The Year of Juvenile Justice Reform

2012

This version for consideration of HB 641 is a comprehensive rewrite of all of Title 15, Part of Title 49 and Title (20) Twenty. We respectfully believe that these Titles must work together to reform the juvenile justice system. Moreover, these Titles work together to dismantle the school-to-prison pipeline and restore families back to their homes and communities.

Attorney
Sherri Jefferson

2012 - The Year of Juvenile Justice Reform

Family Law Center/A.A.J.J.P
Attorney Sherri Jefferson

Recommendation for Consideration of HB641

We are guilty of many errors and many faults but our worst crime is abandoning the children, neglecting the foundation of life. Many of the things we need can wait. The child cannot. Right now is the time his bones are being formed, his blood is being made, and his senses are being developed. To him we cannot answer "Tomorrow." His name is "Today."

- Gabriela Mistral, Chilean poet, educator, Nobel Laureate

FLC/AAJJP – Attorney Sherri Jefferson
www.thefamilylawcenter.org
Post Office Box 2041
Jonesboro, Georgia 30236
770-374-9591

About the Report

In 2005, Attorney Sherri Jefferson served the State of Georgia as one of its Juvenile Division Chiefs, when she recognized the need for reform in the juvenile justice system. She immediately began researching best practices to be enacted by the State of Georgia. In 2007, she undertook an ambitious project through the African-American Juvenile Justice Project, a pro bono service project, to create a model juvenile code that could provide a framework, based on proven best practices and scientific research, for revising Georgia's juvenile code.

The AAJJP project was not subject to federal, state, public, or private funding. Attorney Jefferson used her own resources. On December 27, 2007, she released the Juvenile Justice Reform Code. Prior to its release, Attorney Jefferson had conducted town hall meetings, attended conferences around the country, gathered research, and hosted events to hear from members of the African-American community as well all stakeholders in the field of juvenile justice, education and child protective services. This report is a comprehensive examination of the issues, which plague the most adversely affected group within the juvenile justice and child welfare system. Please note that several members of the Georgia General Assembly attended the town hall meetings.

Attorney Jefferson had hoped that the laws would be made available through SB 292 or SB 127. However, those bills did not pass in their respective sessions. However, she did participate in some of the hearings, which were held.

This report was the culmination of years of best practice research and hard work by an attorney and advocate who works in the field of juvenile justice and education. It includes research from some of our nation's top juvenile programs. This report includes research, which includes a comparative study of laws from around the country; studies performed on issues of poverty, education and single parenting and its effect upon child development and juvenile delinquency and deprivation.

This version for consideration of HB 641 is a comprehensive rewrite of all of Title 15, Part of Title 49 and Title Twenty (20). We respectfully believe that these Titles must work together to reform the juvenile justice system. Moreover, these Titles work together to dismantle the school-to-prison pipeline and restore families back to their homes and communities.

About the Author

Sherri Jefferson is resident of the State of Georgia. She first moved to Georgia more than 20 years ago. She holds her undergraduate degree from Mercer University in HRA/HRS with a concentration in Business. She completed post-graduate studies in Early Childhood Education. Sherri holds a Masters degree in Post Secondary Education with a concentration in Criminal Justice. Sherri Jefferson is an attorney, juvenile advocate, and founder of the African-American Juvenile Justice Project (AAJJP) and the Family Law Center (www.thefamilylawcenter.org). She is also a Teen Court Judge serving under the Honorable Belinda Edwards. Miss Jefferson is a former foster parent, and trained Court Appointed Special Advocate who volunteers her services to C.A.S.A. She presented at their National Conference in Washington, D.C. on the subject of Who Are the Children: *The Plight of African-American Children in the Child Welfare System.*

Miss Jefferson served the State as its Juvenile Division Chief and Assistant Public Defender covering five counties in South Georgia. Notwithstanding, from 2005 through 2008, Attorney Jefferson presented a version of the juvenile reform bill, which included all three facets of the juvenile justice system (education, deprivation and delinquency). Respectfully, it is difficult to reform the juvenile justice system without reforming the school-to-prison pipeline or addressing laws, which govern deprivation. These issues plague so many families in the system. This report provides a comprehensive examination of reform, which covers education laws, juvenile court services, DHR and juvenile law. This report is based on extensive research and evidence of best practices.

Former Supreme Court Chief Justice Robert Benham said that "freedom must be fought for. . . those freedom fighters are to be ethical and moral, and to fight for what is right. . . . We are working to ensure that children spend less time away from home and that judges and other professionals responsible for their well-being are well-trained and well-equipped to do their job, citing that there is a correlation between children who are abused and those who later are sent to Youth Detention Centers and, ultimately, as adults to prison"[1]

I am pleased to announce that this report is completed without securing any federal, state, local, private or public funding. Attorney Jefferson remains committed to be a non-partisan with no special interest ties.

Although my skin is dark in color, I am not made of dirt. Blood runs through my veins, and I hurt like any other child. I am of earth. I am entitled to everything good that derives from the earth, everything pure and everything whole. I am entitled to the same principles of living as anyone else. Who am I? I am a human being.

- Sherri Jefferson

I'm still holding on, I am still in God's holy plan" by the grace of God, I am alive and still here!

[1] Justice Benham: 1999 and 2000 State of the Judiciary address to the General Assembly and Justice Sears: January 24, 2007

FLC/AAJJP – Attorney Sherri Jefferson

State of Georgia Juvenile Code "Re-Write" Recommendations

2012 - THE YEAR OF JUVENILE JUSTICE

Overview

"For these are all our children, and we will all profit by, or pay for, whatever they become."

--James Baldwin

Since 2005, the Georgia General Assembly has considered whether to re-write the juvenile code of the State of Georgia. To date, no legislation is introduced that would allow for an overhaul of the juvenile justice system of this state. Attorney Jefferson respectfully submits that we neither play politics with the lives of our children nor wait another year to change the juvenile laws of this state. Every year delayed is a violation suffered by children of this state. AAJJP sees the need for legislation to be enacted this year. Legislation needs to be passed in the areas of school, the court, the Department of Family and Children Services and the Department of Juvenile Justice. AAJJP hopes that these recommendations bring Georgia into compliance with federal law, national standards, and improve the lives of the children of this state.

Georgia's Juvenile Justice System comprises of the school, the court, the Department of Juvenile Justice and the Department of Family and Children Services. The recommendations by AAJJP include addressing the disparity against African-American children in the child welfare and juvenile justice system that are subject to displacement and detention. The recommendation will include, but are not limited to, amendments, repeals and/or new legislation under **Title 49** (The Department of Juvenile Justice and The Department of Family and Children Services). **Title 15** (The Courts), and **Title** 20 (Education).

Executive Summary

"An injustice anywhere, is an injustice everywhere."
- Dr. Martin Luther King, Jr.

The Department of Juvenile Justice and the Department of Family and Children Services are responsible for the lives of children and families. Both state agencies are created to oversee the care and rehabilitation of our children in areas of deprivation and detention. The juvenile justice system was created to ensure the treatment, rehabilitation and supervision of children.[2] O.C.G.A. 15-11-1 prescribes in pertinent part that "children whose well-being is threatened shall be assisted and protected and restored . . . That each child coming within the jurisdiction of the court shall receive, preferably in his or her own home, the care, guidance and control that will be conducive to the child's welfare . . . That the court shall provide children removed from his or her parents secured child care." Respectfully, we know from recent cases and litigation that this is not true and that the State of Georgia have failed our children.

[2] O.C.G.A. 15-11-66

Introduction

If there is no struggle, there is no progress. Those who profess to favor freedom and yet deprecate agitation…want crops without plowing up the ground; they want rain without thunder and lightning. They want the ocean without the awful roar of its many waters…Power concedes nothing without a demand. It never did and it never will.

- Frederick Douglas

Movement building for children requires openness to many different kinds of people with different needs, approaches, interest, and talents without losing sight of the overreaching goal[3]: "Georgia Juvenile Re-Write."

In an effort to overhaul the juvenile codes of the State of Georgia, AAJJP believes that we must start by overhauling the Department of Juvenile Justice and the Department of Family and Children Services. These two agencies are responsible for providing protection, restoration and rehabilitation for our children. This reverse approach allows us to address the needs of those already in the system, and then move toward prevention in keeping children out via intervention, prevention and non-detention services. This approach will deal with the schools and the role of the juvenile court system.

Poverty is the largest driving force behind deprivation and delinquency. It is exacerbated by race. Child poverty in America continues to grow; in 2006, 17.4 percent f children in America, 13 million (one in six), were poor. Today, there are 1.2 million more children living in poverty than there were in 2000.[4] More than fifty (50%) percent, half of all poor children in the United States live in 10 states. Georgia ranks number seven with 484,525 poor children, that is twenty (20%) percent.[5] AAJJP recognizes that the African-American community and all other races and ethnicities must address promiscuity, single parenting, teen parenting and employment. However, a minimum wage job pays only 58.9 percent of the federal poverty level for a family of four[6] (husband, wife, and two children). There are more poor whites in America than African-American; however, African-Americans and Latinos are inappropriately poor.[7] In 2006, Georgia had 276,929 (33.6%) poor African-American children and 70,939 (39.2%) poor Latino children.[8] Every year that 13 million children live in poverty costs the nation $500 billion in lost productivity; child poverty could be eliminated for $55 billion a year and could be paid for by the tax cuts currently received by the top one percent of taxpayers. The $100 billion a year we are spending on the Iraq war could lift every child in America from poverty twice over.[9] Ohio Congressman, Boehner said

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[3] I America's Cradle to Prison Pipeline. (2007). at 183

[4] America's Cradle to Prison Pipeline. (2007). Faces of Children at risk of or in the Pipeline. Children's Defense Fund, p. 26

[5] Id at 25

[6] Id., at. 25

[7] Id at 29

[8] Id at 30

[9] Is at 33

that national security and defense is investing in young people.[10]

Attorney Sherri Jefferson and AAJJP believe that these recommendations must be enacted this legislative session and we cannot wait any longer to serve and protect the children of this state. The State of Georgia is in a crisis and we are and will continue to suffer greatly until we recognize that all children are a commodity, a human resource. "The most dangerous place for a child to try to grow up in America is at the intersection of poverty and race. That an African-American child born in 2001 has a 1 in 3 chance and a Latino child has a 1 in 6 chance of going to prison in their lifetime is a national disaster and says to millions of our children and to the world that America's dream is not for all."[11] African American juveniles are about four times as likely as their White peers to be incarcerated for the same offenses are; today 580,000 African-American males are serving sentences in state or federal prison, while fewer than 40,000 earn a bachelor's degree each year. This is America's problem, this is Georgia's problem.[12]

Ohio Congressman, Boehner said that national security and defense is investing in young people.[13]

Georgia invests two times as much money per prisoner ($15,644.00) as per public school pupil ($7774.00). Georgia suspends African-American students at a rate of 16.1 and Whites at a rate of 5.2; African-American children are three times as likely in Georgia to be in special education at the rate of 3.1% compared to White students at a rate of 1.4%; African-American children ages 10-17 are incarcerated at three times to rate of White children for the same offenses in Georgia.[14]

We must recognize that the world does not see us in Black or White; they see us as America. With that said, we have a choice to invest in all Americans, or allow America to fall and to be subject to attack on every side without any one qualified to defend this country because they will be dead, incarcerated, on drugs, or unwilling to protect a country that did not protect them. What will we do, threaten them with incarceration? The only universally guaranteed child policy in America is a jail or detention cell. We must guarantee to every child in the richest country on earth the health, mental health, childhood services, education, safe and stable housing, family services and alternatives to incarceration.[15]

African-American children are twice as likely as White children to be put into programs for mental retardation, twice as likely to be retained in a grade; three times as likely to be suspended from school, and 50 percent more likely to drop out of school.

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[10] The Pros and Cons of Children Health Medicare Protection Act (CHAMP). (2007). Congressional Digest. 2007

[11] America's Cradle to Prison Pipeline. (2007). Children's Defense Fund, p. 4

[12] Id at 37

[13] The Pros and Cons of Children Health Medicare Protection Act (CHAMP). (2007). Congressional Digest.

[14] Id at 231 and 232

[15] Id at 77

Notwithstanding the gloomy outlook on life for African-American children, White males ages 15-19 are twice as likely as African-American males to commit suicide with a firearm. However, African-American males ages 15-19 are about eight times as likely to be gun homicide victims as White males. This country has invested billions of dollars to fight an external war on terror. However, very little if any money is spent fighting the people who terrorize our communities via gun dealing. In 2004, 2,845 children and teens died from guns - more than the number of American military deaths between 2003-2006 in Iraq and Afghanistan.[16] In a three year period, Georgia has lost over three hundred children to death by guns.[17]

According to national CASA research, "The numbers are difficult to ignore. Of the over 500,000 children currently in the [foster care] system, nearly 60% are children of color. African-American children represent 35% of children in foster care although they make up only 15% of the general population. Children of color are not abused or neglected at higher rates than Whites children. Despite this, African-American children make up 35% of displaced children. Race has been identified as a primary determinant for decision-making in five out of six stages of child protective services: reporting, investigation, substitution, placement and exit from care. Instead of being referred to foster care, 72% of White/Caucasian children receive services in their own homes.

In the same report, CASA reports that African-American children remain in foster care longer - a median of 18 months in care compared to 10 months for White children. African-American children are more likely to be more around more often than White children from one placement to the other."[18]In Georgia, African-Americans foster children are less likely than Whites to be placed with family members. African-American children are less likely to be reunified with their parents and, their parents are less likely to be provided with the care and services to aid them in reunification. African-American children are still less likely to receive effective legal representation despite the Kenny A v. Perdue case. More than 51.1 percent of all children in DFCS custody are African-American children.[19]

So allow AAJJP to assist the Georgia General Assembly and the citizens of this state by unlocking the future: **Declaring 2012 the Year of Juvenile Justice**. Beginning right now, we can:

1. Reconstruct the Role of the Department of Juvenile Justice.
2. Dismantle the School-to-Prison Pipeline.
3. Reorganize the Juvenile Court System.
4. Renew the Mission of the Department of Family and Children Services.

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[16] Id at 85

[17] Id at 234

[18] L. Austin. "Uneven Ground: The Disproportionate Representation of Children and Families of Color in the Child Welfare System. Seven Facts to Know When Advocating for Children of Color." *The Connection.* (Summer 2007). pp. 5-12.

[19] Id at 229

Legislative Recommendations

I. Reconstruct the Role of the Department of Juvenile Justice

Overview of the Department of Juvenile Justice:

There exist 159 counties in the State of Georgia; the Department of Juvenile Justice governs about 95% of the juvenile courts within these counties. What does this mean? It means that DJJ oversees the allegations of delinquency and files petitions with the court; files a risk assessment tool to determine if the child is at risk for release notwithstanding the Georgia laws that govern bail, and otherwise makes appearances before the court in the absence of district attorneys. They present themselves as though they are the "State." DJJ operates under what they call "executive" powers and they contend that they do not have to abide by orders of the juvenile courts. Their staff engages in practices that are similar to that of district attorneys and practitioners of law. DJJ is a one-stop department and regulatory system for juvenile justice in the State of Georgia. DJJ serves as the arresting officer, district attorney, judge, jury, probation/parole, and appeals. The Georgia General Assembly must restructure DJJ to ensure the constitutional protections and safeguards of the children of this state. (*See O.C.G.A. 15-11-47; § 15-11-66, § 15-11-50, § 15-11-65,* § *15-11-70, and O.C.G.A. § 49-4A-3, § 49-4A-4; § 49-4A-5, § 49-4A-7, § 49-4A-8, and § 49-4A-9*).

Under DJJ policies for graduated sanction and administrative revocation of placement or probations, juveniles are denied access to counsel. (See DJJ policy 20.6, 14.8 and 15-11-66 (b) (2).)

The Department of Juvenile Justice was created by legislation in July 1992. A fifteen-member policy-making board governs the Department. The board is required to establish rules and regulations for the government, operation, and maintenance of all training school, facilities, and institutions under the control of the Department. The Department alleges, "The schools, facilities and institutions operate rehabilitative programs that restore and improve the self-esteem and life competency of youths in order to qualify and equip them for good citizenship and honorable employment."[20] AAJJP disagrees with their contentions and given the most recent legal action against the Department and the federal MOA, it is apparent that they are not meeting these regulatory guidelines.

AAJJP recommends the following legislative action:

Create/Enact: New Legislation
Insert: Add to the current legislation
Amend: To revise or add a provision to existing legislation
Repeal: To delete current legislation

[20] www.djj.state.ga.us/referencelibrary/refjuvlaws.shtml

Reconstructing the Role of the Department of Juvenile Justice can be achieved with statutory changes and it is simple and costless. In fact, the State of Georgia may save money by utilizing this restructuring plan.

<u>New Legislation</u>: Adult offenders have three separate boards that govern corrections (DOC), state probation, and pardons and parole. Our children deserve the same services that are under separate government leadership. The State of Georgia needs a system of checks and balances.

- **The General Assembly shall create in the Department of Juvenile Justice Level of Detention System: *Minimum, Moderate, Maximum Security* Systems to separate non-violent offenders from violent offenders and misdemeanor offenders from felony offenders and felony offenders for non-violent offenses from children facing adult or designated felony offenses.**

- **The General Assembly shall create a Department of Juvenile Pardons and Parole (DJPP) and Guidelines. (For adults O.C.G.A.** *§ 42-9-40)*

- **The General Assembly shall create a Department of Juvenile Sentencing Review Board (DJSRB) and Guidelines. (For adults O.C.G.A.** *§ 17-10-6)*

- **The General Assembly shall create a Department of Juvenile State Probation. (DJSP) and Guidelines. (For adults O.C.G.A.** *§ 42-8-34, 42-8-34.1, 42-8-38, through 42--8-61).*

  Currently, juveniles in the State of Georgia are not subject to pardons and parole review by third persons, a board or a neutral panel of juvenile experts and advocates. DJJ currently controls when children are detained, where they are detained and when they are released. DJJ averages about $33 million dollars per year in a budget to restore children to their status quo. However, most of the children are detained. They do not receive treatment, rehabilitation and supervision as proscribed by O.C.G.A. 15-11-2, 15-11-66 and 49-4A-2. Warehousing children allows DJJ to continue to receive money as oppose to providing evidence that their services are actually doing what the law prescribes. We can close down some of the juvenile facilities and reduce the number of employees serving the facilities if we can get a review board to designate treatment and other after care programs for these children.

Amend Current Legislation/Statute/Law

The following statute shall be amended as follows:
<u>Terms:</u> Amend, Strike, Insert, Repeal, and Create/Enact.

Amend and Insert new provision
O.C.G.A. *§* 49-4A-3. Department of Juvenile Justice created;

commissioner of juvenile justice, organization and operation of department. (*DJJ will oversee the facilities of juvenile detention centers only and will no longer oversee community services, programs or services***)**

(b) **Amend** - The department shall provide for detention and rehabilitation during detention of juveniles who are delinquent and committed to state custody. The department shall not be authorized to operate prevention program and/or to provide assistance to local public and private entities with prevention programs for juveniles at risk. The department shall provide for prevention, intervention and treatment and rehabilitation services and programs for children in their custody are not authorized to provide services for any aftercare, probation, or parole program.

(1) **Repeal**

(2). **Amend and Insert,** employees who have the following minimum educational and professional experiences shall provide Services implemented by the Department:
Wardens shall possess a Masters degree in the field of Organizational Management in a Public Safety Leadership Program of Study, Criminal Justice with a specialty in Juvenile Justice, Sociology, or a Human Services field of study.
Associate Directors of the facilities must possess at a minimum a degree in Criminal Justice with an internship or career in Juvenile Justice, Sociology, or a Human Services field of Study.
Juvenile Correctional Officers must possess a bachelor's degree in criminal justice, sociology or a human services field and must take and pass a psychological evaluation and have externship or internship experiences in working with children.

