.A. § 15-11-2(10)(A).

26 O.C.G.A. § 15-11-2(10)(B).

27 O.C.G.A. § 15-11-2(10)(C).

28 O.C.G.A. § 15-11-2(10)(D).

29 O.C.G.A. § 16-3-1. Georgia courts have interpreted this provision not as a statutory bar to prosecution for acts that occur prior to 13 years of age, but as an affirmative offense, which must be raised by the defendant. See Adams v. State, 288 Ga. 695, 697 (2011).

30 O.C.G.A § 15-11-560(a).

31 O.C.G.A. § 15-11-560(b).

32 Sw. Reg'l Juv. Def. Ctr., et al., Juvenile Practice is Not Child's Play: A Handbook for Attorneys Who Represent Juveniles in Texas 3 (3rd ed. 2005), https://www.texasappleseed.org/sites/default/files/06-JJ-AttorneyHandbook.pdf.

33 Nat'l Juv. Def. Ctr., Juvenile Defense Attorneys: A Critical Protection Against Injustice: The Importance of Skilled Juvenile Defenders to Upholding the Due Process Rights of Youth (2015), http://www.naco.org/sites/default/files/documents/07%20Juvenile_DefenseAttorneys-%20A%20Critical%20Protection%20Against%20Injustice.pdf.

34 Nat'l Juv. Def. Ctr., National Juvenile Defense Standards (2012), http://njdc.info/wp-content/uploads/2013/09/NationalJuvenileDefenseStandards2013.pdf.

35 Nat'l Juv. Def. Ctr., Role of Juvenile Defense Counsel in Delinquency Court (2009), http://njdc.info/wp-content/uploads/2013/11/NJDC-Role-of-Counsel.pdf.

36 Id.

37 Nat'l Juv. Def. Ctr., Juvenile Defense Attorneys: A Critical Protection Against Injustice: The Importance of Skilled Juvenile Defenders to Upholding the Due Process Rights of Youth (2015), http://www.naco.org/sites/default/files/documents/07%20Juvenile_DefenseAttorneys-%20A%20Critical%20Protection%20Against%20Injustice.pdf.

38 O.C.G.A. § 24-5-501.

39 Ga R. of Prof'l Conduct R. 1.2(d) (2001); See also In re Fulton County Grand Jury Proceedings, 244 Ga.App. 380, 382 (2000) (holding that the attorney-client privilege does not extend to communications which occur before perpetration of a fraud or commission of a crime and which relate thereto).

40 For helpful guides to interviewing children and adolescents, see Am. Bar Ass'n Juvenile Justice Ctr., Talking to Teens in the Justice System: Strategies for Interviewing Adolescent Defendants, Witnesses, and Victims (Laurdes Rosado, ed. 2000), available at http://www.njdc.info/pdf/maca2.pdf; Marty Beyer, Suggestions for Interviewing Teenagers, MartyBeyer.com, available at http://www.martybeyer.com/content/suggestions-interviewing-teenagers; Karen A. Reitman, Attorneys For Children Guide to Interviewing Clients: Integrating Trauma Informed Care and Solution Focused Strategies, New York State Welfare Court Improvement Project (Judith S. Claire & Amee L. Neri eds. 2011), available at http://www.nycourts.gov/ip/cwcip/Publications/attorneyGuide.pdf; and Am. Bar Ass'n Section of Litig. and Children's Rights Litig. Comm., DVD: Interviewing the Child Client: Approaches and Techniques for a Successful Interview (2008).

41 David Binder, Paul Bergman and Susan Price, Lawyers as Counselors: A Client-Centered Approach, 35 N.Y.L. Sch. L. Rev. 29 (1990).

42 Id.

43 See GA R. of Prof'l Conduct 1.1, cmt. 5 (2001) (addressing competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem).

44 See GA R. of Prof'l Conduct 2.1 (2001).

45 Sw. Reg'l Juv. Def. Ctr., et al., Juvenile Practice is Not Child's Play: A Handbook for Attorneys Who Represent Juveniles in Texas 3 (3rd ed. 2005), https://www.texasappleseed.org/sites/default/files/06-JJ-AttorneyHandbook.pdf.

46 Nat'l Juv. Def. Ctr., Juvenile Defense Attorneys: A Critical Protection Against Injustice: The Importance of Skilled Juvenile Defenders to Upholding the Due Process Rights of Youth (2015), http://www.naco.org/sites/default/files/documents/07%20Juvenile_DefenseAttorneys-%20A%20Critical%20Protection%20Against%20Injustice.pdf.

47 GA R. of Prof'l Conduct 1.1 (2001); See also Model Rules of Pro. Conduct r. 1.1 (Am. Bar Ass'n).

48 Nat'l Juv. Def. Ctr., National Juvenile Defense Standards (2012), http://njdc.info/wp-content/uploads/2013/09/NationalJuvenileDefenseStandards2013.pdf.

49 Id.

50 See GA R. OF PROF'L CONDUCT 1.14 ("When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.")

51 Nat'l Juv. Def. Ctr., National Juvenile Defense Standards (2012), http://njdc.info/wp-content/uploads/2013/09/NationalJuvenileDefenseStandards2013.pdf.

52 Child Welfare Information Gateway, Determining the Best Interests of the Child (2016), available at https://www.childwelfare.gov/pubpdfs/best_interest.pdf.

53 Nat'l Juv. Def. Ctr., National Juvenile Defense Standards (2012), http://njdc.info/wp-content/uploads/2013/09/NationalJuvenileDefenseStandards2013.pdf.

54 GA R. of Prof'l Conduct 1.6(a).

55 GA R. of Prof'l Conduct 1.6(b).

56 GA R. of Prof'l Conduct 1.4.

57 O.C.G.A. § 15-11-510.

58 Id.

59 O.C.G.A. § 15-11-479.

60 O.C.G.A. § 15-11-510(c).

61 O.C.G.A. § 15-11-505.

62 O.C.G.A. § 15-11-515 (b).

63 See Barry Holman and Jason Ziedenberg, Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities, 2 Justice Pol'y Inst.1, 2-3 (2013), available at http://www.justicepolicy.org/images/upload/06-11_rep_dangersofdetention_jj.pdf

64 O.C.G.A. § 15-11-505.

65 O.C.G.A. § 49-4A-1(6).

66 O.C.G.A. § 15-11-504.

67 O.C.G.A. § 15-11-504(b).

68 O.C.G.A. § 15-11-506(b). Pursuant to O.C.G.A. § 15-11-5, weekends and legal holidays are excluded from the calculation of days in this provision.

69 O.C.G.A. § 15-11-506(c).

70 See O.C.G.A. § 15-11-475.

71 O.C.G.A. § 15-11-503(a).

72 O.C.G.A. § 15-11-503(a).

73 O.C.G.A. § 15-11-503(c).

74 O.C.G.A. § 15-11-503(d).

75 O.C.G.A. § 15-11-503(f).

76 O.C.G.A. § 15-11-507.

77 O.C.G.A. § 15-11-507(e).

78 O.C.G.A. § 15-11-520.

79 O.C.G.A. § 15-11-521(a).

80 O.C.G.A. § 15-11-521(b).

81 In Interest of M.D.H., 300 Ga. 46 (2016).

82 O.C.G.A. § 15-11-522.

83 O.C.G.A. § 15-11-523.

84 O.C.G.A. § 15-11-511.

85 O.C.G.A. § 15-11-530.

86 O.C.G.A. § 15-11-531.

87 O.C.G.A. § 15-11-531(c).

88 O.C.G.A. § 15-11-532.

89 O.C.G.A. § 15-11-580.

90 O.C.G.A. § 15-11-478.

91 Id.

92 O.C.G.A. § 15-11-582(a).

93 See Lafler v. Cooper 566 U.S. 156 (2012) (a defendant will prevail on an ineffective assistance claim if, absent the ineffective counsel, a defendant would have accepted an offered plea that was less severe than his eventual sentence, and the trial court would have accepted the terms of that plea); Missouri v. Frye, 566 U.S. 134 (2012) (the Sixth Amendment requires defense attorneys to communicate formal plea offers from the prosecution).