(3) Through (7) **repeal**

Amend and Insert:
O.C.G.A. *§* 49-4A-4. Purpose of chapter; detention care facilities.

It is the purpose of this chapter to establish the department as the agency to administer, supervise, and manage juvenile detention facilities. Except for the purposes of administration, supervision ad management, as provided in this chapter, the department shall not engage in any other activity except to supervise, and manage juvenile detention facilities for the purposes of Article 1 of Chapter 11 of Title 15, relating to juvenile courts and juvenile proceedings.

Repeal, Amend and Insert:
O.C.G.A. *§* 49-4A-7. Powers and duties of department.

(a) The department shall be authorized to only
(1) Accept for detention in a youth development center of other juvenile detention facility any child who is committed to the department under Article 1 of Chapter 11 of Title 15.

(2) **Repeal** (provides probation and parole . . .)
(3) **Repeal** (provides casework services and care . . .)

Insert and Amend
(5)(b)(4) The right to determine in which facility the child or youth shall be detained shall be a joint decision that consists of screening and placement by the juvenile court, the district attorney and defense attorney who shall determine which treatment facility is agreeable to ensure that the child is receiving treatment, rehabilitation, and supervision as prescribed by O.C.G.A. 15-11-66.

(5)(b)(5) The Department shall not have the right to provide or obtain for a child or youth medical, hospital, psychiatric, surgical or dental care or services as may be considered appropriate and necessary by competent medical authority without securing prior consent of parents or legal guardians.

Repeal, Amend and Insert:
O.C.G.A. § 15-11-70. Duration and termination of orders of disposition for delinquent or unruly children; extensions

(a) An order of disposition committing a delinquent child to the Department of Juvenile Justice shall not be extended. The original order shall serve as binding upon the court and the Department of Juvenile Justice. The court or Department of Juvenile Pardon and Parole and Sentencing Review Board shall be able to terminate an order or commitment order.
(c) . . . The court that made the order of commitment shall not extend the duration of its order once the order of sentencing is enter. The order shall stand as a final judgment and may not be modified to extend or shortened the sentence of a child. The original sentence shall be within the ambit of the sentencing guidelines for the offense.

(d) The court shall not extend or shorten an order of disposition of a child adjudicated as delinquent or unruly.

(d.1) Create/Insert. No child shall be ordered to serve a probated sentence or commitment to the Department of Juvenile Justice or Department of Corrections or program or services beyond the duration of the sentencing guidelines for that offense. The court shall not order an extension of the original sentence. If the child committed a new offense, the child may be revoked from probation, but the original sentence may not be extended. The court shall not extend a order of restitution **(repeal 17-14-5 which is peonage)** and keep a child under court order or supervision for failure to pay restitution, it is peonage, if it is determined that the child cannot afford to pay restitution. The court shall not extend an original sentence. The child shall not be revoked and re-sentence for the same transaction. The court shall adhere to the restitution guidelines set forth in Chapter 14 of Title 17.

Cross-reference § 49-4A-8 with § 15-11-70:

O.C.G.A. *§* 49-4A-8. Commitment of delinquent or unruly children; procedure; cost; return of mentally ill or retarded children; escapees; discharge; evidence of commitment; records; restitution.

Amend and Insert
(a) When any child or youth is adjudged to be in a state of delinquency under Article 1 of Chapter 11 of Title 15 and the court does not release such child or youth unconditionally or place him or her on probation or in a suitable public or private institution or agency, the court may not commit him to the Department of Juvenile Justice as provided in Article 1 of Chapter 11 of Title 15 unless the Department of Juvenile Justice provides the court, defense counsel and the district attorney with the treatment and rehabilitative plan of action in writing that the Department will use to restore and improve the self-esteem and life competency of youths in order to qualify and equip them for good citizenship and honorable employment.

(b) Amend - remove "unruly"

(c) Amend - remove "unruly"

(d)(1) Amend - remove - "unruly"

(d)(2) Amend and insert . . . Records as may be maintained by the department with respect to a delinquent child committed to the department shall not be public records but shall be privileged records and may be disclosed to the attorney representing the interest of the child upon a written request that shall not be required to be signed by a parent or child if said parent is the complainant or the child if the child is detained at the time the request is made for representation and review of his/her records; any attorney representing the child shall not be denied access to the records of the juvenile; to all persons of interest, the records shall be disclosed by the direction of the commissioner pursuant to federal law in regard to disseminating juvenile records only to those persons having a legitimate interest therein; provided, however, that the commissioner shall permit the Council of Juvenile Judges to inspect and copy such records for the purposes of obtaining statistics on juveniles.

(e) Amend and Insert: When a delinquent child has been committed to the department for detention for the purposes of determining the most satisfactory plan for the child's care and treatment has been completed, the department shall not have the authority to order confinement, re-confinement, probation, revoke or modify the judge's original order of commitment. The department shall abide by the terms and conditions of the order the judge concerning treatment, rehabilitation and supervision. The department shall not be vested with any authority to make decisions concerning the confinement, re-confinement, revocation, or modification of an order or a delinquent child. The juvenile court judge shall have the authority to decide what is in the best interest of the child and the court's decision shall be made upon a hearing with the defense attorney and district attorney. No child shall be detained for diagnostic purposes only; diagnostic testing shall be conducted in the least restrictive environment. The department does not

make the decision when to discharge a child; the decision to discharge a child is at the discretion of the order of commitment and the sentencing guidelines for the offense. No child shall be sentenced, reconfined or confined beyond the duration as set forth under the sentencing guidelines for the offense as prescribed in O.C.G.A. ***§*** **15-11-70. (See above)**

(f) Amend and Insert: As a means of correcting the socially harmful tendencies of a delinquent child committed to it, the department may not:
(1) require participation by youth in moral, academic, vocational, physical, and correctional training and activities, and may not provide youth with the opportunity for religious activities without providing a treatment and rehabilitation plan to the juvenile court judge, defense attorney and district attorney for review and consideration at the dispositional hearing as prescribed by *§* 15-11-65 in order to assure that these services provide treatment, rehabilitation and supervision. Every child committed to the Department of Juvenile Justice under this section shall be required to receive an education and, if age-appropriate shall either complete a high school diploma or attain a G.E.D. or shall have course work assigned for the completion of either of these educational alternatives. DJJ shall be responsible for providing the court, the child's parent and attorney with documentation to substantiate that the child is receiving life skills training, academic and vocational training via a quality education and that the child has either sat for or is scheduled to sit for their G.E.D. or CRCT and SAT/ACT exams or vocational skills building exams, that include Civil Service Examination, etc., In addition, where warranted based on the offense the child shall receive and it shall be documented that substance abuse and violence prevention counseling services were provided to the child. This is mandatory and not optional. Every child is entitled to treatment and rehabilitation.

(3) May not provide such medical, psychiatric or casework treatment as is necessary; or

(4) place him (her), if available in a work camp, park, maintenance camp, forestry camp or on a ranch owned by the state or by the United States and require any child so housed to perform conservation and maintenance work, and shall not exploit a child to labor without providing a treatment, rehabilitation and supervision plan of action for review and subject to objection by the defense attorney, district attorney and judge as prescribed by ***§*** **15-11-65 et seq. and *§* 15-11-66 et seq.**

(g).The department shall:

Establish and operate places for detentions and services for delinquent children committed to it by establishing and operating level systems of correctional/developmental facilities that shall be classified to handle juveniles of different ages, different mental and physical conditions and different offenses. The department shall provide separate facilities for juveniles committed for violent offenses and non-violent offense. The department shall separate juveniles by levels of care within different facilities from a minimum secured detention center to a maximum secured detention center and

development center. The department shall separate all juveniles charged as adults from all other offenders and shall place them in a separate facility just for such offenders who have committed murder, rape, armed robbery using a firearm, and other SB 440 offenses; Designated felony offenders shall be separated from non-violent offenders that include but are not limited to children who have a fight at school and are charged with battery not involving a weapon or injuries (aggravated battery). The department shall not house status offenders, general offenders (theft offenses) with violent offenders in the same facility The department shall provide educational and vocational services for all juveniles that is in compliance with federal and state law including I.D.E.A. (Individuals with Disabilities Educational Act), Individualized Educational Program (IEP) and other services that include CRCT preparation and educational services that will enable each child to return to their school district with course. Every child committed to the Department of Juvenile Justice under this section shall be required to receive an education and, if age-appropriate shall either complete a high school diploma or attain a G.E.D. or shall have course work assigned for the completion of either of these educational alternatives. DJJ shall be responsible for providing the court, the child's parent and attorney with documentation to substantiate that the child is receiving life skills training, academic and vocational training via a quality education and that the child has either sat for or is scheduled to sit for their G.E.D. or CRCT and SAT/ACT exams or vocational skills building exams, that include Civil Service Examination, etc., In addition, where warranted based on the offense the child shall receive and it shall be documented that substance abuse and violence prevention counseling services were provided to the child. This is mandatory and not optional. Every child is entitled to treatment and rehabilitation.

(h) Whenever the department finds that any delinquent child committed to the department is mentally ill or mentally retarded, the department shall provide the child with the appropriate services and shall provide a treatment plan that includes its goals for medically, educational and vocational services.

(h)(2) The commissioner may not designate as a peace officer who is authorized to exercise the power to arrest any employee of the department who is not P.O.S.T. certified and has completed and continues to get annual P.O.S.T certified training updates and firearms proficient test, and the United State Department of Justice Use of Force Policy and Training (or Georgia P.O.S.T certified use of force training) that includes psychological and background testing. No other employee shall be vested with the power to arrest as a law enforcement officer of the local government with police jurisdiction over such children, escapees, facilities or institutions. No such employee shale be authorized to carry weapons without completion of a P.O.S.T certified training program; and the United State Department of Justice Use of Force Policy and Training (or Georgia P.O.S.T certified use of force training) that includes psychological and background testing in addition to all other requirements as set forth under Chapter 8 of Title 35.

(4) **Repeal.**

(6) If the department takes a person into custody, such taking shall be termed an arrest; and the person taking a child into custody shall be subject to the same civil and criminal liability as a law enforcement officer; peace officer who makes an arrest without a warrant.

(0) **Repeal**

Amend. O.C.G.A. *§* 49-4A-9. Sentence of youthful offenders; modification of order; review; participation in programs.
(b) Amend. . . .that the release or parole of any child committed to the department for detention in any of its institution under the terms of this chapter during the period of one year from the date of commitment shall **not** be had with the concurrence and recommendation of the commissioner or the commissioner's designated representative; the commissioner nor the department shall have a decision in the release of a child sentenced under the order of the court. The court, the defense attorney, the district attorney or the party representing the interest of the juvenile may move the court to modify its order or may petition the Juvenile Pardon and Parole Board for early release or the Sentencing Review Board.

(c) After the expiration of one year from the date of commitment, the child, its representative, the defense attorney, and the parent, may petition the Juvenile Board of Pardon and Parole or the Juvenile Sentencing Review Board for such an order of release or continued confinement.

(e) . . . The court, upon motion, shall review and determine if the child, upon becoming 17 years of age, should be placed on probation, have his or her sentence reduced, be transferred to the Department of Corrections for the remainder of the original sentence, or be subject to any other determination authored by law. The child may petition the Board of Pardon and Parole or have his sentence reviewed by the Juvenile Sentencing Review Board.

Amend and Insert.
O.C.G.A. *§* 49-4A-12. Special School District

(a) The Department of Juvenile Justice shall be a special school district which shall be given the same funding consideration for federal funds that school districts within the state are given

(c) (2) The State School Superintendent shall not grant any waivers for such provision of the laws and regulations with which the schools do not comply with all other educational laws and regulations of school districts in the state. The department shall be made to comply with all school regulatory and laws governing school districts as prescribed by federal and state law including those prescribed in Title 20. The department shall comply with federal special education law (IDEA, 20 U.S.C. *§* 1400 and No Child Left Behind). The Department shall provide children in its custody with a "free

and appropriate education" that includes education at the public expense, meet state educational standards, include an appropriate school for elementary, middle and high school and conform with an Individualized Education Program (IEP) for students who are special education as prescribed under 20 U.S. C. *§ §* 14049 (8) and (25) and, 34 C.F.R. *§ §* 300.13, 300.26, 300.121 and 300.300. The department shall comply with state and federal law for providing accommodations in education as prescribed under 20 U.S.C. *§* 1401 (22); 34 C.F.R. *§* 300.24 this includes but is not limited to related services in the fields of speech-language, psychological services, physical and occupational therapy, school health services, and etc. The Department shall allow parents to participate in the IEP planning for their children. The Department and the court shall place children in their community schools upon release and not to alternative schools. The child who graduates from DJJ schools shall receive an official high school diploma and not certificates of learning.

II. Dismantling the School-to-Prison Pipeline

In response to the growing number of violent acts committed in other states, Georgia began its zero-tolerance program. Through this initiative, the State of Georgia reacted to and responded to nationwide acts of isolated school violence. For several years, Georgia schools have confused their zero-tolerance program as a remedial measure. The zero-tolerance approach is punitive. Arrest of children in Georgia occurs at an alarming rate, and this is particularly true of African-American children who are disabled or have a disorder. Most of the committed acts are status offenses. Status offenses include unruliness, running away from SRO's and police officers (otherwise charged as obstruction of an officer without violence or threat), and other offenses that would not be crimes if committed by an adult.

Local school boards are misusing Georgia law and the juvenile justice system to punish students who are either already suspended from school or who have been subject to tribunal and expulsion. This is double jeopardy under the law. The local school boards have Title 20, which prescribes the use of school disciplinary action. This action includes in-school suspension (ISS), out-of-school suspension (OSS) and other remedies available, which will keep students in compliance with the compulsory school attendance guidelines.

AAJJP is particularly concerned about the expulsion of exceptional students who suffer from learning disabilities and other disorders. The school systems are utilizing the juvenile court to circumvent I.D.E.A. (Individuals with Disabilities Education Act[21], 20 U.S.C. § 1400 et seq, 34 C.F.R. 300.7 and U.S.C. §1401 (3); Special Education (Free Appropriate Public Education), see 20 U.S.C. §§ 1401 (8) and (25); 34 C.F.R.§§ 300.13, 300.26, 300.121 and 300.300; and 504 (Carl Perkins Act) guidelines.

AAJJP is well aware of the statutory changes of I.D.E.A. as a result of special interest groups who lobby their congressman/woman and local politicians for change. These groups include teachers unions and school board administrators. For the purposes of these recommendations, AAJJP has revisited the original intent of I.D.E.A. that was written into law in 1997; nonetheless recognizes the changes under 34 C.F.R. 300.530 et seq and 20 U.S.C. 1415 et seq.

The schools funnel the following cases through the juvenile court system.

Status Offenses:

- Truancy
- Unruly (including allegations of obstruction of an officer for running away)

Misdemeanor Offense

- Disrupting Public School (off-campus incidents that do not create a harm/threat to the school, its staff, students and/or agents)
- Battery between students without weapons and/or injuries

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[21] The legislative intent of the federal regulations of I.D.E.A. can best be described in its 1997 legislation. For that reason, you will find that the 1997 provision is pronounced in this recommendation. The author is well aware of the changes of 2004 and 2006 that have weakened the legislative intent due to special interest lobbyist and 'consultants' operating on behalf of school boards and teacher unions. Nonetheless, you will find Part B of the 2004 and 2006 legislation herein.

According to the American Bar Association Juvenile Justice Center, Juvenile Law Center and the Youth Law Center:

> "Schools must address child's problem behaviors. The 1997 (**the original intent of the I.D.E.A. federal legislation**) amendments to IDEA require school personnel to address a disabled child's behavior as an education matter by developing proactive, interventionist strategies to help the child control his own behavior, rather than responding to simply removing or excluding the children from regular classroom activities . . . When a school does suspend a disabled child from school or otherwise removes him for disciplinary reasons, school personnel must conduct behavioral assessment and develop a behavioral intervention plan. If such a plan already exists in the child's IEP then the IEP team must review the plan and modify it as necessary to address the behavior the child's removal prompted.[22]"

As a rule, suspension is a tool of punitive measure used against without any modifications or behavioral intervention plans and local school board have ignored the provisions set forth under I.D.E.A. and 504. "No child with a disability can be expelled for conduct related to or deemed to be a manifestation of that disability." Id. § 300.523-524

In spite of this legal provision, exceptional children in this state are expelled everyday and subject to juvenile court proceedings. In many instances, these children are not afforded due process of law. "The Supreme Court ruled that **all** students had protected liberty interest in a public education that could not be taken away by suspension without the minimal procedural safeguards of notice and an opportunity to be heard. Students did not shed their constitutional rights at the schoolhouse door and the Fourteenth Amendment forbid such arbitrary deprivations of liberty as unilateral suspensions of up to 10 days without notice of hearing. Rudimentary due process was required to ensure fairness in disciplinary truth-seeking determinations. . . The Fourteenth Amendment forbids the state to deprive any person of life, liberty, or property without due process of law." Goss et al v. Lopez et al, 419 U.S. 565; 95 S. Ct 729; 42 L. Ed 2d 725 (1975)

"Young people required by compulsory attendance laws to attend schools do not shed their constitutional rights at the schoolhouse door. The Fourteenth Amendment, as now applied to the states, protects citizens against the state itself and all of its creatures -- **boards of education not excepted**. The authority processed by the state to prescribe and enforce standards of conducts in its schools although very board must be exercised consistently with constitutional safeguards. The state must recognize

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[22] Rosado, Lourdes. Special Ed Kids in the Justice System: How to recognize and treat young people with disabilities that compromise their ability to comprehend, learn and behavior. ***American Bar Association Juvenile Justice Center, Juvenile Law Center and Youth Center.*** P. 32

a student's legitimate **entitlement t**o a public education as a property interest which is protected by the Due Process Clause and which may not be taken away for misconduct without adherence to the minimum procedures required by that clause." *Id*

The court said, "Where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him, the minimal requirement of the clause must be satisfied, including in the case of school suspensions. If sustained and recorded, charges could seriously damage the students' standing with their fellow pupils and their teachers as well as interfere with later opportunities for higher education and employment." *Id*

Status offenses are offenses such as truancy or other acts that would not be a crime if committed by an adult. African American children and the poor children of Georgia are detained for weeks and sometimes months on status offenses in secured detention facilities for alleged violations of truancy and unruly behavior. Most of these cases are reports from the local school system.

Under the federal Juvenile Justice and Delinquency Prevention Act (JJDPA), Georgia received almost $2 million dollars in grants. Georgia receives these funds because Georgia agrees to comply with federal mandates that include the "deinstitutionalization of status offenders and the reduction of disproportionate minority contact." Currently, Georgia is in non-compliance with these mandates.

In addition, the school systems reports children as unruly and/or truant and, children lose days from school as result of incarceration. Children who are truant are also subject to suspension. None of these "remedies" makes any sense. How do we educate the children of this state, especially those already academically challenged, if we continue to incarcerate or suspend them from school?

If Georgia refuses to be brought into compliance, then Georgia would lose the almost $2 million in federal funding. JJDPA, 42 U.S.C. § et seq., and its regulations, 28 C.F.R. § 31.303.

RECOMMENDATIONS TO DISMANTLE THE SCHOOL-TO-PRISON PIPELINE

Create/Enact: New Legislation
Insert: Add to the current legislation
Amend: To revise or add a provision to existing legislation
Repeal: To delete current legislation

As noted by Supreme Court Justice O'Connor

"… it is beyond cavil that juveniles are as a class generally less mature, less responsible and less fully informed than adults, and that these differences bear on juvenile's comparative moral culpability. ("There is no dispute that a defendant's youth is a relevant mitigating circumstance".) **Roper v. Simmons**, 543 U.S. _____ (2005)

To Create/Enact:

That all elementary, middle and high schools implement a 'student council code of conduct committee' which shall consist of students from each grade, a teacher representative from each grade, who by vote of the PTA/PTSA will serve to aid the students on the committee and, four parents, one from each grade, who by vote of the PTA/PTSA will represent each grade. Decisions and sanctions by the committee will be binding, but can be appealed to the Principal of the school. (Synonymous to mediation and arbitration under Title 9, Chapter 11). Students will receive orientation in mediation and will be trained to understand the code of conduct.

To Create/Enact:

No student shall be asked to provide a written or oral statement about an incident at school or outside of school that can subject the child or a third person to an arrest in the absence of an attorney; no parent shall waive their child's right to counsel, but can request an attorney to represent their child's interest. (5^{th} Amendment Rights)

To Amend/Insert:

That juvenile court and municipal courts shall have jurisdictions over matters brought by a local board of education pursuant to Code Section 20-2-766.1 That all matters brought by the school to the juvenile court shall be subject to the juvenile court's school mediation program that shall mediate all cases involving unruliness, and misdemeanors offenses.

Create/Enact:

To enact legislation that mandates that ALL schools within the State of Georgia shall offer an in-class course or an in-class student orientation on violations of school laws and code of conduct. In addition, a mandated, parent, teacher and student assembly shall be held that reviews the school code of conduct, and violations of school law and criminal laws (obstruction of an officer, battery, public indecency, etc.) this shall be held at the beginning of the year and again, in January following holiday/winder

break. Parents and students must learn what acts on school property constitute violations of the law. Elementary and Middle schools must be taught that acts of fighting can constitute battery, 16-5-21, ; that acts of truancy is a status offense; the acts of telling a person that they will be beat up can constitute "terrorist threat," O.C.G.A. 16-11-37, etc. AAJJP does NOT condone children charged for these offenses because the children do not understand the criminality of their action. Many children cannot and do not know that these acts are crimes if committed by an adult. The school's zero-tolerance policies are overreaching and it criminalizes behaviors that are A-typical of school-aged children.

Create/Enact:

To enact legislation that mandates that schools cannot use the juvenile courts as its disciplinary arm. Every school district shall enact uniform codes of conduct, uniform disciplinary guidelines that are within the ambit of Georgia law and that afford children constitutional safeguards under due process.

Reference United States v Rodger, 466 U.S. 475, 104 S. Ct. 1942, 1948; 80 L.Ed 2d 492; *United States v. Hedges*, 912 F. 2d 1397 (11th Cir). The "unambiguous words of a criminal statute are not to be altered nu judicial construction so as to punish one not within its reach, however, deserving of punishment his conduct may seem." *Viereck v. US*, 318 US. 236, (3); 63 S. Ct. 561, 87 L. Ed. 734.

Create/Enact:

To enact legislation that mandates that every child charged with the offense of battery (fist fight) not involving a weapon or injury shall be disciplined via the school's use of suspension (ISS/OSS) or parent-teacher conference, etc. (Further, the schools must also take into account that O.C.G.A. 16-3-21 prescribes "self-defense" and use of force provisions and the right to protect self does not shed at the schoolhouse door.)

Create/Enact:

To enact legislation that mandates that all elementary and middle school children will not be subject to arrest, handcuffed or transported to the police department or juvenile court, unless the incident involves serious injury or use of a weapon.

Create/Enact: That each local school board, shall allow their schools to determine the dress code of the students where the school is facing gang activity. Each school shall be responsible for conducting two public hearings at the school to give the parents the opportunity to be heard on uniform attire. The local school boards shall also be empowered to determine which schools shall have a uniform dress code to avoid gang activity. They shall conduct two public hearings on the matter.

Create/Enact:

Each local school board shall allow the individual schools to develop a curriculum for health science for all students grades 6 through 8 to teach them sex education, teen pregnancy and obesity. The schools shall conduct a public hearing and the PTSA/PTA shall be a part of the planning committee. Each school will determine if this program is

best suited for their individual schools based on need. The board shall not deny the schools the opportunity to educate and inform their students on matters of public policy and concern. In addition, the board shall be empowered to demand that a school within its district that has a proven at-risk population to adopt a curriculum but the board cannot refuse to allow a school within its district to provide the curriculum. Parents may petition the school or the board for a curriculum.

Create/Enact/Amend and Insert: (Repeal 20-2-1160 as written and amend)
O.C.G.A. 20-2-1160. Local boards to be tribunals to determine school law controversies; appeals; special provisions for disabled children.

The Supreme Court held that "A fair trial in a fair tribunal is a basic requirement of due process." *Holt v VA*, 381 U.S., 131. Taking this into consideration, and given the impartiality of the school board tribunal proceedings, AAJJP recommends that parents and children are afforded the option of immediately proceeding in their superior courts. Or, the Governor shall impanel a board of "**State School Tribunal Review Panel**" which would consist of a representative from each school board, or regional school district, or judicial district, with members from the community, Court Appointed Special Advocate, members from the State school board, Accreditation boards and member from the business community. Similar to grand juries, they will hear cases per quarter and will make decisions on tribunals. Unless urgent, children will not be removed from schools via tribunals until their matters go before the **SSTRP**. Otherwise, the school would have to request an ad havoc committee to review the cases.

All schools must demonstrate that they have used and exhausted all disciplinary measures before using a tribunal. Further, tribunals cannot be used to circumvent IDEA, FAPE, NCLB guidelines and laws.

UNCONSTITUTIONALITY OF STATUTES USED TO PUNISH CHILDREN

To Amend/Insert:
O.C.G.A. § 20-2-1185 within 1000 Feet of School Property (Fill-In -- Sherri)

As written, this law appears to be unconstitutional because it includes within the 1000 feet parameters of privately owned property that is subject to the domain of the state for purposes of disciplining children. The "on, in or within" 1000 feet of the school is overbroad. In addition, it gives school resource officers powers to enter onto private property to address a school related matter (truancy, smoking, drinking, etc.). These issues should be addressed by trained and qualified local police and law enforcement agencies. Further, in a recent decision by the Supreme Court, they ruled that it was unconstitutional to restrict the residency of sex offenders. The same legal principle applies here.[23]

[23] For example: several children cut their last two class periods following lunch to hold a house party. The property was located within the 1000 feet of the school; the

Disrupting a Public School

O.C.G.A. § **20-2-1181** is unconstitutionally void for vagueness[24]

Local School Boards are citing children via their SRO/School Police with disrupting the public schools. The Georgia General Assembly must repeal or amend O.C.G.A.§ 20-2-118 as written because it is unconstitutionally void for vagueness because there are no standards to guide those charged with enforcing the law, and there exist the very real possibility of discriminatory and arbitrary enforcement, which

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SRO's, without a warrant entered the property, and arrested the students.) In another incident, several students were at their private resident, after school, and the SRO alleged that they were told that a fight was going to occur by way of a tip; they engaged in a pursuit of these students. No fight had begun and the officers did not witness any fight. The officers chase down some of the students and pursued the others in their vehicle. Some of the students were found at a private property belonging to one the students. They were in the back yard. The students were chased by the officers and arrested; another student was arrested the next day at school. The students who ran from their backyard, who had done nothing wrong, were charged with LEO (Obstruction of an Officer under O.C.G.A. 16-10-24). No fight ever occurred. The children were sentenced to 60 days for the LEO charge. In any other setting, the officers would have never been able to pursue these children and subject them to an arrest. Notwithstanding the officers' reliance on an unfounded tip, they entered a private property where children were not engaged in any criminal activity. However, because the school alleges that these private properties fall within the ambit of their school campus, they are given latitude that has a discriminatory effect as enforced and otherwise violates the constitutional rights of the homeowners.

[24] "A **statute is unconstitutionally vague** if it fails to give a person of ordinary intelligence notice of the conduct which is prohibited and encourage arbitrary and discriminatory enforcement" especially as applied to an exceptional child. Johnson v State, 264 Ga 590 (1), 449 S.E. 2d 94 (1994), citing Izzo vv. State, 257 Ga 109, 110 (1), 356 S.E.2d 204 (1987). See also, Land v. State, 262 Ga 898, 899 (1), 426, S.E.2d 370 (1993)."A statute is unconstitutionally overbroad if it reaches a substantial amount of constitutionally protected conduct." State v Miller, 260 Ga. 669, 673 (2), 398 S.E2d 547 (1990). What is disrupting a public school and how is it applied to an exceptional child? "A criminal statute must be construed strictly, and that, as said by the Supreme Court of the United States in Viereck v. U.S. 236 (3), 63 S. Ct. 561, 87 L. Ed. 734: "The unambiguous words of a criminal statute are not to be altered by judicial construction so as to punish one not within its reach, however, deserving of punishment his conduct may seem." Citing Fleming v. State, 271 Ga. 587, 523 S.W2d 315, 318 (1999)The Due Process Clause of the Fourteenth Amendment protects a defendant in a criminal (quasi-criminal juvenile proceeding) case against conviction except upon proof beyond a reasonable doubt **of every fact necessary to constitute the crime** in which he is charged. Jackson v. VA, 443 US 307Criminal statutes must be strictly against the state and liberally in favor of the accused. Palmer v State, 260 Ga 330, 331, 393 S.E.2d 251 (1990); Knight v State, 243 Ga. 770, 775 (2), 257 S.E.2d 182 (1979); Balkom v Defore, 219 Ga 641, 642 (2), 135 S.E.2d 425 (1964).

specifically targets children who suffer from learning disabilities and are in special education. Windfaire Inc. v. Busee, 523 F. Supp. 868 (N.D. Ga 1981). In the alternative, O.C.G.A. 20-2-1181 should be quashed and held unconstitutionally vague, indefinite and over-broad, both on its face and as applied to students. The statute violates the due process and equal protection clauses of the 5th and 14th Amendment of the United States Constitution, as well as Article 1, Section 1, Paragraphs 1,2, and 5 of the Georgia Constitution. The statute further violates students' rights as guaranteed by O.C.G.A. sec. 1-2-6 (a) (1) and (2).

DOUBLE JEOPARDY[25]

Create/Enact:

It shall be unlawful to charge a child/student with an offense and also proceed against the child in juvenile court for the same offense or same transaction.

It shall be unlawful for any school to hold a tribunal to expel a student from school for an offense that occurred on school property until after the child is adjudicated delinquent for the offense.

It shall be unlawful for a student to be sent to an Alternative school upon release from a juvenile detention sentence or program; the student shall be allowed to return to his community school.

Status offenses should not subject children to secured detention. With that said, two bills, HB 52 and HB 662 are still open for consideration and passage by the 2008 Session of the Georgia General Assembly.

HB 52 children would not be subject to pre-adjudication detention. Children will be released to their parents in lieu of being in secured detention.

HB 662 legislation would have a great impact on the children of Georgia because it would place new guidelines on juvenile courts, which would curtail or prevent secured

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[25] Administrative Suspension and Juvenile Court Services Administrative sanctions constitute punishment for double jeopardy purposes only if they are punitive rather than remedial. State v Perry, 261 Ga. App. 886; 583 S.E.2d 909, (2003). **AAJJP raises a similar legal argument and contends that administrative suspensions and the involvement of juvenile court services constitute double jeopardy. Most suspensions of academically challenged and disabled children are not corrective**. The Supreme Court held that double jeopardy attaches whether or not "one proceeding was civil and the other was criminal, it did not matter, so long as they both involve the same offense and both were intended as punishment." Kurth Ranch v US 114 S. Ct. at 1947-48. "A sanction designed in whole or part to deter or punish will constitute punishment, regardless of whether it also has a remedial purpose." Austin v. U.S., 125 L.Ed. 2d 488, 113 S. Ct. 2801 (1993). Most exceptional children are forced out of school via use of juvenile court services. Double jeopardy attaches when the offenses require and involve proof of the essential elements. Isbell v State, 190 Ga App 25, 378 S.E.2d 529. (1989).

detention of status offenders.

Georgia Must Comply With Due Process Rights in School Disciplinary Exclusions. See 20 U.S.C § 1415 (k); 34 C.F.R. §§ 300.519-529.[26]

Georgia law shall mandate that the juvenile justice system should not be a dumping ground for problem children in the school systems, who are mostly the mentally and emotionally challenged children. Georgia schools shall adhere to federal guidelines and enact legislation that is in compliance with I.D.E.A. as follows:

1.The schools will follow the guidelines set forth under federal law (**I.D.E.A. and others as noted herein)**.

1. The Supreme Court held in Matthews v Eldrige, that due process varies but must include: **Interest at stake, Risk of erroneous deprivation of that interest through procedures used** (example: a child alleged to commit an offense who is adjudicated not-guilty, but who was already suspended for the same offense, or worse, removed from school via tribunal), 424 U.S 319, 333-335 (1976).
2. When warranted the schools will exhaust all in-school disciplinary remedies before using out-of-school suspension. The juvenile court services shall only be used where an actual violent crime, if committed by an adult, occurred.
3. When warranted the schools will use the following or similar guidelines for disciplinary actions:

- 1st offense Verbal Warning
- 2nd offense Written Warning
- 3rd offense Parent-Teacher conference
- 4th offense ISS (in-school suspension **during** school)
- 5th offense ISS (in-school suspension **after** school hours during program)
- 6th offense OSS (Out of school suspension)

*** These offenses do not involve weapons, drugs, and/or injury caused by an act of violence. Further, we note that children will have fistfights, and the school will make the appropriate assessment as to whether or not that student will be subject to in-school suspension **and** a parent-school conference where there are no injuries or weapons involved. The goal is to keep students in school and not to continue to criminalize student behavior under an ineffective zero-tolerance program.

Procedural Rights in Disciplinary Exclusion of Any Student.[27]

1. The **U.S. Supreme Court** held that any student suspended for any amount of time is entitled, at a minimum to:

- Some form of notice
- An explanation of the evidence in support of the allegation
- An opportunity to be heard

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[26] Rosado, Lourdes. Id

[27] Rosado, Lourdes. Id

- An impartial decision maker
- Must be afforded a hearing on the form of discipline/penalty imposed.
- If the suspension is more than 10 days, the Supreme Court has held that more process is due. Goss v Lopez, 419 U.S. 565 (1975).

2. Procedural Rights of Special Education Students in Disciplinary Exclusions.
An exclusion of more than 10 days of a special education student from his/her regular placement "triggers the rights and procedures ordinarily attendant to placement changes under IDEA." [28] Honig v. Doe, 484 U.S. 305 (1988)

- The right to notice
- The right to a written complaint
- The right to have a due process hearing
- The right to remain in the current educational placement pending the resolution of the administrative or judicial proceeding (This is currently NOT occurring).

The "stay-put" provision MUST be activated when the parent request a hearing or file an appeal to challenge the disciplinary exclusion provision. THE SCHOOL MUST obtain a court order to remove the child from the school once the parent makes the request to a hearing or files an appeal. The child CANNOT be removed during the "stay-put" period.

EDUCATION AFTER EXPULSION

Even if a child is expelled from school, the state remains obligated to provide that child with a free and appropriate public education (FAPE). The state must place the child in an alternative placement that will still follow the child's IEP (Individualized Educational Program).

EDUCATIONAL SERVICES PROVIDED FPR DETAINED STUDENTS UNDER IDEA

The school system is still obligated to make sure that the juvenile court and the Department of Juvenile Justice receives the students IEP BEFORE the students are placed into physical custody of DJJ. The 1999 provision of IDEA requires that in-custody children receive special educational services.

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[28] Rosado, Lourdes. Id

III. Reorganize the Juvenile Court System.

Create/Enact: New Legislation
Insert: Add to the current legislation
Amend: To revise or add a provision to existing legislation
Repeal: To delete current legislation

The role of the juvenile court system is to "assist and protect and restore . . . It is to provide, preferably in the child's home, the care, guidance, and control that will be conducive to the child's welfare and the best interest of the state; and when a child is removed from the control of his or her parents the court shall secure for the child care as nearly as possible equivalent to that which his or her parents should have given the child." O.C.G.A. § 15-11-1.

AAJJP believes that the State of Georgia juvenile justice system has failed the children of this state and that the state has not meet the "construction and purpose" of O.C.G.A. § 15-11-1.

Recommendations for reorganizing and changing the juvenile court system

Create/Enact: New Legislation
Insert: Add to the current legislation
Amend: To revise or add a provision to existing legislation
Repeal: To delete current legislation

Create/Enact:

- **The General Assembly shall create and authorize the creation of a Juvenile Pretrial Intervention and Diversion Program (For adults O.C.G.A.** *15-18-80.)*

- **The General Assembly shall create and authorize the creation of a Juvenile Drug Court and Youth Court Program**

- **The General Assembly shall create a provision for the creation of a Juvenile Court School Mediation and Mediation program for all status and misdemeanor offenses. The enactment of mandatory mediation can fall under a new statute: O.C.G.A. 15-11-69.1 (Currently, under O.C.G.A. 15-11-69 Georgia law allows for Informal Adjustments.).**

Mediation shall be provided for all other status offenses including runaways; unruliness and prostitution. Juvenile prostitution shall not be considered a crime if committed by an adult. The mediator shall engage DFCS, Court Personnel, Mental Health services, Medical services and other services to aid juvenile prostitutes. No juvenile prostitute shall be incarcerated or placed in secure detention. Secure detention includes an environment that restricts or prohibits free movement.

All school related incidents that include status offenses and misdemeanors shall be first subject to mediation at the Juvenile Court. The school shall provided documentation to the court to be made part of the case file when the petition is filed, that they have exhausted all school disciplinary remedies. Remedies for purpose of this section shall mean parent-teacher meetings, school conferences, suspensions, warning and after school detention. Prior court mediation shall not preclude additional mediation services to resolve status offenses and misdemeanor allegations that include fist fighting at school; truancy/cutting class, allegations of misbehavior that interferes with classroom performance. Mediators shall work to resolve the matters and shall not prescribe displacement or detention for any child.

- **Create: Election of Juvenile Court Judges**

  Reintroduce **HB 894** or enact new legislation that causes ALL Juvenile Court Judges to be subject to public review and scrutiny via an election. Currently, juvenile court judges are appointed by Superior Court judges within their circuit.

Juvenile Judges have the power to detain and remove children from their homes and communities yet, they do so without any review by the public of their credentials and abilities to serve the children of this state. Juvenile Judges are the only judges in this state who do not have an open election.

GENERAL PROVISIONS

Insert/Amend: O.C.G.A. 15-11-1 Construction and Purpose

Amend:

(1) That children whose well-being is threatened shall be assisted and protected and restored and, that children will receive and be entitled to medical, educational and social services programs and services that will restore them as productive and law-abiding members of society.

Insert:

(4) That when a child is removed from the control of his or her parents the court shall immediately find a relative placement for the child that is equivalent to that which his or her parents should have given the child.

(5) That when a child has committed a status offense or is alleged to have committed a status offense, the child shall ***not*** be detained in secured detentions or secured correctional facilities compliance with federal statute 42 U.S.C. section 5633 (a) (11) and Juvenile. The court shall find shelter care for the child with relative, foster placement or emergency care services.

Insert. Amend: O.C.G.A. 15-11-2 Definitions

Amend:

(2) "Child" means any individual who is:
(a) Under the age of 18 years[29];
(b) Under the age of 21 years, who committed an act of delinquency before reaching the age of 18 years, and who has been placed under the supervision of the court or on probation to the court.

(4) "Court" or "juvenile court" means the court exercising jurisdiction over juvenile matters that shall include, but be not limited to, local municipal courts that offer programs and services for juveniles who are alleged to violate local ordinances; drug court programs created for juveniles, family court programs, and magistrate court and, within the state and courts that preside over juvenile matters.

(6) "Delinquent Act" means: (REVIEW SHERRI)

(A) An offense **intentionally** committed by a juvenile under the age of eighteen (18) or twenty-one (21) if they are special educational students and enrolled in a special

[29] See Roper v Simmons, 534 U.S. (2005). The Supreme Court decision pertaining to juveniles who are charged as adults and the mental facilities of juveniles. See also the national standards for the ages of a "child."

educational program at school; an act designated a crime under Title 16 or Title 17 of the laws of this state that is intentionally committed by a juvenile, and that is a crime, if committed by an adult, or by the laws of another state if the act occurred in that state, under federal laws, or by local ordinance. The state shall carry the burden of proven beyond a reasonable doubt that the juvenile knowingly, purposely and intentionally committed an offense and knew that the offense was a status offense and delinquent act which is a crime if committed by an adult.