94 Elizabeth Calvin, Sarah Marcus, George Oleyer, and Mary Anne Scali, et al., Juvenile Defender Delinquency Notebook, Nat'l Juvenile Defender Ctr. Advocacy and Training Guide (2d ed. 2006) at 174, available at http://njdc.info/wp-content/uploads/2013/09/Delinquency-Notebook.pdf.

95 See McLeod v. State, 251 Ga.App. 371 (2001).

96 See GA Bar Rules of Prof'l Conduct R. 1.2 (2001) (stating that "in a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered").

97 O.C.G.A. § 15-11-2(20).

98 O.C.G.A. § 15-11-582(e).

99 O.C.G.A. § 15-11-582(b)(3).

100 O.C.G.A. § 15-11-582(d).

101 Elizabeth Calvin, Sarah Marcus, George Oleyer, and Mary Anne Scali, et al., Juvenile Defender Delinquency Notebook, Nat'l Juvenile Defender Ctr. Advocacy and Training Guide (2d ed. 2006) at 152, available at http://njdc.info/wp-content/uploads/2013/09/Delinquency-Notebook.pdf.

102 O.C.G.A. § 24-6-615.

103 See, e.g., O'Kelley v. State, 175 Ga.App. 503 (1985).

104 O.C.G.A. § 17-17-9; O.C.G.A. § 24-6-616.

105 Jackson v. Virginia, 443 U.S. 307, 319 (1979). See also Humphrey v. State, 252 Ga. 525 (1984).

106 O.C.G.A § 15-11-600(a)(1).

107 Nat'l Juvenile Defender Ctr., National Juvenile Defense Standards (Sue Burrell, Kristin Henning, Randy Hertz, Mary Ann Scali, and Abbe Smith, eds. 2012) at § 1.1, available at http://njdc.info/wp-content/uploads/2013/09/NationalJuvenileDefenseStandards2013.pdf.

108 O.C.G.A. § 15-11-600(b).

109 Id.

110 O.C.G.A. § 15-11-600(f).

111 O.C.G.A. § 15-11-590(a).

112 O.C.G.A. § 15-11-590(f).

113 O.C.G.A. § 15-11-477(a).

114 O.C.G.A. § 15-11-600(g).

115 O.C.G.A. § 15-11-481(a).

116 O.C.G.A. § 17-17-7.

117 O.C.G.A. § 15-11-481(d).

118 O.C.G.A. § 15-11-481(f).

119 O.C.G.A. § 15-11-2(20).

120 O.C.G.A. § 15-11-600(d).

121 O.C.G.A. § 15-11-600(e).

122 O.C.G.A. § 15-11-600(c).

123 O.C.G.A. § 15-11-601(a).

124 Id.

125 Misdemeanor (+) is a term that we have ascribed to the following: An offense that would be a misdemeanor if committed by an adult and such child has had at least one prior adjudication for an offense that would be a felony if committed by an adult, and at least three other prior adjudications for a delinquent act. See O.C.G.A. § 15-11-601(a)(10); O.C.G.A. § 15-11-601(a)(11); and O.C.G.A. § 15-11-601(b).