(b) Repeal

(c) Repeal

Insert/Amend
(7) Delinquent Child means a child who has committed a delinquent act and is adjudged to be in need of treatment and rehabilitation and where a plan or course of action for providing treatment or rehabilitation is provided by or to the court, otherwise the child cannot be adjudged delinquent if no treatment or rehabilitation is available or provided to the child.

Insert/Amend:
(8) Deprived Child means a child who:
(A) Is without adequate, responsible, proper, and functioning parental care or control, subsistence, education as required by law or other care or control necessary for the child's physical, mental or emotional health or livelihood. Poverty shall not constitute deprivation if the parent or child can receive assistance to provide shelter, food, clothing, education, or mental health services.

(8.a) A child who runs away from home; a child alleged to be truant because of parent's failure to get child to school or attend to affairs of school; or a child who is on drugs, substance or alcohol abuse;. a child who wanders the streets of this state during the hours of 12 midnight to 5 AM.

Insert/Amend: (REVIEW -- SHERRI)
(11). "Status Offender" means a child who knowingly, with intent to commit an offense which would not be a crime if it were committed by an adult. The following offenses shall be status offenses: truancy, if the child has purposely and intentionally missed five or more days of unexcused school days without the knowledge of his parent/guardian; the school must provide documentation that they have notified the parent via certified mail with return receipt of the absences and made a demand for an explanation of the missed school days; Running away from home, if the child intentionally and purposely runs away without justification or cause, and for self gratification and not as a result of abuse or neglect, etc., leaves or deserts their home.; Without justification, or parents knowledge or consent, wanders or loiters about the streets within the State or public place, between the hours of 12:00 midnight and 5: AM;

(12) Unruly child means

(A) truancy, if the child has purposely and intentionally missed five or more days of unexcused school days without the knowledge of his parent/guardian; the school must provide documentation that they have notified the parent via certified mail with return receipt of the absences and made a demand for an explanation of the missed school days; A child alleged to miss a class or cut a class or more, is not a truant for purposes of this section. The school shall use its own disciplinary remedies to discipline a child who missing a class or one but less than five days of school.

(B) Repeal (Not the business of the court to baby sit children or incarcerate children who do not listen to their parents but have not committed crimes)

(C) Repeal (Its unconstitutionally void for vagueness)

(D) Running away from home, if the child intentionally and purposely runs away without justification or cause, and for self gratification and not as a result of abuse or neglect, etc., leaves or deserts their home.; (*AAJJP NOTE: children do not runaway it is because something at home is not right, children seldom leave a place of refuge to be alone in the streets)*

(E) Without justification, or parents' knowledge or consent, wanders or loiters about the streets within the State or public place, between the hours of 12:00 midnight and 5: AM;

(F) Amend/Insert:
Knowingly and intentionally disobeys the terms of supervision contained in a court order which is directed to the child but do not require the participation of the parent, in other words, a child shall not be disciplined by the court for failure to appear for treatment, rehabilitation, supervision, etc, if it is not within the sole control or ability for the child to do so absent their parent or guardian participation.

(G) Insert/Amend
Patronizes any bar where alcoholic beverages are being sold, unaccompanied by such child's parents, guardians, or custodian, or possesses alcoholic beverages or drugs without the intent to sell; who drives or is otherwise under the influence of alcohol or drugs in school; such a child shall not be detained but shall receive drug or alcohol treatment

(H) Repeal (Void for vagueness)

(I) Repeal (Void for vagueness -- catch-all for other offense to subject children to the jurisdiction of the court)

Amend: O.C.G.A. 15-11-3. Appeals; supersedeas

In all cases of final judgment of any juvenile matter before a court overseeing juvenile

proceedings, appeals shall be taken to the Court of Appeal, or the Supreme Court within 10 days from the final judgment; the court reporter and clerk of court shall make the record and transcripts available for transmittal; all judgments appealed that involve deprivation of life, liberty or property shall be immediately subject to supersedes and the judgment of the court shall not stand during the pendency of the appeal. The Court of Appeals or the Supreme Court shall hear and decide juvenile matters within sixty (60) days from the date of docketing.

Amend: O.C.G.A. 15-11-4. Juvenile court as court of inquiry; court of record; issuance of warrants

Amend (a) . . . any conduct or acts of any person 18 years of ages or over. . .

Insert/Amend: O.C.G.A. 15-11-5. Contempt Powers of juvenile court.

Insert: (2) Impose a fine not to exceed $1,000.00 but shall not have the power to incarcerate persons in contempt of court (*Juvenile courts are allotted the largest sum of money for fines, more than superior court; so they can either fine, reduce their fines, or incarcerate with hearings administered by superior court judges and the district attorney serving as the prosecutor)*

Insert: O.C.G.A. 15-11-6. Right to Counsel.

(c) The court, its staff, probation officer and/or agents may not interview a child concerning any alleged violation of law in the absence of counsel nor may they direct or part-take in a custodial or non-custodial interview conducted by law enforcement; the court must immediately, upon intake, notify the child and their family, that they are entitled to legal representation; every child shall be represented by counsel in all proceedings before the court where their life, liberty or property is in-issue; and parents cannot waive their child's right to counsel.

Insert/Amend: O.C.G.A. 15-11-9. Appointment of guardian ad litem.

(b) The court shall immediately appoint a guardian ad litem (An Attorney for the Child) and a Court Appointed Special Advocate (CASA) for every child who is a party to the proceeding as soon as the child case comes before the court; no child shall appear before the court without a GAL and CASA; this shall include both delinquency and deprivation cases .. . . . (Continue with rest of the language of section) (This section shall make McKinney v Perdue law for all of Georgia)

Insert/Amend/Repeal: O.C.G.A. 15-11-10. Community based risk reduction programs.

Amend: (b). The prosecuting attorney, public defender office, local school board, law

enforcement agencies, department of family and children health, mental health agencies, community leaders and organizations and the court shall upon application establish within the geographical jurisdiction of the agencies and the court an approved community based risk reduction program for the purposes of making available to the children and community assessments, prevention and intervention programs and services in cases of delinquency, deprivation or unruliness. Any individual and any public or private agency or entity may participate in the program.

(c). In any jurisdiction within which a program has been established, when a child comes before the court for disposition in any case involving delinquency, deprivation or unruliness the court may order an assessment be made of the child and the circumstances resulting in the child being before the court. The court shall hold a hearing affording the child the opportunity to be heard on whether an assessment is necessary and the assessment shall be ordered only after the case is adjudicated against the child. The assessment shall be conducted for the sole purpose of aiding the court in affording the child with treatment and rehabilitation and is not to be used in a punitive manner. The child shall have the right to due process concerning the agency or persons who will conduct the assessment and no child shall be detained while awaiting an assessment. Parents shall be entitled to be present during each and every assessment. The assessment shall focus upon treatment and rehabilitation based upon the incident (s) that brought the child into the court. The assessment shall detail a case plan that is required for treatment and rehabilitation and the goals, and period to accomplish the goal that is within the specified duration of sentencing under the sentencing guidelines. . . .

(d) . . . the court and any individual, public or private agency, or the entity participating in a program established pursuant to this Code section may exchange, as necessary, information, medical records, school records, records of adjudication, treatment records, and any other records or information that will aid in the assessment of the and prevention and intervention with the children and families in the programs. The child and families shall be entitled to due process of law concerning the dissemination of their personal information and at all times shall be notified in advance and have the opportunity to be heard prior to any individual, agencies, public or private sectors having access to their information; all request for information must be made in writing and the parents and child must sign an authorization for release of information to be used for assessments, preventions and interventions. In the event that the child is in conflict with the parent, and the child is assigned an attorney, or Guardian ad litem, said person shall review and consider the release of the record. . . .

(e)(1) **Amend/Insert**. The courts **shall** implement or adopt an early intervention and prevention program designed to identify children and families who are at risk of becoming involved with the court through petitions alleging that a child is delinquent, deprived, or unruly. . . . .

Create/Enact:

The juvenile court and the juvenile prosecuting attorneys for each judicial circuit of

this state shall create and administer a Pretrial Intervention and Diversion Program.

(a) It shall be the purpose of such a program to provide an alternative to prosecuting juveniles offenders in the juvenile justice system.

(b) Entry into the program shall be either by the prosecutor or by application of the child, its parent and attorney. The prosecuting attorney and the court shall have written guidelines for program admission, said guidelines shall be available to anyone, and all persons shall be told of the existent of the program by any and all intake officers, court personnel, defense counsel, the prosecuting attorney, etc.

(c) The Council of Juvenile Court Judges, the Prosecuting Attorney Counsel, and the Georgia Public Defenders Council, with community organizations within each circuit shall implement written guidelines.

(d) No child shall be authorized to enter the program for committing the seven (7) deadly sins (murder, voluntary manslaughter, rape, aggravated child molestation, aggravated sodomy, aggravated sexual battery, rape, or armed robbery) or a designated felony offense as prescribed by O.C.G.A. 15-11-63.

(e) A panel shall review the request for entry into the program within each circuit; the panel shall consist of court personnel, prosecutor, defense counsel, community agencies and members of the community.

(f) The prosecutor shall be authorized to collect restitution, provided the restitution is in accordance with O.C.G.A. 17-14-10, any restitution collected under this subsection shall be made payable to and disbursed by the clerk of court in the county in which the case would be prosecuted.

(2). Amend/Insert: . . . Such protocol agreements shall not authorize person's ad agencies entering into them to exchange confidential information unless a hearing is held affording the child and/or family due process in the releasing of their confidential records. Records shall only be released or exchanged upon hearing with notice, the child and/or family shall be entitled to be heard on the issue of exchanging records and shall be entitled to know who and for what reasons their records are subject to exchange.

Amend/Insert O.C.G.A. 15-11-12, Social Study and report, when made; medical or psychological examination; medical treatment absent parental notice or consent.

O.C.G.A. 15-11-12. Social Study and report, when made; medical or psychological examination' medical treatment with parental consent, when applicable.

(a) If the allegations of a petition alleging delinquency, unruliness or deprivation are admitted by a party or if notice of a hearing under O.C.G.A. 15-11-30.2 has been given, the court prior to the hearing on need for treatment or rehabilitation and disposition shall not direct that a social study and report in writing to the court be made by the probation officer of the court or the person designated by the court, concerning the child , the child's family, the child's environment, and other matters relevant to disposition of the case unless the parent and defense counsel or representative is present at the gathering of the information for the social study or report; the social study and the report shall consist of information that is required for treatment and rehabilitation of the child and is not be

used for any additional purpose. The social study or report shall be made available to defense counsel and the prosecutor for disposition proceedings. The social study or report shall be completed only after the child admits to the allegations.

Create/Enact:

(b) The admission of the allegations shall be in compliance as follows:
No child may admit to an offense without an attorney present who has read the child their rights and discussed the consequences of the admission; admissions shall not be accepted by the court administrator, clerk of court, probation officer, court personnel, prosecutor, the department of juvenile justice personnel; admission to allegations shall be accepted by the court only after careful review and consideration of the representation afforded by counsel who will advise the child or family of their legal rights. The Court shall not allow the parent to waive the child's right to an attorney or legal representation; the parent can request legal representation but cannot deny the child legal representation. All waivers of legal representation or admissions to allegations of delinquency, deprivation or unruliness must follow protocol: discuss the charges and their meaning, the **actual** sentencing of the offense(s), the voluntariness of the admission, the consequences of the admission, the child or family shall be advised that they have the right to confront witnesses and challenge the evidence of the state. The child shall be told that they do not carry the burden to prove their case, that the state carries the burden to prove their case against; that they have the right to remain silent and can introduce their own evidence. The child has the right to receive and review the actual charges against him in writing and shall be given the opportunity to make a decision to admit or deny allegations free from duress and fear.

(c). During the pendency of any proceeding, the court shall not order the child to be examined at a suitable place by a physician unless the allegations that bring the child before the court warrant an examination by a psychologist. The examiner shall use all school records, family, church and community records (this includes home interviews and conversations with relatives), juvenile court records (this includes CASA's) and other medical records as part of its examination. However, no child accused of a status offense or misdemeanor shall be subject to an examination unless there is already evidence before the court that warrants an examination. Defense counsel shall be authorized, at the state expense to demand an examination by a certified doctor. The parties shall be heard to reach an agreement on who will perform the examination. The child can refuse testing and a hearing shall be held on the record to establish the reason for said examination. The child shall not be subject to detention or secured detention based on the report or examination absent some other evidence before the court that the child is a threat to himself and or the community. The child shall have all examinations recorded and/or videotaped if said examination or report may be entered as evidence or used in disposition. No child shall be detained to wait testing absent a showing that the child is a threat to himself or the community, an allegation of a delinquent does not in and of itself warrant an examination. The evidence shall include proof that the child is a threat to himself or others, commission of a prior act, not based on hearsay evidence; the court shall not use examinations arbitrarily or to have a discriminatory effect. If in the opinion of a physician, a child is suffering from serious physical condition or illness, a

notice of an emergency hearing shall be held, even by conference call, video conferencing, or in-court. The parent shall authorize any medical or psychology testing administered on their child, in the event of a parent/child conflict, an attorney (GAL) shall be appointed in the best interest of the child.

Amend. O.C.G.A. 15-11-14. Emergency care and supervision of child by Department of Human Resources; search for care provider; shelter care; medical treatment; liability.

(a) . . . The Department of Human Resources is authorized to provide emergency care and supervision to any child without seeking a court order for a period of 24 hours, not to exceed **one-calendar** day when:

(1). If as a result of an emergency or illness, the person who has psychical and legal custody of the child or children makes a request of the Department of Human Resources to provide care and supervision of their child or children, then the DHR shall exercise such emergency custody provided that DHR shall bring the matter before the court within 24-48 hours and shall provide the person having legal and physical custody with programs and services to reunify them with their child or children and shall immediately return the child to the custody of the persons having physical or legal custody of the child or children with a case plan and services to provide assistance

(2) . . . The Department shall make immediate contact with a relative, including out of state residents if necessary, in lieu of placing the children in foster care services, within the 24 hour period from removing the child from the home and shall endeavor to place the child or children with a relative of the parent or guardian; if the parent or guardian has community sources (family, friends, or church members) who are willing to accept the child or children for placement, DHR shall immediate make arrangements for placement arrangements. The Department shall exercise and use its resources to reunify the child or children with their parents and guardian.

(b) Within the first 24 hours of receiving custody of the child or children, the department shall begin a diligent search for relative placement, including out of state relatives, and shall inquire of the parents/guardians of family members of both the father and mother side of the family; the department shall also make arrangements with Child Protective Services and DHR in other states to secure safe, healthy placements for the child or children. The department shall also inquire of the parent/guardian of local family, friends, church members, etc, who can accept placement of the child or children. At the close of the 24-hours, the department shall demonstrate for the court that they have contacted family, friends, or a designee of the parent/guardian. If the department is unsuccessful in contacting these persons, then a CASA/GAL and attorney shall immediately be assigned to the child or children to represent their interest. The child or children shall meet with the GAL, attorney, within 24-48 hours from case assignment and shall prepare a report to the court of their meeting with the child or children and shall make recommendations for placement in lieu of state custody.

(c) . . . 24 hours (one-day)

(d) . . . . 24 hours (one-day)

(e) . . . the department shall secure documentation of the child's medical records and gather information from the parent/guardian, school, relative or family or friends concerning the medical history of the child or children. If the claim for removal of the child or children is based upon lack of housing as a result of poverty and otherwise, no case of abuse, the parent shall maintain the authority to make decisions about medical treatment and consent is required by the department.

(f) Repeal

JUVENILE COURT ADMINISTRATION

Create/Enact/Amend and Insert: O.C.G.A. 15-11-18. Creation of Juvenile Courts; terms and compensation of judges; state grants for judicial salaries; qualification; presiding judge; practice of law; actions of judges; administration; expenditures.
(a) There is created a juvenile court in every county in the state. This article does not prohibit local municipalities from exercising jurisdiction over juvenile matters that occur within their city limits or superior courts, state or magistrate courts from exercising jurisdiction over juvenile matters that occur within their county where there exist no juvenile court. This includes providing community programs, treatment and rehabilitation services.

(a.1). All judges upon election shall agree to continue with legal education in juvenile and family law, and shall be active in their local communities, the juvenile court shall have a community presence that is beyond that of displacing or detaining children and families. This includes community outreach.

(b) All presiding full-time, juvenile judges shall be elected to the term of four years; a judge shall be elected to serve each county within each circuit within the state. (Repeal - Superior Court Appointments)

(c) All judges shall serve a term of four years and shall appoint the judge pro tem, associate or part-time judge for each circuit

2(d) Repeal
2 (e) Repeal
2 (f) Repeal

(3) Repeal

3(e) Qualifications of judges: No person shall be a judge of the juvenile court unless, at the time of his or her appointment, he or she has attained the age of 30 years and is not over the age of 50, has been a citizen of the state for three years, and has practiced law for five years at the time that they take office, and has practiced juvenile law before the juvenile court for three of the last five years of their career. Juvenile law is a specialty and a juvenile judge shall have juvenile law experience that includes three years of courtroom experience, and appellate experience immediately prior to elections.
(h) Repeal
(I) Repeal
(J) Repeal

Amend/Insert. O.C.G.A. 15-11-24.2. Duties of probation officers; liability

A Probation Officer:

(1) Insert. Shall make investigations, reports and recommendations to the court that shall be used for the court its decision making process for supervision or disposition of delinquent children; neither the court nor probation officers shall allow a child to participate or give testimony as part of an investigation without the presence of an attorney and notification of counsel and a parent. Even where a parent is presence, no court or probation officer shall have a child to give a statement in an on-going investigation, or provide information that the court or probation officer knows will be used against the child in a delinquency proceeding. All recommendation reports and investigations conducted by probation officers shall be available to the child's parent, attorney or legal representative which includes a GAL.

(3) Amend: Shall supervise and assist a child placed on probation or in the protective supervision or care of such probation officer by order of the court or other authority; probation officers shall be responsible for preparing a treatment and rehabilitation plan for every child who is placed on probation; probation officer shall prepare a case plan that each child will follow while on probation and the probation officer shall work with the child toward fulfilling their treatment and/or rehabilitative plan.

(5). . . A probation officer shall not conduct an accusatory proceeding against a child who is or may be under such probation officer's care or supervision, this includes but is not limited to an administrative revocation of the child's probation or placement, questioning a child about an act that the child is accused of committing; advising the child to give a statement or testimony to an officer in an on-going investigation; or preparing any documents for admission of an offense.

Repeal: O.C.G.A. 15-11-24.3. Intake and Probation services of juvenile courts.

(1) Repeal
3(b) Repeal
3(c) Repeal
3(d) Repeal

JURISDICTION AND VENUE

First and foremost, Georgia must consider the national standards and cease from charging juveniles as adults. Juveniles are not and will never be adults.

As noted by Supreme Court Justice O'Connor

"… it is beyond cavil that juveniles are as a class generally less mature, less responsible and less fully informed than adults, and that these differences bear on juvenile's comparative moral culpability. ("There is no dispute that a defendant's youth is a relevant mitigating circumstance".) **Roper v. Simmons**, 543 U.S. _____ (2005)

Repeal: O.C.G.A. 15-11-28 Jurisdiction of juvenile court.

(a) Insert and Amend:

Jurisdiction. The court shall have jurisdiction over juvenile matters and shall not be the sole court for initiating actions; municipal courts shall determine whether they want to exercise jurisdiction over cases and controversies involving juveniles in delinquency and unruly matters that occur within the city limits.