126 O.C.G.A. § 15-11-601(a).

127 O.C.G.A. § 15-11-605(a).

128 O.C.G.A. § 15-11-605(c).

129 O.C.G.A. § 15-11-605(d).

130 O.C.G.A. § 15-11-605(e), (f).

131 O.C.G.A. § 15-11-605(f).

132 O.C.G.A. § 15-11-605(g).

133 O.C.G.A. § 15-11-601(a)(10), O.C.G.A. § 15-11-601(a)(11); O.C.G.A. § 15-11-601(b).

134 See Ga. Dep't Juvenile Justice, Pol'y 20.20 ("Screening of Youth") (Oct. 25, 2019).

135 Id.

136 O.C.G.A. § 15-11-602(b).

137 Id.

138 O.C.G.A. § 15-11-477(b).

139 O.C.G.A. § 15-11-602(a).

140 Id.

141 O.C.G.A. § 15-11-604; O.C.G.A. § 15-11-602(c)(2); O.C.G.A. § 15-11-602(d)(2), (3).

142 O.C.G.A. § 15-11-29(a).

143 O.C.G.A. § 15-11-29(b).

144 O.C.G.A. § 15-11-29(c).

145 O.C.G.A. § 15-11-29(a).

146 O.C.G.A. § 15-11-19.

147 O.C.G.A. § 15-11-608.

148 O.C.G.A. § 15-11-607.

149 O.C.G.A. § 15-11-32.

150 O.C.G.A. § 15-11-602(f)(2).

151 O.C.G.A. § 15-11-701.

152 O.C.G.A. § 15-11-19.

153 O.C.G.A. § 15-11-35.

154 M.K.H. v. State, 132 Ga.App. 143 (1974).

155 Id.

156 In the Interest of D.L.S., 224 Ga.App. 660 (1997) (citing Jacobson v. State, 201 Ga.App. 749 (1991)).

157 O.C.G.A. §5-6-34(a).

158 O.C.G.A. §5-6-38(a).

159 O.C.G.A. §5-6-31.

160 O.C.G.A. §15-11-35.

161 Id.

162 Id.

163 O.C.G.A. §5-6-38(a).

164 See O.C.G.A. § 15-11-2(19)(B) (defining delinquent act as an "act of disobeying the terms of supervision contained in a court order…). See also In re B.S.L., 200 Ga.App. 170 (1991).

165 O.C.G.A. § 15-11-608(b).

166 O.C.G.A. § 15-11-608(c).

167 O.C.G.A. § 15-11-608(e).

168 O.C.G.A. § 15-11-608(f).

169 O.C.G.A. § 15-11-608(g).

170 O.C.G.A. § 15-11-608(h).

171 O.C.G.A. § 15-11-607(a), (b).

172 Id.

173 O.C.G.A. § 15-11-607(a).

174 O.C.G.A. § 15-11-607(b).

175 O.C.G.A. § 15-11-607(a), (b).

176 O.C.G.A. § 15-11-607(c).

177 O.C.G.A. § 15-11-607(d).

178 O.C.G.A. § 15-11-32(a).

179 O.C.G.A. § 15-11-32(b).

180 O.C.G.A. § 15-11-602(f)(2)(A).

181 O.C.G.A. § 15-11-602(f)(2)(B).

182 See Dep't. Juvenile Justice Pol'y 17.22 ("Designated Felon Order Modifications and Terminations") (Jan. 15, 2014), available at http://www.djj.state.ga.us/Policies/BrowseSearch.asp.

183 O.C.G.A. § 15-11-602(f)(2)(B).

184 O.C.G.A. § 15-11-602(f)(2)(C).

185 Id.

186 O.C.G.A. § 15-11-602(f)(2)(D).

187 O.C.G.A. § 15-11-602(f)(2)(A).

188 See O.C.G.A. § 15-11-700(b).

189 O.C.G.A. § 15-11-703.

190 O.C.G.A. § 15-11-701(e).

191 O.C.G.A. § 15-11-701(a).

192 O.C.G.A. § 15-11-701(b).

193 O.C.G.A. § 15-11-701 (referring to records specified in O.C.G.A. § 15-11-702 and O.C.G.A. § 15-11-708).

194 O.C.G.A. § 15-11-701(b).

195 O.C.G.A. § 15-11-701(c).

196 O.C.G.A. § 15-11-701(e).

197 Id.

198 O.C.G.A. § 15-11-701(d).

199 O.C.G.A. § 15-11-541.

200 O.C.G.A. § 15-11-541(a).

201 O.C.G.A. § 15-11-541(b).

202 See Brady v. Maryland, 373 U.S. 83 (1963).

203 O.C.G.A. § 15-11-541(c).

204 O.C.G.A. § 15-11-543(a).

205 O.C.G.A. § 15-11-541(d).

206 O.C.G.A. § 15-11-544.

207 O.C.G.A. § 15-11-542(a).

208 O.C.G.A. § 15-11-542(b).

209 O.C.G.A. § 15-11-546.

210 See Strickland v. Washington, 466 U.S. 668, 691 (1984). See also Kimmelman v. Morrison, 477 U.S. 365 (1986).

211 Uniform Rules, Juvenile Courts of the State of Georgia, Rule 9.3, available at https://www.gasupreme.us/rules/.

212 Kristen Henning et al., Juvenile Training Immersion Program Curriculum: Coordinator and Trainer's Guide, Nat'l Juvenile Defender Ctr., Lesson 19 ("4th Amendment Challenges") (2015), available at http://njdc.info/wp-content/uploads/2013/10/JTIP_Coordinator_Trainers_Guide_101513_nocrops.pdf.

213 See U.S. v. Mendenhall, 446 U.S. 544, 553-54 (1980).

214 See Brendlin v. California, 551 U.S. 249, 254 (2007).

215 See Terry v. Ohio, 392 U.S. 1, 16 (1968) (holding that a seizure occurs when the police "accost [the] individual and restrain his freedom to walk away"). See also California v. Hodari D., 499 U.S. 621 (1991).

216 See New Jersey v. T.L.O., 469 U.S. 325 (1985).

217 New Jersey v. T.L.O., 469 U.S. 325, 341 (1985).

218 See, e.g. State v. Young, 234 Ga.App. 488 (1975); *See also*, State v. Scott, 279 Ga. App. 52, 55 (2006) (stating, the exclusionary rule does not apply when school officials violate the Fourth Amendment)

219 See, e.g., State v. Scott, 279 Ga.App. 52 (2006)

220 Id.

221 See, Ortiz v. State, 306 Ga. App. 598, 600, 703 S.E.2d 59, 62 (2010) ("an officer's mere presence in the room, without more evidence of his involvement, does not indicate police participation thereby implicating the exclusionary rule.")

222 See, In re T.A.G., 292 Ga. App. 48 (2008) (police involvement need not be substantial to implicate the exclusionary rule); State v. K.L.M., 278 Ga. App. 219 (2006)(probable cause required and exclusionary rule implicated when school official contact law enforcement for safety reasons and asked law enforcement to conduct the search.)

223 See, e.g., Jackson v. Denno, 378 U.S. 368 (1964).

224 Boyd v. State, 315 Ga.App. 256 (2012) (finding that the State failed to show that incriminating custodial statement by the defendant was made voluntarily after a knowing and intelligent waiver of the right against self- incrimination, and that the trial court erred in admitting his statement); See also Riley v. State, 237 Ga. 124 (1976) (holding that the State has a heavy burden to show that the juvenile did understand and voluntarily waive his constitutional rights).

225 O.C.G.A. § 24-8-824.

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493 See Rescission of Memorandum Providing for Deferred Action for Parents of Americans and Lawful Permanent Residents ("DAPA"), June 15, 2017, available at https://www.dhs.gov/news/2017/06/15/rescission-memorandum-providing-deferred-action-parents-americans-and-lawful.

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495 Victims of Criminal Activity: U Nonimmigrant Status, updated June 12, 2018, available at https://www.uscis.gov/humanitarian/victims-human-trafficking-and-other-crimes/victims-criminal-activity-u-nonimmigrant-status.

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499 20 U.S.C. § 1400.

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503 34 C.F.R. § 300.301.