(1) **Concerning any child** under the age of 18:

(2) *Involving any proceeding*:

2(E) The juvenile court and the municipal court shall have jurisdiction over actions brought by a local board of education pursuant to Code Section 20-2-766.1

(b) Repeal. *Criminal Jurisdiction*. SB440 - Children Charged as Adults.

(1) Amend: Juvenile court shall have exclusive jurisdiction over a child who is alleged to have committed a delinquent act which would be considered a crime if tried in superior court and for which the child may be punished by loss of life, imprisonment for life without the possibility of parole or confinement for life in a penal institution.

(2)(a) The juvenile court shall have exclusive jurisdiction over the trial of any child under the age of 18 who is alleged to have committed any of the following offenses:

(1) Murder;
(2) Voluntary Murder;
(3) Rape;
(4) Aggravated sodomy;
(5)Aggravated child molestation;
(6) Aggravated sexual battery, or;
(7) Armed robbery, if committed with a firearm.

(A.1) The granting of bail or pretrial release of a child charged with offenses enumerated in subparagraph (A) of this paragraph shall be governed by the provisions of Code Section 17-6-1.

(A.2) **Amend.** The court shall upon application by the child, defense or prosecutor, conduct a transfer hearing to transfer the case to superior court for all children 16 to 18 years of age. At the hearing, the state, and the defense may offer evidence to substantiate why the case **should or should not** be transferred to superior court for proceedings. The juvenile court shall through the same selection process used by the clerk of superior courts impanel a ***review panel/juvenile grand jury**[30] **however, this panel** shall include local citizens, mental health professionals, local school agency, Court Appointed Special Advocates, etc., to hear the case, and if it is determined that the case shall be transferred to the superior court, then the prosecutor after investigation and for extraordinary cause shall determine if the state desires to prosecute and sentence the child as an adult; or as a designated felon under O.C.G.A. 15-11-63.

(A.3) **Amend.** If it is determined that the juvenile court shall retain jurisdiction of the case, the juvenile court shall hold a trial and impanel a ***jury**[31] and the child may be sentenced either under the designated felony offense or sentenced to 21 years of age. The child shall be entitled to a case plan for treatment and rehabilitation during incarceration and upon release shall receive after-care treatment. The child shall be entitled to ***plea**[32] negotiations subject to an offer by the prosecutor. Children charged under this section are not entitled to the Pre-trial Diversion Program or Services. Children shall be able to move the court for change of venue as prescribed in O.C.G.A. 17-7-150. All children sentenced under this paragraph shall receive First Offender Treatment.

(B). **Amend.** Upon transferring the case to superior court, and before indictment, the district attorney may, after investigation and for extraordinary cause, still decline prosecution in the superior court of a child 16-18 years of age alleged to have committed an offense specified in subparagraph (A) of this paragraph. Upon declining to prosecute in superior court, the district attorney shall immediately cause a petition to be filed in the appropriate juvenile court pursuant to this subparagraph shall be subject to the designated felony provisions of Code Section 15-11-63 and the transfer of the case from superior court to juvenile court shall constitute notice to the child that such case is subject to the designated felony provisions of Code Section 15-11-63. The child or the defense may not request a transfer back to juvenile court before indictment. Once the panel has heard the evidence and information to substantiate that the child shall be charged in superior court. However, the child may appeal the decision of the panel before the court of appeals for cause.

(C) **Amend and Insert**. After indictment, the superior court, or defense attorney, may on its own motion or by application, may after investigation and for extraordinary cause transfer a case involving a child 16 to 18 years of age alleged to have committed any offense enumerated in subparagraph (A) of this paragraph. Any such transfer shall be

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[30] ***Review Panel**: Like a grand jury (O.C.G.A. 17-7-50)

[31] *Jury: A child shall be entitled to a jury for all offenses punishable by 6 months or more) See O.C.G.A. 15-12-40; O.C.G.A. 15-12-131-135; O.C.G.A. 15-12-164; O.C.G.A 15-12-162; and O.C.G.A. 15-12-170.

[32] ***Pleas**: O.C.G.A. 17-7-95, O.C.G.A. 17-7-111, O.C.G.A. 17-7-130, O.C.G.A. 17-7-130.1, and O.C.G.A. 17-7-131.

appealable by the State of Georgia pursuant to Code Section 5-7-1. Upon transfer by the superior court, jurisdiction shall vest in the juvenile court. Any case transferred by the superior court pursuant to this subparagraph shall be subject to the designated felony provisions of Code Section 15-11-63. A transfer shall serve as notice to the child that he will be charged under the designated felony status provision of O.C.G.A. 15-11-63 and, if the state does not appeal the transfer to juvenile court after indictment, the child shall not appeal the sentencing under the designated felony provision. All children sentenced under this paragraph shall receive "First Offender Treatment."

(D) **Amend and Insert.** The superior court may sentence any child under this offenses enumerated in subparagraph (A) of this paragraph under the designated felony provision and jurisdiction shall vest in the juvenile court.

(E) **Amend**: Within 30 days of any proceeding in which a child 16 to 18 years of age . . .

(F) **Create/Insert** The District Attorney may not prosecuted a child as an adult and then convict the child under the lesser included offense that is a designated felony offense under O.C.G.A. 15-11-63 unless disposition is transferred back to juvenile court or the child is placed in a juvenile facility. The District Attorney shall not convict a child under a designated felony offense as a lesser included offense when the child will have an adult felony record. All children convicted under these provisions shall be entitled to First Offender Treatment,

(G) **Create/Enact**: No child convicted in superior court shall be sentenced to serve their time in an adult facility; no child sentenced under these provisions shall be sentenced to life in prison or death.

(d) Age limit for new actions: Insert --- reached the **age of 18**

Amend/Insert: O.C.G.A. 15-11-30. Transfer to County of residence for disposition following adjudication as delinquent or unruly; retaining custody of nonresident.

(b) **Amend:** . . . At the time the court makes petition of a case, and before the adjudicatory proceeding, plea or admission phase of the case, the adjudicating court shall upon application of any party to the action, hold a transfer hearing to determine whether it is in the best interest of the child and the state to retain jurisdiction of the nonresident child. This hearing is to be recorded and the child may present evidence and supporting information. This hearing can be held in combination of the probable cause hearing. The court must decide at the conclusion of the hearing whether it will maintain jurisdiction. If it is decided that the court will retain jurisdiction, the adjudicating court will move forth with the proceedings as governed by statute. If it is decided that the adjudicating court will transfer the case, then the court shall do so within three business days from adjudicating the child. The child shall not be detained during the waiting period. Unless it is established that the child is a threat to society or himself.

COMMENCEMENT AND CONDUCT OF PROCEEDINGS

Amend/Insert: O.C.G.A. 15-11-37. Preliminary determination prerequisite to filing petition.

A petition alleging delinquency, deprivation, or unruliness of a child shall not be filed unless it is determined by the court or a person authorized by the court has determined and endorsed upon the petition that the filing of the petition is in the best interest of the public and the child; that the allegations require court intervention; that the court can provide care, guidance, and restore the child as prescribed in O.C.G.A. 15-11-1; that the court can provide treatment and rehabilitation for the child as prescribed in O.C.G.A. 15-11-66.; that the child cannot receive restoration, care, guidance, treatment, reanimation or supervision without court intervention and that all other remedies have been exercised and were otherwise unsuccessful. In the event that the allegations involve unruliness, parents shall be advised that the court will only intervene to provide services for the entire family and the parent bringing the child before the court shall also submit to a case plan of treatment and rehabilitation and avail themselves to court ordered counseling and services. If the school brought the matter before the court under 20-2-766.1, the school shall establish that it has exhausted all other school disciplinary remedies before involving the court.

Amend/Insert: O.C.G.A. 15-11-38. Petition

(1) Subject to Code Section 15-11-37, the petition alleging delinquency, deprivation or unruliness of a child may be made by any person, including a law enforcement officer, who has knowledge of the facts alleged or is informed and believes that they are true, provided that any person, including law enforcement who make petition to the court shall do so with the intent of seeking care, guidance, restoration, treatment, rehabilitation and supervision for the child or family; no one shall bring an action against a child who does not have firsthand knowledge of the same; and there shall be a statute of limitation on petitions of **unruliness, incorrigible,** that shall include that the acts alleged must be committed with 24 - 48 hours of making the petition; for delinquency, no school shall make allegations against a child resulting from incidents that occurred 3 days after the commission of the offense; the petition shall be filed and prosecution commenced with the three days following the offense.

(1.a) The petition shall be filed in writing and a signature bearing the date of the offense and the date of the filing of the petition which shall be **stamped filed by the court**. The parent, child, defense attorney and the prosecutor shall receive a copy of the stamped filed petition.

(2) Limitation on prosecutions _ generally

(a) Prosecutions for all **status offenses** shall be commenced within 2 days after the commission of the offense;

(b) Prosecutions for **misdemeanor offenses** shall be commenced within 3 days after the commission of the offense;

(c) Prosecutions for **felony** offense shall be commenced within five (5) days after the commission of the offense;
(d) Prosecutions for **designated felony** (O.C.G.A. 15-11-63 et seq.) offense shall be commenced within fifteen (15) days after the commission of the offense;
(e) A prosecution for offenses under **O.C.G.A. 15-11-28 et seq**. and those punishable by death or life imprisonment shall be commenced within one year after the commission of the crime, provided that prosecution for felonies against victims who are at the time of the commission of the offense under the age 10 must be commenced within six months after the commission of the crime; except for murder, including voluntary or involuntary, prosecution may commence at any time;
(f) A prosecution for the following offenses may be commenced within two years when deoxyribonucleic acid (DNA) evidence is used to establish the identity of the accused:

1. Rape - Code Section 16-6-1
2. Aggravated Child Molestation - Code Section 16-6-4
3. Aggravated Sodomy - Code 16-6-2
4. Aggravated Sexual Battery - Code Section 16-6-22.2;

Provided, however, that the child is still entitled to an effective defense and the evidence is preserved that includes any witnesses, and that a sufficient portion of the physical evidence tested for DNA is preserved and available for testing by the accused and provided, further, that if the DNA does not establish the identity of the accused, the limitation on prosecution shall be as provided in subsection

(2.a) there shall be a statute of limitation on petitions of **unruliness, incorrigible,** that shall include that the acts alleged must be committed with 24 - 48 hours of making the petition; for delinquency, no school shall make allegations or file a petition against a child resulting from incidents that occurred 3 days after the commission of the offense; the petition shall be filed and prosecution commenced within the three days following the offense. In other words, no school shall be entitled to raise allegations against a child based on incidents that occurred over a period exceeding three calendar days from the date of the offense. This includes its use as 'supporting evidence' to substantiate or aid in an offense.

Amend/Insert: O.C.G.A. 15-11-38.1. Contents of petition; verification.

The petition shall be verified and shall be on information known to be true and accurate by law enforcement and school personnel and business persons; and shall be on information and belief for all others. It shall set forth plainly:

(1) **Insert/Amend:** The specific facts which bring the child within the jurisdiction of the court. If deprived, delinquent or unruly allegations are raised, the court, school official, Department of Family and Children Services, The Department of Juvenile Justice, court in-take officer, and/or law enforcement shall specify with certainty the actual code of conduct that the child, person or family is alleged to violate and the actual Code Section under Georgia law that the child, person or family is alleged to violate. The petition

shall provide a statement that it is in the best interest of the child and public that the proceeding be brought and, if delinquent or unruly conduct is alleged , that the child is in need of supervision, treatment or rehabilitation, as the case may be; The schools shall attest that they have exhausted all remedies available to them under the law and under their school policies and procedures and shall attest that they are not using the juvenile court or court as its disciplinary arm. The petition shall serve as an indictment or presentment and shall set forth the violations of Georgia law that bring the child within the jurisdiction of the court. The district attorney shall approve or verify the petition and, the charges or allegations shall be the notice of charge against the child. The court shall use the petition as its only source of charges against the child and the state shall carry the burden of proving the allegations against the child, person or family, as set forth in the petition and if for delinquency or unruliness, the allegations must be proven beyond a reasonable doubt. The court shall not be authorized to adjudicate the child on a lesser included offense or on another offense where the state has failed to meet its burden on the charges in the petition. The petition shall alleged incidents or alleged violations of law that have occurred with a twenty-four hour period and no more than seventy-two hour period prior to the filing of the petition. If an incident occurred more than seventy-two hours prior to the filing of the petition, the person, entity or agency bringing the petition shall seek a written approval from the court and prosecutor to bring a child before the court. The application and approval shall set forth why there was a delay in bringing the matter before the court; what type of court intervention is sought; what mitigating measures were exercise to reach an amicable decision or agreement between the child and the petitioner, etc. These documents shall be made available to the defense attorney in defense of his/her client, child.

Create/Enact/Amend/Insert: O.C.G.A. 15-11-39. Time of hearing; summons, waiver of service of summons; judicial order to child's parents, guardian or custodian.

Create/Amend:

(a) After the petition has been filed the court shall set a hearing thereon, which if the child is taking into custody in compliance with O.C.G.A. 15-11-45 et seq. and O.C.G.A. 15-11-46 et seq as prescribed in this article; and a probable cause hearing is warranted, its shall be held within twenty-four (24) but no later than forty-eight hours (two calendar days) after the filing of the petition or arrest of the child. In accordance with O.C.G.A. 15-11-45 et seq. and O.C.G.A. 15-11-46 et seq, the child shall be entitled to a probable cause hearing within twenty-four but no more than forty-eight hours following arrest if detained on the weekend, otherwise, if the child is arrested during the weekday on an unruly, or misdemeanor offense, if committed by an adult, the child shall be released immediately to his parent by the court or law enforcement and shall await the filing of the petition in accordance with O.C.G.A. 15-11-38 and O.C.G.A. 15-11-.38.1 under this Article. If the child is released, the adjudication hearing shall be held within ten days of the alleged offense and filing of the petition. If the child cannot be released to their parent then the child shall be released to a shelter, but shall not be placed in a secured

detention which includes but is not limited to any facility or home where the child cannot move without restriction. Children who are charged with or who have committed an offense that would not be a crime if committed by an adult shall not be placed in secured detention, secured facilities or correctional families, and this is especially true of children who commit a status offense, truancy or runaways. This section will comply with federal statute as proscribed under 42 U.S.C. sec 5633 (a)(11)

(a.1) if the child is arrested or accused of committing a felony, if committed by an adult, the child shall be entitled to a probable cause hearing within forty-eight hours, if detained. The child shall be entitled to bond/bail as prescribed under this Article. Upon the initial arrest, the child shall not be detained and sent to a RYDC if the court is in session and the court of jurisdiction is open for business and the child is delivered or held in a cell at the court or police department. The child shall be brought before the court and not sent directly to the detention center or held at the juvenile court in a cell and then transferred to a RYDC. If the child is arrested and brought to the court, the court shall hold a hearing on **probable cause** or **bond** immediately following the arrest, every child shall be subject to a bond/bail hearing if a bail is not set by the court or at the jail as prescribed for adults. If the child is detained, the adjudication hearing shall be held within five to ten days of the alleged offense and filing of the petition. If the child is released, the adjudication hearing shall be held within twenty days of the alleged offense and filing of the petition on a felony offense.

(a.2) all children arrested shall be entitled to bail/bond and each circuit shall set a standard and uniform jail bond/arrest bond for all children based on their alleged offenses. The bail and bond amounts shall be available to the public, shall be available at the time of arrest and all detention centers holding children shall have access to the bond/bail amounts for each child. Bail and bonds hearings shall be in accordance with O.C.G.A. 17-6-1.

(a.3) All children detained awaiting probable cause hearings, adjudication or sentencing shall be entitled to credit for time served as prescribed in O.C.G.A. 17-10-11 and 17-10-12.

(b) **Insert.** . . . The summons shall be issued at least five (5) business days in advance of the scheduled hearing of probable cause also be directed t the child if he or she is 14 or more years of age or is alleged to be delinquent or unruly. The summons shall also be directed to the attorney for the child and shall be accompanied by a petition and a list of all witnesses and evidence that is in the possession of the court at the time of the filing of the petition. . . .

(d). The summons shall state that a party is entitled to counsel in the proceeding and shall state the name, address and telephone number of the circuit public defender's office and shall state that their office is available to provide legal services to all persons who are unable to secure private counsel due to financial hardship.

Insert/Amend. O.C.G.A. 15-11-40. Modification or vacation of orders; revocation;

petition; hearing and notice

(b) Amend. (Remove -- except an order committing a delinquent child to the Department of Juvenile Justice). . An order granting probation to a child found to be delinquent or unruly shall not be revoked without a hearing. An attorney for the child shall be presented to represent his interest. No revocation of probation shall occur absent a hearing and the court shall not enter an open order of probation that can subject a child to detention in lieu of a revocation hearing (*for example see O.C.G.A. 42-8-35 and 42-8-38)*

(c) Create . . . . . and the child shall be afforded a hearing with legal representation.

(d) Amend. After the petition is filed, the court shall hold a hearing within 24 hours after the alleged violation occurred if the child is detained subject to an arrest; if the child is brought before the court during business hours, and the court is in session and the child is brought to the court to be housed in one of its cells, the child shall be entitled to a hearing on the probation violation and an attorney from the office of the public defender is to be notified immediately of the hearing and afforded ample time to prepare for the case. The child shall be subject to immediate release if the violation is for a status offense or a misdemeanor.

(e) Create. No child shall be detained for violation of probation who has committed a status offense or a misdemeanor.

Amend/Insert. O.C.G.A. 15-11-41. Conduct of hearings generally; recordation; assistance from district attorney.

(a) Amend. All hearings involving a sentence punishable by detention of 2 months or more shall be conducted by the court with a review panel jury; for sentences of two months to six months, the child can waive his right to a trial by review panel jury. For all sentences punishable by six months or more, the child shall have a review panel jury that is not subject to waiver.

(a.1) Create/Enact: The court shall assign a different judge to conduct all detention and probable cause hearings. The judge who presides over adjudication and sentencing shall **not** be the same judge who presides over the probable cause, bond/bail or detention hearings. The chief judge shall assign an associate, pro tem or part-time judge to preside over each hearing. The rules of evidence shall apply to all hearings.

(b) Amend. All proceedings shall be recorded by stenographic notes or by electronic, mechanical, or other appropriate means. No proceedings which can result in the deprivation of life, liberty or property shall be waived.

ARREST AND DETENTION

Create/Amend/Insert. O.C.G.A. 15-11-45. Arrest; when child may be taken into custody; notification of district attorney.

(1) Arrest and Custody:

(a) Arrest of a child shall be defined as set out in Chapter 4 of Title 17, and Chapter 8 of Title 35.

(b) A child taken into the custody of law enforcement for a status offense, including an unruly offense or misdemeanor offense shall not be subject to handcuffing or shackling; further, such a child shall not be presented before the court in handcuffs or shackles.

(b.1) Female children accused of a delinquent or status offense shall be taken into custody and handled by female officers, only. No female child shall be arrested, searched or physically touched, in any way, by a male officer. This includes probation officer, law enforcement, school resource officer, school personnel, court officer, in-take officer, etc.

(c) A child taken into the custody of law enforcement for a felony offense under general offenses or a designated felony shall not be subject to handcuff or shackling unless he is, **at the time of arrest**, a threat to himself or third persons, further, the child shall not be brought before the court in handcuffs or shackles.

(d) A child shall not be arrested and detained by law enforcement, school resource officers and school personnel, probation officers, correction officers and/or in-take officers without a warrant from the court for any matters that did not occur within their immediate presence or within the officer immediate knowledge.