504 34 C.F.R. § 300.300.

505 34 C.F.R. §§ 300.320 - 300.324.

506 34 C.F.R. § 300.114.

507 34 C.F.R. § 300.530.

508 29 U.S.C. § 794; 34 C.F.R. Part 104.

509 34 C.F.R. § 104.3.

510 34 C.F.R. § 104.33.

511 34 C.F.R. § 104.34.

512 See S-1 v. Turlington, 635 F.2d 342, 346 (5th Cir. 1985) (holding, under Section 504, that a student cannot be expelled for conduct that results from his handicapping condition); Broward County (Fla) School District, 36 IDELR 159 (OCR Nov. 19, 2001) (stating "it is OCR's policy that when the exclusion of a child with a disability is permanent (expulsion), or for an indefinite period, or for more than 10 consecutive school days, the exclusion constitutes a significant change in placement"); Springfield School District # 186, 55 IDELP 206 (OCR June 29, 2010) (holding that school district violated Section 504 when it expelled an ADHD student without holding a manifestation determination).

513 See Letter from Office of Special Educ. Programs, to Colleague (Dec. 5 2014) ("Dear Colleague Letter"), 114 LRP 51903.

514 Id. at f.n. 1.

515 34 C.F.R. § 300.324(d).

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517 Letter from Office of Special Educ. Programs, to Colleague (Dec. 5 2014) ("Dear Colleague Letter"), 114 LRP 51903 at 3.

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519 Id. at 2.

520 Id. at 4.

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523 O.C.G.A. § 20-2-736(a).

524 O.C.G.A. § 20-2-736(b).

525 O.C.G.A. § 20-2-754(b)(1).

526 O.C.G.A. § 20-2-753(a).

527 O.C.G.A. § 20-2-755.

528 O.C.G.A. § 20-2-754(c).

529 O.C.G.A. § 20-2-751.2(b).

530 O.C.G.A. § 20-2-751.1(a).

531 Id.

532 O.C.G.A. § 20-2-751.1(b).

533 O.C.G.A. § 20-2-751.6.

534 O.C.G.A. § 20-2-751.6(a).

535 O.C.G.A. § 20-2-751.6(b).

536 O.C.G.A. § 20-2-751.6(c)(3).

537 O.C.G.A. § 20-2-751.6(c)(1).

538 O.C.G.A. § 20-2-751.6(c)(2).

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541 O.C.G.A. § 20-2-1181(b)(4)(B).

542 O.C.G.A. § 20-2-751.5(c) (emphasis added).

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544 See, C.O. v. Henry Co. Bd. Of Educ., Case No, 2018-15 (Ga. SBE 2018) (local boards must put forth more evidence than the existence of a felony adjudication to show cause for the permanent expulsion of a student from a school district); See also, T.B. v. Houston Cnty. Bd. of Educ., Case No.1994-6 (Ga. SBE, 1994) (reversing the local board of education for failure to show "that the alleged crime resulted in any disruption to the control and management of the school.").

545 N.M. v. Polk Cnty. Bd. of Educ., Case No. 2019-15 (Ga. SBE 2019)

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585 Id. To receive this certificate, the minor must provide the issuing officer with a birth certificate and a statement from the prospective employer describing the employment offered and if the minor could be employed immediately. The minor must be enrolled full-time and have an attendance record in good standing. Id.

586 O.C.G.A. § 39-2-2.

587 O.C.G.A. § 39-2-3, § 39-2-4. The prohibition on employing minors under the age of 16 between 9pm and 6am extends to message delivery services. O.C.G.A. § 39-2-6. However, minors under the age of 16 who sell or deliver news papers in residential areas can do so between 5 a.m. and 9 p.m. provided that such employment does not occur during school hours and does not exceed the limitations set out in by statute. O.C.G.A. § 39-2-6.