(e) Law enforcement, school resource officers and personnel, probation officers, correction officers and/or in-take officers who take a child into custody shall **immediately** notify the parents/guardian or an adult family representative of the child **and** the office of the public defender within the county or circuit of the court, or the child's family attorney, if the name of the person is available. If the child or family does not give the name of a private practitioner or firm for legal representation at the time of arrest, the office of the public defender is to be immediately notified and allowed to converse with the child via by telephone, video conference or in-person to advise of their rights and shall be authorized under the provision to delay questioning of the child until they either arrive to witness and participate in the questioning of the child, or until the child is transported to the police department or court. During such time, the child shall not be questioned or prompted to give responses to any information. The child shall not be questioned without an attorney present. Parents cannot waive their child's right to counsel but can request counsel for the child. An attorney shall not waive their child's right to counsel for questioning as a result of their inability to speak with the child about the subject of the arrest.

(f) A child shall be subject to Miranda Rights and shall not sign that they understand their rights unless an attorney is present to explain their legal rights; no child shall be asked to waive their right to legal representation without counsel explaining their legal rights that

include but are not limited to consequences of the arrest.

(g) No child taken into custody shall be asked to provide a written statement without first having the opportunity to speak with and be advised by counsel. Probation officers shall not assist law enforcement in securing statements or information from a child that is the subject of an arrest or an offense that occurred without first consulting with the child's attorney and without the attorney speaking with the child about the alleged incident or offenses that have or might subject them to arrest and conviction.

(h) All courts shall provide an area within the courthouse or court room for attorney-client contact; this includes but is not limited allowing attorneys' full access to the cells of clients who are held at the jail or courthouse. No attorney shall be denied access to meet one-one, and face-to-face with their client. All attorney-client visits and meetings shall be confidential and not subject to intervention by the court or the jail personnel, this includes but is not limited directing when and how the attorney can interview, question or visit with the client during normal court hours, or at any time that the child is in the custody of the jail or police department; attorneys shall be allowed to bring necessary writing instruments, recording equipment, paper, legal text, and other information warranted for the defense of their client. No visit or meeting between an attorney and client shall be subject to courtroom or jail monitoring.

(2) A child may be taken into custody subject to the provision set forth in paragraph (1) and the subsections:

(a) Pursuant to an order of the court under this section and article.

(3). When a child is taken into custody pursuant to this article has committed an act which would constitute a felony under the laws of this state if committed by an adult, the juvenile court, shall immediately, after it learns of the taking into custody, shall notify the district attorney or duly authorized assistant district attorney of the judicial circuit in which the juvenile proceeding are to be initiated. The district attorney shall immediately make a determination as to whether said child will be prosecuted as charged and a petition and shall be completed and served upon the child, their attorney and parent.

Create/Amend/Insert. O.C.G.A 15-11-46. When detention of a child permitted.

(1) Detention of a child prior to a probable cause, adjudication or disposition hearing shall not be permitted if the child has or is alleged to have committed a status offense or misdemeanor offense. A child shall be released according to the provisions set forth in O.C.G.A. 15-11-45 et seq and as follows:

(1.a) If the child cannot be released to their parent then the child shall be released to a shelter, but shall not be placed in a secured detention which includes but is not limited to any facility or home where the child cannot move without restriction. Children who are charged with or who have committed an offense that would **not** be a crime if committed

by an adult shall **not** be placed in secured detention, secured facilities or correctional facilities and this is especially true of children who commit a status offense, truancy or runaways. This section will comply with the federal statute as proscribed under 42 U.S.C. sec 5633 (a)(11).

(2) A child taken into custody for a status offense or misdemeanor shall automatically be entitled to release on their own recognizance into the custody of their parent, and if no parent, then an adult relative or family member. An officer shall not be precluded from transporting the child home or to their parent's place of business if the court where the child is detained will close prior to the parent's arrival.

(2a) A child taken into custody for a felony, if committed by an adult under the laws of this state, shall be entitled to pre set bond or bail. Alternatively, if the pre-set bond cannot be paid then a bond/bail hearing shall be held within **24-48 hours of the arrest**; the court shall also have set jail bonds that are available and published to the public and the child shall be subject to release if they pay the bail/bond; the court shall allow the child to be presented before the court on the day of arrest if court is in session during the hours of arrest. Bails and bond shall be set in accordance with O.C.G.A. 17-6-1 and Chapter 6 of Title 17. The court shall establish on the record why the liberty or freedom of a child should be restrained and be specific to make finding that the child is either a threat to himself or the community and shall make finding in accordance with O.C.G.A 17-6-1 et seq.

(3) If the child's detention or care is required to protect the person or property of others or of the child, the child may be placed in detention provided however, a hearing bond/bail and detention is held within 24 hour; a runaway shall not be placed in a RYDC, YDC or a correctional facility but shall be placed in a shelter if no shelter space is available, then the child shall be declared deprived and shall be immediately placed with a family member, church organization, relative or the custody of the Department of Family and Children Services shall secure housing for the child; a child who has no parent shall not be placed in a RYDC, YDC, or correctional facility and in this stance, law enforcement or the court shall contact The Department of Family and Children Services immediately upon in-take or arrest for a status offense. The child shall be placed in shelter care or with a family, friend or temporary foster care placement, but shall not be placed in a RYDC, YDC, or correctional facility.

(4) If a child may abscond or be removed from the jurisdiction or the court for a deprivation proceeding, the child shall be placed in shelter care or with a family, friend or temporary foster care placement, but shall not be placed in a RYDC, YDC, or correctional facility.

(4 a) If a child is subject to a delinquency charge and the court has made a finding that the child may abscond or be removed from the jurisdiction or the court, and the offense is a status offense or a misdemeanor, the court shall place the child in the custody of family, relative or church organization that will accept placement of the child.

(4 b) If a child is subject to a delinquency charge and the court has made a finding that the child may abscond or be removed from the jurisdiction or the court, and the offense is a felony, the court may place the child in detention for no more than 48 hours prior to holding a probable cause hearing; if the probable cause hearing is waived for cause and said cause is on the record, then the child must have an adjudication hearing held within 72 hours from the date of arrest. A continuance for cause may be request on Motion, said hearing shall be on the record within the 72 hour period. The child shall not be held more than five (5) days awaiting an adjudication hearing.

(5) All children are entitled to credit for time served awaiting detention, probable cause, adjudication and sentencing hearing; and any time for screening.

Create/Amend/Insert. O.C.G.A. 15-11-46.1. When interim control or detention of accused children permitted.

(a) As a matter of public policy no child shall be deprived of life, liberty or property, or have restrains on their freedom based on mere probable cause that he committed a status offense, or delinquent act. A hearing shall be held on the record to establish the findings of the court to have restraints on the child; the findings must establish that the interim control or detention is not to punish, treat or rehabilitate the child and that the child is a threat to himself and to others. No child who is a threat to himself shall be detained in a RYDC/YDC or correctional facility; instead the child shall be place in a medical facility for overnight observation; if a child is deemed a threat to others, he shall be placed in the least restrict environment that does not include a RYDC/YDC that can monitor his behavior, and as soon as it is determined that he is no longer a threat to others, he shall be released.

(d) **Repeal**

Create/Amend/Insert. O.C.G.A. 15-11-47. Procedure on taking child into custody; detention; bail; detention of child alleged to be unruly, runaway, drugs, or prostitution.

(1) In addition to the provision set forth in O.C.G.A. 15-11-39 et seq., O.C.G.A. 15-11-41 et seq, O.C.G.A. 15-11-45 et seq, O.C.G.A. 15-11-46 et seq, O.C.G.A. 15-11-46.1 and O.C.G.A. 15-11-48, the juvenile court shall abide as follows:

(2) Intake officers shall not determine if a child should be released, detained or brought before the court. All detention matters shall be brought before the court and said hearing shall be on the record and the court findings shall be in accordance with O.C.G.A. 15-11-39 et seq., O.C.G.A. 15-11-41 et seq, O.C.G.A. 15-11-45 et seq, O.C.G.A. 15-11-46 et seq, O.C.G.A. 15-11-46.1 and O.C.G.A. 15-11-48.

(3) Detention hearings shall not be informal, but shall be on the record with a finding of fact supported by law defining why the child should be detained. Detention hearings shall be held as prescribed in O.C.G.A. 15-11-39 et seq., O.C.G.A. 15-11-41 et seq,

O.C.G.A. 15-11-45 et seq, O.C.G.A. 15-11-46 et seq, O.C.G.A. 15-11-46.1 and O.C.G.A. 15-11-48.

(4) Bond and bail shall be in accordance with the provision set forth in O.C.G.A. 15-11-39 et seq., O.C.G.A. 15-11-41 et seq, O.C.G.A. 15-11-45 et seq., O.C.G.A. 15-11-46 et seq, O.C.G.A. 15-11-46.1 and O.C.G.A. 15-11-48.

(5) A child may only be questioned in the presence of an attorney and no court personnel shall question the child concerning the events that bring him before the court; no probation officer, law enforcement agent, school personnel, in-take officer, etc., shall question the child in the absence of an attorney. No parent shall waive their child's right to an attorney; no parent shall consent to their child being questioned by authorities after the child has been arrested or while in custody. No parent has the authority to waive any of their child's constructional protections.

Treatment of unruly children; status offenders; or child alleged to prostitute.

(1) With respect to a child suspected of being unruly as defined by paragraph (12) of Code Section 15-11-2 or a child who is in violation of a curfew, or status offenses, a person taking such a child into custody shall not exercise custody over the child by placing the child in a secured detention facility or secured facilities as prescribed by federal law 42 U.S.C. 5633 (a)(11); Any child who commits these offenses shall not be placed in a holding cell, handcuffed, or shackled. The child accused of these offenses shall be in a designated area of the court house or police department until their parents/guardian arrives and the child shall be released into their custody. If there is no parent/guardian, then the court shall adhere to the Codes O.C.G.A. 15-11-39 et seq., O.C.G.A. 15-11-41 et seq, O.C.G.A. 15-11-45 et seq., O.C.G.A. 15-11-46 et seq, O.C.G.A. 15-11-46.1 and O.C.G.A. 15-11-48.

(1.a) A child alleged to be in possession of drugs and/or alcohol shall be placed in a drug and alcohol treatment program through the court's drug court program or in a treatment facility and their addition shall not be criminalized. The court shall not displace the child due to their addition.

(2) If the child is suspected of being a prostitute, the child shall be treated as a deprived child **and** a runaway and shall not be detained, but shall immediately be placed in medical care and then shall be placed in an emergency shelter. The court shall find a non-secured, residential placement for treatment and rehabilitation services to assist the child in self-esteem, sexual education, and medical services for any possible diseases that includes blood testing and treatment; the child offense shall not be criminalized as an offense committed by an adult. The court shall contact the Department of Family and Children Services to locate parents, relatives, church organizations, if the child parents are not available.

Create/Amend/Insert. O.C.G.A. 15-11-48. Place of detention; allegation of

delinquency; allegation of deprivation; allegation of unruliness; allegation of prostitution; alleged capital offenders; notice to court by jail official; record of detention.

Every child brought before the court shall be placed in detention in accordance with O.C.G.A. 15-11-39 et seq., O.C.G.A. 15-11-41 et seq, O.C.G.A. 15-11-45 et seq., O.C.G.A. 15-11-46 et seq, and O.C.G.A. 15-11-46.1 and the provisions as set forth herein.

Amend/Insert:
(a) Allegations of delinquency. A child alleged to be delinquent shall be detained only in:

(1) A licensed foster home or home approved by the court which may be a public or private home or the home of the non-custodial parent or of a relative; the court shall seek placement with family and relative before using public or private placements options;
(2) A facility operated by a licensed child welfare agency; or

(3) A detention home or center for delinquent children which is under the correction or supervision of the court or other public authority or of a private agency approved by the court. A child alleged to be in possession of drugs and/or alcohol shall be placed in a drug and alcohol treatment program through the court's drug court program or in a treatment facility and their addition shall not be criminalized. The court shall not displace the child due to their addition. The court shall comply with the provisions set forth at Codes O.C.G.A. 15-11-39 et seq., O.C.G.A. 15-11-41 et seq, O.C.G.A. 15-11-45 et seq., O.C.G.A. 15-11-46 et seq, and O.C.G.A. 15-11-46.1 before exercising this option prior to disposition as prescribed in O.C.G.A. 15-11-65 et seq.; and O.C.G.A. 15-11-66, et seq.

Amend/Insert:

(b) **Allegations of deprivation**. A child alleged deprived shall be placed in a shelter care as prescribed in paragraphs (1) and (2), or in a shelter care facility operated by the Court. The actual physical placement of a child pursuant to this subsection shall require approval of the judge and a hearing on the record with a finding for displacement of the child before the juvenile judge or his/her designee.

(c) Allegation of unruliness: A child alleged unruly, status offense or to be or have engaged in prostitution who has not been released to medical care or to their parents from custody, shall be placed in shelter care as prescribed by paragraph (1) or (2) and shall otherwise be taking into custody and subject to detention as prescribed in O.C.G.A. 15-11-2 and O.C.G.A. 15-11-39 et seq., O.C.G.A. 15-11-41 et seq, O.C.G.A. 15-11-45 et seq., O.C.G.A. 15-11-46 et seq, and O.C.G.A. 15-11-46.1. In the event a child alleged to be unruly or has committed a status offense including prostitution, comes within the purview of the Interstate Compact on Juveniles and the proper authorities of a demanding state have made an official return request to the proper authorities of this state, the Interstate Compact on Juveniles shall apply to the child. Any child that falls

within the ambit of the Interstate Compact on Juveniles shall have her/his photograph and prints taken and the court shall secure the name of the transporting officer and agency along with a signed release indicating the date, time and location of pickup and transport for the child. The court shall confirm the arrival of the child to his/her destination and shall file proof of transport with the court and shall thereafter close the file. The court shall not release a female child into the custody of male transport officers with the parents or guardians present for transport.

(d) Allegation of capital or violent offense. For purposes of this section and as noted throughout this Article, a fist fight at school or other fighting without injuries shall not constitute "violent" within the ambit of this section. A child alleged to have committed an offense as defined by O.C.G.A. 15-11-28 et seq. shall be detained as proscribed in Codes O.C.G.A. 15-11-39 et seq., O.C.G.A. 15-11-41 et seq, O.C.G.A. 15-11-45 et seq., O.C.G.A. 15-11-46 et seq, and O.C.G.A. 15-11-46.1 and based upon the hearing and the findings of the court , shall be subject to the provisions that are set forth for detention in paragraph (1) through (3). The child shall not be placed in detention with adults and there will be interaction between a child and an adult offender.

(e) Insert. **Transfer following indictment**. *Following an indictment as prescribed in O.C.G.A. 15-11-28 et seq. . . . . under the age of 18 . . .under the age of 18 . . .*

Amend/Insert. O.C.G.A. 15-11-49. Formal Detention Hearing; Presentation of Petition; Scheduling of Hearings.

A through 4(e) shall be repealed.

(a) Detention hearings shall be formal proceedings held on record and every child shall be entitled to an attorney to make an appearance at the hearing. The court shall make a written finding of its decision to detain a child.
(a.1) The court shall not detained any child without following the Codes O.C.G.A. 15-11-39 et seq., O.C.G.A. 15-11-41 et seq, O.C.G.A. 15-11-45 et seq., O.C.G.A. 15-11-46 et seq, and O.C.G.A. 15-11-46.1 and O.C.G.A. 15-11-48.

(b) Any child released from detention shall be entitled to a hearing as prescribed

After the petition has been filed the court shall set a hearing thereon, which if the child is taking into custody in compliance with O.C.G.A. 15-11-45 et seq. and O.C.G.A. 15-11-46 et seq as prescribed in this article; and a probable cause hearing is warranted, its shall be held within **twenty-four (24) but no later than forty-eight hours** (two calendar days) after the filing of the petition or arrest of the child. In accordance with O.C.G.A. 15-11-45 et seq. and O.C.G.A. 15-11-46 et seq, the child shall be entitled to a probable cause hearing within **twenty-four but no more than forty-eight hours** following arrest if detained on the weekend, otherwise, if the child is arrested during the weekday on an unruly, or misdemeanor offense, if committed by an adult, the child shall be released immediately to his parent by the court or law enforcement and shall await the filing of the petition in accordance with O.C.G.A. 15-11-38 and O.C.G.A. 15-11-.38.1 under this

Article. If the child is released, the adjudication hearing shall be held within ten days of the alleged offense and filing of the petition. If the child cannot be released to their parent then the child shall be released to a shelter, but shall not be placed in a secured detention which includes but is not limited to any facility or home where the child cannot move without restriction. Children who are charged with or who have committed an offense that would not be a crime if committed by an adult shall not be placed in secured detention, secured facilities or correctional facilities, and this is especially true of children who commit a status offense, truancy or runaways. This section will comply with federal statute as proscribed under **42 U.S.C. sec 5633 (a)(11)**

(a.1) If the child is arrested or accused of committing a felony, if committed by an adult, the child shall be entitled to a probable cause hearing within **forty-eight hours**, if detained. The child shall be entitled to bond/bail as prescribed under this Article.

(b) If the child is deprived the court shall hold a detention hearing **within 24 - 48 hours** of the child being brought to the court and the deprived child shall not be subject to secured detention or a correctional facility while awaiting hearing.

(c) The Court shall provide notice of the hearing as soon as it is scheduled the parent**,** the child, the attorney for the child and the parent, if a deprivation case, shall be immediately notified at least 24 hours before the hearing. The court has an affirmed duty to call the parent and the child and their attorney, if delinquent, to call the Office of the Public Defender and advise of the hearing. The court shall not notify the OPD on the day of the hearing if the court scheduled it a day or so earlier. This shall not serve as ample or reasonable notice and the child shall automatically be entitled to release. The court's failure to provide ample and reasonable notice shall not result in the child's continued detainment. The court shall not issue oral notice without sending a written notice to the child, parent and attorney. In addition, where applicable, the probation officer shall hand-deliver the notice to the parent of the child if the child is already subject to supervision by the court. The officer shall get two points of contact for the parents of the child; this includes a telephone number, cellular number, place of employment and home address.
The court shall not appoint counsel to a case; the Office of the Public Defender shall qualify a child for services as per Chapter 12 of Title 17.

(d) The court shall adhere to the provision set forth in this Articles and Codes O.C.G.A. 15-11-39 et seq., O.C.G.A. 15-11-41 et seq, O.C.G.A. 15-11-45 et seq., O.C.G.A. 15-11-46 et seq,; O.C.G.A. 15-11-46.1 and O.C.G.A. 15-11-48.

Repeal: O.C.G.A. 15-11-49.1. When order for immediate custody authorized.

REPEAL this entire section, as other codes within this Article address when and how a child shall be taken into custody. *See, herein* O.C.G.A. 15-11-39 et seq., O.C.G.A. 15-11-41 et seq, O.C.G.A. 15-11-45 et seq., O.C.G.A. 15-11-46 et seq, and O.C.G.A. 15-11-46.1 and O.C.G.A. 15-11-48.

Amend/Insert. O.C.G.A. 15-11-50. Commitment of child to penal institution prohibited.

A child shall not be committed to a penal institution, this includes to the Department of Juvenile Justice Youth Development Centers, or other facility used primarily for the execution of sentences of persons convicted of a crime or offense. This section shall include direct commitment to the Department of Juvenile Justice Youth Development Centers via an order of commitment under O.C.G.A. 15-11-66 et seq., and 15-11-70 et seq., of any child adjudicated delinquent of a status offense, unruliness, runaway, prostitution, and/or all misdemeanors. This section shall also include a commitment to the Department of Juvenile Justice for felony offenses without specifying through a hearing that is on the record and as prescribed by O.C.G.A. 15-11-65, the exact treatment and rehabilitation the child shall receive. The court shall require a case plan for treatment and rehabilitation of all children proposed to be or commitment to the DJJ and this information shall be prepared and subject to cross examination under O.C.G.A. 15-11-65. The court shall make a finding of the exact treatment and rehabilitation that the child shall receive and the method of how such treatment and rehabilitation will be applied or used for that the child. Every child committed to the Department of Juvenile Justice under this section shall be required to receive an education and, if age-appropriate shall either complete a high school diploma or attain a G.E.D. or shall have course work assigned for the completion of either of these educational alternatives. DJJ shall be responsible for providing the court, the child's parent and attorney with documentation to substantiate that the child is receiving life skills training, academic and vocational training via a quality education and that the child has either sat for or is scheduled to sit for their G.E.D. or CRCT and SAT/ACT exams or vocational skills building exams, that include Civil Service Examination, etc., In addition, where warranted based on the offense the child shall receive and it shall be documented that substance abuse and violence prevention counseling services were provided to the child. This is mandatory and not optional. Every child is entitled to treatment and rehabilitation.

DELINQUENT AND UNRULY CHILDREN

Amend/Insert. O.C.G.A. 15-11-62. Commitment of child 15 to 18 years of age to custody of Department of Corrections; housing in designated youth confinement units; rights of department.

The Department shall comply with O.C.G.A. 49-4A-8 et seq; O.C.G.A. 49-4A-7 et seq, and O.C.G.A. 15-11-50 et seq. In addition, the rights of the department shall be:

Insert:
(a) A child 16 **to 18** years of age . . . . . that any child in the custody of the Department of Corrections shall be housed in a designated youth confinement unit until reaching the age of **18** . . . All designated youth confinement units shall provide to children 16 to 18 years of age who have been sentenced to such units . . .
(b)(4) The court shall have the right to determine the facility in which the child shall be defined to ensure that the child receives treatment and rehabilitation if the child is convicted as an adult but sentenced under the designated felony statute of the code O.C.G.A 15-11-63 et seq.

(5) **Amend**: . . . If the child is sentenced under the designated felony statute the parent shall be advised of any medical, hospital, psychiatric, surgical, or dental care that is non-emergency; and shall have the right if the child is **under 18 years** of age to consent or deny consent for any procedure or treatment.

Repeal-Strike/Amend/Insert. O.C.G.A. 15-11-63. Designated felony acts; definitions; restrictive custody disposition; notice to schools.

(a) (1) Strike/Repeal

(2) **Amend:** child age 16 to 18

(2) Insert: this provision shall apply to children ages 16 to 18; and shall not apply to children who use hunting gear with a licensed firearm holder or parent or guardian.

(2)(ii) **Strike:** battery against a school teacher or school personnel (16-5-23.1 allows adults to be subject to 1 - 5 years on either probation or incarceration, so is harsh and cruel to sentence a juvenile to the same under the DF policy)

(2)(iv). **Strike/Amend/Insert: The carrying or possession of a weapon shall fall within the ambit of this section as follows:**
A concealed weapon (gun, brass knuckles, knife with the blade 3 inches or longer, or double sided razor not encased for shaving) on school property. (Reference the misdemeanor offenses for weapons at O.C.G.A. 16-11-102, O.C.G.A. 16-11-126 and O.C.G.A. 16-11-132.)

(2)(v) **Insert**. Highjacking (carjacking) a motor vehicle with a firearm, knife, brass

knuckles, or other weapon other than by intimidation or sudden taking, if done by a child 16 or more years of age;

(2)(vi) **Amend** . . ., if done by a child 16 or more years of age;

(2)(vii) **Insert.** . . . has three times, on three separate occasion, not within the same transaction and that is subject to three separate convictions, previously been adjudicated delinquent for acts which done by an adult, would have been felonies. No court or prosecutor shall separate offenses to convict under this section; further, the court shall not sentence the child to a consecutive sentence based on one or more offenses within the petition.

(2)(x)**Amend** . . . relating to an escape by children ages 16 to 18 . . . An escape shall be defined for purposes of this section as an attempt to evade custody; the person must already be in custody and already subject to a sentence, not merely an arrest; the person must escape from confinement, the custody of a detention center; or jail. A child who leaves the custody of a private or public agencies, group home, residential care, shall not fall within the ambit of this code.

(c) **Repeal:** (Adults are not charged as a felon for O.C.G.A. 16-7-85, a Hoax is a misdemeanor unless there is a demand for money; 16-7-87 is also a misdemeanor unless there is an act of violence.

(c.1) **Amend/Insert**. Shall not be a felony unless the street gang engages in the commission of felony on behalf of the gang; or there is an act of violence or injuries committed on behalf of the gang. The court and prosecutor shall identified the actions of the person as gang affiliation; the mere assembly of a group of females and males in the absence of a showing of an act in furtherance of gang activity shall not constitute a street gang; the mere presence of a group of male and/or females at an affray shall not in and of itself constitute a street gang; the identification shall include a combination of codes, tagging, signs, and apparel.

(D) Constitutes an offense within the meaning of O.C.G.A. 15-11-28 or which if transferred to the juvenile court by the superior court or prosecutor for adjudication or sentencing pursuant to O.C.G.A. 15-11-28 et seq.

(E) Amend/Insert. Constitutes a second conviction under O.C.G.A. for theft of a motor vehicle with force or intimidation. This section does not apply to entering a motor vehicle as defined by O.C.G.A. 16-8-18.

(3) “Intensive supervision” means the monitoring of a child’s activities on a more frequent basis that shall include home, work and school visits, weekend and weekday visitation and monitoring.

(b) **Amend/Insert.** . . . The order of disposition shall be made within 10 days of the conclusion of the dispositional hearing, provided that an order for continuance is entered

by motion of either the prosecutor or the defense . . .

(c) In determining whether restrictive custody is required, the court shall consider:

(1.) **Create/Insert:** The needs and best interests of the child which shall include a case plan for the treatment and rehabilitation of the child as follows:

The court shall require a case plan for treatment and rehabilitation of all children proposed to be or committed to the DJJ and this information shall be prepared and subject to cross examination under O.C.G.A. 15-11-65. The court shall make a finding of the exact treatment and rehabilitation that the child shall receive and the method of how such treatment and rehabilitation will be applied or used for that the child. Every child committed to the Department of Juvenile Justice under this section shall be required to receive an education and, if age-appropriate shall either complete a high school diploma or attain a G.E.D. or shall have course work assigned for the completion of either of these educational alternatives. DJJ shall be responsible for providing the court, the child's parent and attorney with documentation to substantiate that the child is receiving life skills training, academic and vocational training via a quality education and that the child has either sat for or is scheduled to sit for their G.E.D. or CRCT and SAT/ACT exams or vocational skills building exams, that include Civil Service Examination, etc., In addition, where warranted based on the offense the child shall receive and it shall be documented that substance abuse and violence prevention counseling services were provided to the child. This is mandatory and not optional. Every child is entitled to treatment and rehabilitation.

(2) **Insert**. The record and background of the child: The court shall document in its findings all mitigating circumstances surrounding the offense and the life of the child.

(5) **Insert.** The age of the accused child at the time of the offense.

(e) **Insert/Amend**. When the order is for restrictive custody in the case of a child found to have committed a designated felony act:

(1) The order shall provide that:
(A) The court shall sentence the child into the custody of the Department of Juvenile Justice for treatment, rehabilitation and supervision under this section. The court shall determine the restrictive custody for the period of between one and five years. The Department of Juvenile Justice shall not have the authority to confine a child beyond the sentence of the order of the court.

(b) The court shall sentence the child and the child shall be confined for the period prescribed by the order of the court; the child shall be confined in a youth development center for the period set by the court; however, at the discretion of the court on its own motion or by motion of the prosecutor or defense, the court shall determine the place of confinement of the child which does not have to be in a designated youth development center or secured detention. If the court determines upon careful review and findings

that the child needs treatment and rehabilitation in a place other than a secured detention center, the court shall place the child accordingly.

(C) Create and Insert. The **Department of Juvenile Pardon and Parole** shall determine the after care of the child upon release; the DJPP shall determine when the child shall be released based upon the original sentence. The court shall sentence the child, however, JPP may determine that the child can be subject to an early release but shall not be empowered to extend the original sentence of confinement. Upon release, the child shall be placed on intensive supervision. "Intensive supervision" means the monitoring of a child's activities on a more frequent basis that shall include home, work and school visits, weekend and weekday visitation and monitoring. While on intensive supervision, the child shall receive vocational, life skills training, and educational services. The child shall not be released to an alternative school, but shall have the right to return to a traditional community school under charged as a sex offender or as an adult for murder, involuntary murder or voluntary murder.

(D) Repeal

(2) During the placement or any extension thereof:

(A) Repeal

(B) **Clarity** - "During the first six months of confinement in a youth development center, a child shall not be eligible for outside sponsored programs; but shall be entitled to all programs in cooperation and coordination with the DHR, DRS of the Department of Labor. . . "

(C) The child shall be discharged from the custody of the Department of Juvenile Justice upon a decision by the Juvenile Sentencing Review Board or the Department of Juvenile Pardon and Parole.

(D) The Department of Juvenile Justice shall report in writing to the Department of Juvenile Pardon and Parole and provide a copy of the report to the juvenile court and to the defense attorney, the status, adjustment and progress of the child

(3) Repeal

(f) Repeal

(g) **Repeal**: No extension of a sentencing order shall be extended after the child has completed his term of confinement under the sentence. No one shall be empowered to extend a sentencing order or confinement beyond the periods specified by the **court** within the order. Further, no child shall be sentence beyond the terms of the sentencing guidelines for the offense charged and convicted.

(h) Upon successful completion of their sentence, no child shall be required to report to

any school district that they were confined or under a sentence of the court unless said child was convicted of murder or a sex offense under 15-11-28 et seq. Neither the court nor the Department of Corrections or the Department of Juvenile Justice shall report to any school that a child was confined. This shall apply to this code section and the Article.

Amend/Insert. O.C.G.A. 15-11-64. First proceeding against runaway, incorrigible, ungovernable, unruly shall be automatically dismissed by the court

Any proceeding or other processes or actions relating to a child in which the sole allegation is that the child committed a status offense of either runaway (desertion without cause), incorrigible, ungovernable, or unruly it the petition was brought before the court by the parent, shall be automatically dismissed by the court after consulting with the parent and child. This shall not preclude a parent from having the right to dismiss or withdraw a petition for any of these offenses in the future. This section shall not apply to informal adjustments. The informal adjustment shall be a different remedy available under this Article.

Amend/Insert. O.C.G.A. 15-11-64.1. Representation by district attorney, public defender or defense counsel or Guardian ad litem or Court Appointed Special Advocate.

Amend/Insert . . . "the district attorney or member of the solicitor or the district attorney's staff shall conduct all the proceedings of the state. The juvenile court shall not conduct proceedings without the district attorney, its staff or agents, or the solicitor office. The solicitor or district attorney shall conduct all proceedings for misdemeanors or felony offenses including all probation revocation hearings. . . . the district attorney, public defender, defense counsel, Guardian ad lietm and the Court Appointed Special Advocate shall be entitled to complete access to all court files, probation files, transcripts, delinquency reports . . .Once a petition is filed, it shall be subject to dismissal upon a motion by either the district attorney or the defense counsel or public defender representing the child. The court shall dismiss an action where it is established upon hearing or review that there is insufficient evidence to warrant further conduct of the proceeding.

Amend/Insert. O.C.G.A. 15-11-64.2. Victim impact statements in delinquency proceedings.

Correction misquote in the current legislation/statute:

Currently states:
(1) The allegedly delinquent child, in conduct which would constitute a felony if committed by an adult, caused physical, psychological, or economic injury to the victim; or;
(2) The allegedly delinquent child, in conduct which would constitute a misdemeanor

committed by an adult, caused serious physical injury or death to the victim.

This code section is misstated, and legally incorrect, because the felony causes the serious physical injury or death; and the misdemeanor would generally cause economic lost, at any rate, AAJJP has revised this section as follows:

Amend/Insert:
(A)

1) A child alleged to be delinquent, by a allegedly committing an act that would constitute a misdemeanor or felony, if committed by an adult, and that causes or caused physical, psychological, or economic injury to the victim; or serious physical injury or death to the victim.

(2) Strike

Amend/Insert:
(b) A victim impact statement submitted by a victim shall be attached to the case file and may be used by the district attorney during the adjudication and disposition of the case; and shall only be considered by the judge after adjudication of the case against a child involving determination of restitution. The defense attorney shall be provided with the victim impact statement at the time the petition is filed, or before the adjudication hearing and the victim shall be subject to cross examination based on the statement. The defense shall use the victim impact statement throughout the proceedings. Restitution shall be order only upon the written findings as prescribed in O.C.G.A. 17-14-10 and shall be made on the record.

Insert:
(c) (2.a) The victim shall provide proof of any alleged economic loss; this includes receipts, names and addresses of providers of services and actual payment of services rendered. If an estimate is provided, the accused shall be able to produce an estimate for the same services at a service provider within the jurisdiction of the court.

Amend/Insert:

(e) . . . The court shall provide the child and his defense attorney with a copy of the victim impact statement as soon as the court receives a copy in its file, it is to be stamped filed with the court and a copy sent directly to counsel for the child, The defense attorney shall be provided with the victim impact statement at the time the petition is filed, or before the adjudication hearing and the victim shall be subject to cross examination and rebut by the child or defense counsel. The defense shall use the victim impact statement throughout the proceedings.

Amend/Insert:
(f) . . . In the absence of complying with 2(b)(c)(c.1)(d) or (e) the court shall not allow testimony nor consider the victim statement at any stage of the proceedings and the child

shall not be ordered to pay restitution for any alleged losses.

Amend/Insert: O.C.G.A. 15-11-65. Dispositional hearing for delinquent or unruly child; evidence in proceedings; continuances and scheduling

Insert (a) . . . . Before the scheduling of trial the court shall ask the state and defense when to conduct the disposition hearing and shall not immediately proceed with a disposition hearing following an adjudication hearing. The state and defense shall be entitled to prepare for cross examination, presentment of evidence and witness at the dispositional hearing. If the child is detained, the court shall commence with a dispositional hearing within 10 days following the adjudication hearing for a felony and within 5 days for a misdemeanor hearing. The child shall be entitled to credit for time served for every day spent in detention from the time of arrest to the date of sentencing and for screening if required for placement. The court shall make a written finding as to why the child shall be detained subject to sentencing. The court shall comply with the detention guidelines in this Article.

Insert (a.1) When the court finds that the child is in need of treatment, and rehabilitation proscribed by O.C.G.A. 15-11-66 et seq., the court has an affirmative duty and shall prepare a case plan for treatment, and rehabilitation. The court shall not find that the child is in need of supervision but not treatment and rehabilitation. During the 10 days before sentencing and final disposition of the case, the court shall prepare a case plan and a strategy for addressing each goal. The plan shall consist of input from all of the participants in the treatment, rehabilitation and supervision of the child and shall be similar in nature to the format of an IEP (Individual Educational Program). The court shall make a written finding of the specific treatment, and rehabilitation required for the child. The court shall file the case plan and shall provide the child, parent and defense counsel with a copy of the plan of action to be used in making the final decision for sentencing. If it is established that the child cannot or will not receive the treatment, and rehabilitation as outlined in the case plan, the child shall not be sentenced and the petition shall be dismissed. If it is determined that the child is not in need of treatment, and rehabilitation, the petition shall be dismissed.

(c) The court shall not own its own motion continue the disposition hearing without a written finding of good cause; if the court continues the case, the shall automatically released, if detained, subject to the continuance for all status and misdemeanor offenses. The state or defense may agree on a continuance. The court shall make a finding and an order for release of the child from detention and if necessary, subject to supervision of the court.

Create/Amend/Insert: O.C.G.A. 15-11-66. Disposition of delinquent child

Create/Amend/Insert
(a) At the conclusion of the dispositional hearing provided in s in O.C.G.A. 15-11-65 et seq., if the child is found to have committed a delinquent act and is subsequently

determined to be in need of treatment or rehabilitation, the court shall make one of the following orders of disposition best suited to the child's treatment, rehabilitation and welfare, but court shall not engage in consecutive sentencing for each offense and shall sentence the child according to following:

The court shall sentence the child in accordance with the sentencing guidelines and according to the law for the offense which the child is found delinquent. When the court finds that the child is in need of treatment, and rehabilitation the court has an affirmative duty and shall prepare a case plan for treatment and, rehabilitation. The court shall not find that the child is in need of supervision but not treatment and rehabilitation. During the 10 days before sentencing and final disposition of the case, the court shall prepare a case plan and a strategy for addressing each goal. The plan shall consist of input from all of the participants in the treatment, and rehabilitation of the child and shall be similar in nature to the format of an IEP (Individual Educational Program). The court shall make a written finding of the specific treatment and rehabilitation required for the child. The court shall file the case plan and shall provide the child, parent and defense counsel with a copy of the plan of action to be used in making the final decision for sentencing. If it is established that the child cannot or will not receive the treatment, and rehabilitation as outlined in the case plan, the child shall not be sentenced and the petition shall be dismissed. If it is determined that the child is not in need of treatment and rehabilitation the petition shall be dismissed.

The court shall not be authorized, as a form of disposition under the section or Article for any offense including probation, to give or enter an "open-order" that will subject a child to discipline in the near future.. The court is not authorized to issue an abeyance order, it shall be invalid.

(a)(1) Any order authorized by Code Section 15-11-55 for the disposition of a deprived child;

(a)(2) **Insert/Amend**. An order pacing the child on probation under conditions and limitation the court prescribes which shall include a case plan for treatment and rehabilitation; under the supervision of:

(a)(2)(d**) Insert from (6)** An order requiring that the child perform community service in a court approved program that shall be reviewed by the defense attorney upon request and that is otherwise in a manner prescribed by the court and under the supervision of an individual designated by the court.

(a)(2)(e) **Insert from (2)(c):** Every child placed on probation shall be required to achieve his course credit hours, and if in H.S., a high school diploma while on probation and the court and probation services shall provide vocational, life skills training and educational services. The court and probation services shall provide tutoring or assistance with the local school or a program for all students on probation and, those in H.S. or G.E.D., If a child already has his H.S. or G.E.D, the probation officers shall provide guidance and information and shall assist the child in a vocational or collegiate program this includes

preparation, and enrollment into the program.

((a)(3) **Insert/Amend**. An order placing a child in an institution, camp or other facility for delinquent children under the direction of the court or other local public authority shall comply and adhere to the treatment and rehabilitation case plan for the child and the sentencing guidelines. The court shall not place an unruly, status offender or juvenile prostitute in a secured detention, institution, camp or other facility for delinquent children. The court shall and the Department of Juvenile Justice shall adhere to placement of non-violent and violent offender (A school fist fight shall not constitute a violent offense if it is an A-typical school fight not having any serious injuries or involving a weapon).

(a)(4) **Create/Insert/Amend**. An order committing the child to the Department of Juvenile Justice shall be invalid if the child is a status offender, runaway, unruly, juvenile prostitute or male or female accused of engaging in consensual sex; or, a non-violent offender who committed a misdemeanor, including an A-typical school fight. A child committed to the department shall be committed with a case plan that shall clearly define treatment and rehabilitation plan and strategy. No child shall be committed to an YDC under a commitment order in violation of the sentencing guidelines and the treatment and rehabilitation case plan or as stated herein. The department shall not have the right to violate an order of the court and place a child in an YDC. Every child committed to the Department of Juvenile Justice under this section shall be required to receive an education that includes special education and an IEP and their parents shall be part of the IEP planning and team if under 21 years of age and are special education students and, a child shall, if age-appropriate shall either complete a high school diploma or attain a G.E.D. or shall have course work assigned for the completion of either of these educational alternatives. DJJ shall be responsible for providing the court, the child's parent and attorney with documentation to substantiate that the child is receiving life skills training, academic and vocational training via a quality education and that the child has either sat for or is scheduled to sit for their G.E.D. or CRCT and SAT/ACT exams or vocational skills building exams, that include Civil Service Examination, etc., In addition, where warranted based on the offense the child shall receive and it shall be documented that substance abuse and violence prevention counseling services were provided to the child. This is mandatory and not optional. Every child is entitled to treatment and rehabilitation.