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591 Jacques Couret, Georgia teen unemployment third-highest in U.S., Atlanta Business Chronicle (May 7, 2013), http://www.bizjournals.com/atlanta/news/2013/05/07/georgia-teen-unemployment.html.

592 See generally, O.C.G.A. § 15-11-201; O.C.G.A. § 49-5-7.

593 DFCS has a two-track differential response system: investigation and Family Support Services. Family Support Services is the alternative to a child protective services response for providing protection and investigations. It is designed to ensure child safety and prevent future involvement in the child welfare system through the use of a variety of services meant to strengthen and support families and help caregivers improve their protective capacity. See Georgia Division of Family and Children Services, Policy Manual – Chap. 7 Title 7.00 (revised July 17, 2020).

594 Georgia Division of Family and Children Services, Policy Manual – Chap, 5 Title 5.1 (revised July 17, 2020). Investigation can include a joint investigation with law enforcement for complex and serious reports, contacting the reporter if needed, a review of DFCS history for previous reports, and seeking out the prior criminal history of anyone living within the household.

595 Georgia Division of Family and Children Services, Policy Manual – Chap, 5 Title 5.3 (revised July 17, 2020).

596 Id.

597 Id. Family Preservation Services are initiated within 5 business days of the determination that they are appropriate. Family Preservation Services are used when dangerous situations or safety threats have been identified, but presently the child can safely remain in the home of the caregiver.

598 O.C.G.A. § 15-11-131. DFCS will petition the juvenile court and must show that it is contrary to a child's welfare to remain in the home of the caregiver. O.C.G.A. § 15-11-134. In an emergency, DFCS is authorized to have a child removed from the household without a court order. O.C.G.A. § 15-11-130.

599 O.C.G.A. § 15-11-133. A temporary alternative to foster care refers to placement with a relative or fictive kin. O.C.G.A. § 15-11-133.1.

600 O.C.G.A. § 15-11-145.

601 O.C.G.A. § 15-11-140. The court will also make written findings to determine whether DFCS made reasonable efforts to prevent removal.

602 Id.

603 O.C.G.A. § 15-11-151; O.C.G.A. § 15-11-181.

604 O.C.G.A. § 15-11-181.

605 O.C.G.A. § 15-11-2(22).

606 Abuse takes a variety of forms. It includes non-accidental physical abuse and injury, emotional abuse, sexual abuse or exploitation, prenatal abuse, or acts of family violence as defined in O.C.G.A. § 19-13-1 committed in the presence of the child. O.C.G.A. § 15-11-2(2). Neglect also takes a variety of forms. It includes the failure to provide proper parental care or control, subsistence, education, or other care or control necessary for a child's physical, mental or emotional health or morals. Neglect is also failure to provide a child with adequate supervision or the abandonment of a child by their parent, guardian, or legal custodian. O.C.G.A § 15-11-2(48).

607 O.C.G.A. § 15-11-601(a)(1).

608 See generally, O.C.G.A. § 15-11-503; O.C.G.A. § 15-11-504.

609 JoAnn S. Lee & Jessie Patton, The Social Exclusion of Dually-Involved Youth: Toward a Sense of Belonging, 44 J. Soc. & Soc. Welfare 41, 41 (2017).

610 Dually involved youth have higher rates of truancy, academic deficiencies, special education needs, as well as drastically higher rates of suspensions. They are also more likely to have experienced issues with housing, been exposed to substance abuse, and experienced family domestic violence. Id. at 41-42.

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615 Sex and HIV Education, State Laws and Policies, Guttmacher Institute, (June 15, 2020), available at https://www.guttmacher.org/state-policy/explore/sex-and-hiv-education.

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624 Id.

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626 1971 Op. Att'y Gen. N. 71-177 (noting that the determination of what constitutes "in connection with pregnancy or childbirth" must result in a fact-specific inquiry because of "the myriad types and possibilities of medical treatment which may be offered as an adjunct to family planning services, along with the absence of any court decisions construing which medical treatments are given in connection with pregnancy or childbirth").

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