(a)(5) **Insert/Repeal**. An order of restitution shall be in compliance with O.C.G.A. 17-14-10; the Department of Juvenile Justice shall not require the payment of restitution, however, the Department of Juvenile Pardon and Parole and the Department of Juvenile State Probation shall require remittance of restitution. No child shall be detained for their failure to pay restitution.

(a)(6) Repeal: (Added under probation)

(2) Repeal

(2)(c) Insert under probation

Traffic Offenses

Create/Enact: If the child is alleged to be driving under the influence of alcohol or a substance, which is in addition to their traffic offense, their license shall automatically be suspended for a period of three month not to exceed 12 months. If while under suspension, the child commits a second offense, their driving privileges shall be revoked until they are eighteen and only at that age upon proof of satisfactory completion of substance abuse treatment and driving education course. The child shall be entitled to a permit for the initial six months and if driving without incident shall be entitled to full driving privileges. The Department of Motor Vehicle and Public Safety shall govern this information in their files to follow the child if he shall move out of state or use another identification number to secure a license.

Amend/Insert. O.C.G.A. 15-11-66.1 Adjudication; Disposition of child committing delinquent act constituting AIDS transmittal crime; submission of HIV test; report of results

Unconstitutional as written and it violates due process because under the current law, the child is adjudged delinquent without proof of having AIDS. The test is requested 45 days after he is adjudged delinquent.

(b) **Insert/Amend**. . . . The court shall not adjudicate a child delinquent for committing a delinquent act constituting AIDS transmittal if the court does not have evidence before the court at the time of adjudication that the child has AIDS and infected another person with AIDS. No child shall be forced to submit a blood test to incriminate him/herself to have AIDS if there is no other evidence before the court that the child infected a third person. Mere speculation alone shall not constitute evidence and circumstantial evidence shall not be considered to make a child give blood to test for AIDS. The court shall require the sworn testimony on the record, of a person or persons who alleged or believe that they received AIDS or HIV from the child to substantiate probable cause for the child to submit to an AIDS/HIV test. The person shall be subject to cross examination and the person making the claim shall subject themselves to testing to prove that they have AIDS/HIV before making an accused give a blood, hair, salvia or other bodily fluid sample to test for AIDS/HIV. The child shall have every right to decline to give blood to prove that he committed the offense. The child's 5th Amendment right against self-incrimination shall be honored, but the court shall determine whether the child shall provide blood. Upon a written finding that the child is believed to have AIDS/HIV and is intentionally and knowingly transmitting the disease, the child shall be adjudged delinquent.

(c) **Repeal**

Insert/Amend. O.C.G.A. 15-11-67. Disposition of unruly child.

If the child is found to be unruly, the court shall make disposition as authorized in O.C.G.A. 15-11-66 except that such child shall not be committed to the Department of Juvenile Justice and shall not be displaced from their home; shall not be placed in a secured detention or any "institution, camp, and/or in a *program* where their movement is subject to restriction. The court shall also use O.C.G.A 15-11-45; O.C.G.A. 15-1146; O.C.G.A. 15-11-47; and O.C.G.A. 15-11-48 as their guide.

Insert/Amend. O.C.G.A. 15-11-68.1 Orders of Counseling; Violation of Orders

No child or parent shall be detained for failure to participate in counseling under section O.C.G.A. 15-11-68. The court shall provide defense counsel with his written findings as to why counseling his necessary for the treatment and rehabilitation of the child or parent. The child and parent shall be able to secure their own counselor at the expense of the court, if indigent, and shall not be required to use the court's counselor with consideration in the same text as prescribed in O.C.G.A. 15-11-46.1 (e) (1) through (7).

Insert/Amend. O.C.G.A. 15-11-69 Informal adjustment; counsel and advice; time limit; use of incriminating statements.

(a) **Insert/Amend**. Before a petition is filed, every first offense shall be informally adjusted provided the first offense is a status offense and/or a misdemeanor that is non-violent (a school fight without serious injuries or a weapon does not constitute violent for purposes of this section.) The court shall not prevent a case from being informally adjusted that falls within the ambit of this provision and the court intake officer or district attorney shall not charge a child with a felony when a lesser included offense is a misdemeanor for the same elements of the case before the court. The court shall not counsel or give advice to the parties wait a view to an information adjustment. An attorney shall review the informal adjustment to the child and a copy of the informal adjustment shall be made part of the case file, but not the child's permanent court record and the arrest shall be expunged and the fingerprints shall be removed from any and all reporting agencies and law enforcement files. The court shall not assess any fees for informally adjusting a case; neither shall the court assess a "supervision or counseling fee."

Insert/Amend

(1) The child shall not be asked to admit to any facts that bring the case within the jurisdiction of the court; the child shall not be required to give a oral or written statement of the facts that bring them before the court; Neither the child nor their parents shall be required to admit or consent to an informal adjustment. An informal adjustment shall be offered to every child who falls within the ambit of paragraph of (a) of this section.

Insert/Amend

(b) The child shall not be subject to any counseling or program for any period of time after agreeing to an informal adjustment. The purpose of the informal adjustment is to

allow the child an opportunity to understand their actions and shall not serve as a form of probation or court supervision. Once the informal adjustment is agreed upon, the matter bringing the child before the court shall be closed.

Insert/Amend

(c) No person shall give counsel or advice to a child other than their attorney. Any statement procured by court personnel under this section shall constitute a violation of the child's right against self-incrimination; said statement shall not be used against the child in any hearing; legal proceeding now or in the future and shall not be used in any civil, criminal or juvenile proceeding.

Insert

(d) In addition to what is prescribed in this section, ...

Create/Enact: O.C.G.A. 15-11-69.1. The Juvenile Court School Mediation and Mediation Program

Construction and Purpose:
Each juvenile court shall create a Juvenile Court School Mediation and Mediation program for all status and misdemeanor offenses. The enactment of mediation shall be mandatory for all non-violent misdemeanor offenses including school fights that do not involve serious injury. The mediation can, at the district attorneys discretion be used for felony thefts if the child can and will meet restitution as part of the mediation or for other reasons as per the state. No child who enters into mediation shall be subject to detention as a form of disposition this includes but is not limited to failure to repay restitution.

Mediation shall be provided for all other status offenses including runaways; unruliness and prostitution. Juvenile prostitution shall not be considered a crime if committed by an adult. The mediator shall engage DFCS, Court Personnel, Mental Health services, Medical services and other services to aid juvenile prostitutes. No juvenile prostitute shall be incarcerated or placed in secure detention. Secure detention includes an environment that restricts or prohibits free movement.

All school related incidents that include status offenses and misdemeanors shall be first subject to mediation at the Juvenile Court. The school shall provided documentation to the court to be made part of the case file when the petition is filed, that they have exhausted all school disciplinary remedies. Remedies for purpose of this section shall mean parent-teacher meetings, school conferences, suspensions, warning and after school detention. Prior court mediation shall not preclude additional mediation services to resolve status offenses and misdemeanor allegations that include fist fighting at school; truancy/cutting class, allegations of misbehavior that interferes with classroom performance. Mediators shall work to resolve the matters and shall not prescribe displacement or detention for any child.

The court shall have a truancy intervention program either adopted within their mediation program, pretrial diversion program or a court approved program via the Truancy Intervention Project (T.I.P.) through the State Bar of Georgia

Create/Enact: O.C.G.A. 15-11-69.2. Juvenile Pretrial Intervention and Diversion Program (For adults O.C.G.A. *15-18-80.)*

(a) The prosecuting attorneys for juveniles for each judicial circuit of this state shall be authorized to create and administer a Pretrial Intervention and Diversion Program.
(b) It shall be the purpose of such a program to provide an alternative to prosecuting juvenile offenders in the criminal justice system.
(c) Entry into the program shall be at the discretion of the prosecuting attorney based upon written guidelines that shall be made available to the court and the office of the public defenders within the circuit and anyone who request a copy of the guidelines.
(d) The prosecuting attorney implementing said program shall create written guidelines for acceptance into and administration of the program. These guidelines shall include but are not limited to, consideration of the following:

1. The age of the offender
2. The juvenile record of the offender
3. Mitigating circumstances
4. The nature of the offense
5. The notification and response of the victim (victim for this section shall not be an entity or school, but rather an individual)

(e) Designated Felony and O.C.G.A. 15-11-28 offenses do not qualify for Pretrial Intervention and Diversion Program.
(f) The prosecuting attorney shall collect restitution through this program and payment shall be made to the Clerk of Court
(g) The defense attorney shall motion the court or by application request from the prosecutor for their client to be admitted into the PIDP.
(h) Each judicial circuit shall maintain data based on race, age, gender and socio-economic status of all persons admitted into the program

Create/Enact: O.C.G.A. 15-11-69.3. The Juvenile Drug Court Program

(a) The prosecuting attorneys for juveniles for each judicial circuit of this state shall be authorized to create and administer a Juvenile Drug Court Program
(b) It shall be the purpose of such a program to provide an alternative to prosecuting juvenile offenders in the criminal justice system that has substance or alcohol abuse problems
(c) Entry into the program shall be based upon written guidelines that shall be made available to the court and the office of the public defenders within the circuit and anyone who request a copy of the guidelines and shall be open to all children who have addictions and are arrested for possession or for engaging in acts to support a substance or alcohol problem, entry into the program shall be a joint decision of the prosecuting attorney , juvenile defense attorney, public defender, a mental health and substance abuse

counselor, and a social worker, no judge shall be a part of the panel and the judge shall not have access to the files of the child's addiction, statements, treatment history, etc.,
(d) The prosecuting attorney implementing said program shall create written guidelines for acceptance into and administration of the program. These guidelines shall include but are not limited to, consideration of the following:

1. The age of the offender
2. The juvenile record of the offender
3. Mitigating circumstances
4. The nature of the offense
5. A drug court agreement that prescribes the terms and condition of the program which shall be age-appropriate agreements that keep in mind that the child shall rely on parents for transportation to meeting and programs and services
6. No child shall be denied entrance into the program if they were arrested for possession of a drug or alcohol. No child shall be denied entrance into the program based on any alleged criminality.
7. The child and parent shall agree to participate in juvenile type AA/NA meetings
8. The child shall agree to submit to random drug testing.
9. The child shall agree to be in the program for a term of no more than three months and depending upon the addiction, shall have a 24 - 72 hour detox, followed by outpatient counseling, and treatment. No child shall be forced medicated as part of the program and shall be able to decline any prescribed medication to allegedly assist in reducing their desire to use drugs or alcohol
10. The child shall not be sanctioned to detention for failing a blood, urine, hair, salvia or drug test. Community service shall be permissible; counseling (each participant can choose if they want faith based counseling in lieu of traditional counseling), etc.
11. Every child shall be assigned a counselor for outreach and contact who they may discuss in privacy some of their issues or concerns that have led to their substance or alcohol abuse

12..No child shall be forced to participate in this program
e) Designated Felony and O.C.G.A. 15-11-28 offenses do not qualify for Pretrial Intervention and Diversion Program.
(f) The prosecuting attorney shall collect restitution through this program and payment shall be made to the Clerk of Court
(g) The defense attorney shall motion the court or by application request from the prosecutor for their client to be admitted into the PIDP.
(h) Each judicial circuit shall maintain data based on race, age, gender and socio-economic status of all persons admitted into the program

Repeal, Amend and Insert:

O.C.G.A. *§* 15-11-70. Duration and termination of orders of disposition for delinquent or unruly children; extensions

(a) An order of disposition committing a delinquent child to the Department of Juvenile Justice shall not be extended. The original order shall serve as binding upon the court and the Department of Juvenile Justice. The court or Department of Juvenile Pardon and Parole and Sentencing Review Board shall be able to terminate an order or

commitment order.
(c) . . . The court that made the order of commitment shall not extend the duration of its order once the order of sentencing is enter. The order shall stand as a final judgment and may not be modified to extend or shortened the sentence of a child. The original sentence shall be within the ambit of the sentencing guidelines for the offense.

(d) The court shall not extend or shorten an order of disposition of a child adjudicated as delinquent or unruly.

(d.1) Create/Insert. No child shall be ordered to serve a probated sentence or commitment to the Department of Juvenile Justice or Department of Corrections or program or services beyond the duration of the sentencing guidelines for that offense. The court shall not order an extension of the original sentence. If the child committed a new offense, the child may be revoked from probation, but the original sentence may not be extended. The court shall not extend an order of restitution and keep a child under court order or supervision for failure to pay restitution, it is peonage, if it is determined that the child cannot afford to pay restitution. The court shall not extend an original sentence. The child shall not be revoked and re-sentence for the same transaction. The court shall adhere to the restitution guidelines set forth in Chapter 14 of Title 17.

Cross-reference *§* 49-4A-8 with *§* 15-11-70

Insert/Amend. O.C.G.A. 15-11-71. Supervision fees.

(a) **Strike/Amend/Insert.** The purpose of this Code section is to allow the juvenile courts of Georgia to collect supervision fess from those who are placed under the court's formal (**Strike. Informal**) supervision in order that the court **shall** use those fees to provide court services; every court shall be subject to account for the funds that they collect and for the court services that they provide to the children under the court supervision and program; the provision of the following types of services shall be provided and shall be paid for with supervision fees and other funding as provided to the court:

(b**)Insert**. The court shall neither order an indigent child who cannot pay supervision fees to remit payment, nor subject the child to detention for failure to pay; the court shall have a written guide for supervision fees that is available for public review and provided to the Office of the Public Defender and District Attorney Office within their court jurisdiction;
(1) The court shall **not** collect or require an initial court supervision fee
(2) The supervision fee shall be income contingent based on the income of the parent of the child
(3) A court supervision user's fee of not less than $2.00 and no more than $25.00 per month for each month that the child receives supervision.

Amend/Insert . . . These funds shall be administered by the juvenile court and the county and shall be maintained in a juvenile court fund, and the court shall draw upon them to finance these programs and services by submitting an invoice to the county.

Amend/Insert. O.C.G.A. 15-11-72. Nature and effect of adjudication

Insert: The taking of a child into custody by law enforcement. School personnel, etc., an order of disposition or other adjudication in a proceeding under this article is not an arrest for purposes of criminal proceedings, or conviction of a crime; children, under the age of 18 who are taking into custody and/or arrested shall not be subject to fingerprinting or photographs by local law enforcement; their arrest shall not be part of the Georgia Crime Information Center or National Crime Information Center database. A proceeding under this article does not impose any civil disability ordinarily resulting from a conviction nor operate to disqualify the child in any civil service application, military or appointment. No child shall be required to report to anyone that he has or was arrested or convicted of a crime; no child shall be required to advise a school of their disposition; no court shall have access to a child's juvenile record to review or verify their arrest or adjudication history; the court shall never use the terms guilty in its adjudication order or pronouncement of adjudication; court personnel not identify the child as having committed a felony or misdemeanor.

Amend/Insert. O.C.G.A. 15-11-73. Juvenile Traffic offenses; definition; procedure and hearing; disposition; transfer to delinquency calendar; reporting procedure

(a) Insert. . . Definition: Child under the age of 18

(g) Disposition: Insert . . . The court shall make a written finding of that disposition will be in accordance with O.C.G.A. 15-11-66 guidelines for treatment and rehabilitation.

(2) **Repeal**: (Clearly has disparity impact)

(3**) Insert.** . . **Create/Enact:** If the child alleged to be driving under the influence of alcohol or substance, which is in addition to their traffic offense, their license shall automatically be suspended for a period of three month not to exceed 12 months. If while under suspension, the child commits a second offense, their driving privileges shall be revoked until they are eighteen and only at that age upon proof of satisfactory completion of substance abuse treatment and driving education course. The child shall be entitled to a permit for the initial six months and if driving without incident shall be entitled to full driving privileges. The Department of Motor Vehicle and Public Safety shall govern this information in their files to follow the child if he shall move out of state or use another identification number to secure a license.

(4) . . . To remit to the general fund of the county a sum based on an income contingent for all children; the sum not to exceed $100.00.

(6) The court shall not commit a child with a traffic offense under this section to the Department of Juvenile Justice, to a camp, institution, or secured detention, unless the child has committed his second driving under the influence or driving without a license offense that is not under theft of motor vehicle or other offenses involving motor

vehicles.

Amend/Insert. O.C.G.A. 15-11-75. Request for discovery; reciprocal discovery; timing or response; alibi; orders; failure to comply; discretion; confidentiality; pro se appearances.

(a**) Amend/Insert.** ***Request for Discovery***. This code section shall apply to all discovery requests and, local procedures are void. In all cases in which a child is charged with having committed a delinquent act, status offense or unruly as defined in this article, and under Chapter 16 of Title 17 (O.C.G.A. 17-16-1 through 17-16-23) require the state to produce items within the possession, custody, or control of the prosecuting attorney or any law enforcement agency involved in the investigation of the case being prosecuted, this includes and is not limited the Department of Juvenile Justice, Department of Corrections, Schools, The Department of Family and Children Services. The child shall not have to subpoena the records of separate agencies who are involved in the prosecution of a child. Prosecution instituted at the behest of schools, law enforcement, agencies or individuals within these schools or entities shall entitle the child to these items. The prosecution has a duty to produce anything that is exculpatory or impeaching. The prosecutor shall comply with and honor the any request made under a Brady motion. The defense attorney shall be provided with and have full access for review, copying or photographing. It shall be the affirmative duty of the district attorney to provide the defense with discovery. The court administrator, intake officer, clerk of court and/or court personnel shall not have access to or otherwise tamper with discovery information. The state must maintain discovery in their possession to make available to the defense just like in adult proceedings.

Under no circumstances shall the judge have access to the discovery information in a case file that has not been available to all parties in a case. All parties must file a Notice of Filing of Discovery and serve all parties accordingly. All evidence and matters set for trial shall be maintained separately. The judge shall not have access to any discovery information for a case pending before his court. The judge shall not review any evidence prior to the evidence submission before the court at trial or motion hearing on the issue.
A child shall be entitled to al discovery including but not limited to (1 - 8)

(c) Amend/Insert. Timing for response to discovery. All discovery requests shall be made in writing and the district attorney shall comply with discovery within 2 days from the date of receipt. The defense shall serve upon either the person or entity prosecuting the case and shall file a copy in with the Clerk of Court. Reciprocal discovery shall be responded to within 2 days from receipt. Failure to comply with discovery shall result in a dismissal of the petition.

(e) Order granting discovery; limitation; sanctions. The district attorney shall provide discovery upon written request. If discovery is not honored or is otherwise refused, the defense or state, if reciprocal, shall motion the court; the hearing shall be held 2 days

before the trial or hearing in which the discovery material is required. The motion hearing shall be on the record. The court shall comply with the rules of discovery and the rules of Brady. The must make a written finding of its ruling to grant with or deny the motion . . . .

(I) **Amend/Insert**. No child shall be allowed to proceed pro se in an adjudication matter. No child shall proceed on a matter before the court without a parent or guardian. The defense lawyer shall not stand in the place of the parent unless it is designated Guardian ad litem (or CASA) and attorneys present to represent the best and expressed interest of the child.

Create/Enact. O.C.G.A. 15-11-75.1. Adjudication, Trials, Motions and Evidence

Create/Enact. Every child, parent or family shall be entitled to the same constitutional safeguards as adults. They shall be entitled to present evidence according to and adhere to the rules of evidence and criminal or civil procedures under Title 9, Title 24 and Title 16 and Title 17; and all others applicable; they shall be entitled to opening and closing arguments as proscribed in pertinent part by O.C.G.A. 17-8-72 and Chapter 8 of Title 17; they shall be entitled to interpreters, if needed for signage; language, etc. and all other legal safeguards as are available to adults whose life, liberty or property are at stake.

Insert/Amend. O.C.G.A. 15-11-78. Exclusion of public from hearing; exception; review panel juries;

(b) (5) **Insert.** The court shall not open any status offense, misdemeanor or deprivation hearing to the public.

Create: (6) The court shall allow review panel juries to serve on all cases where the child can suffer a loss of his liberty (detention or probation sentence). All felony offenders shall be entitled to a trial by jury (O.C.G.A. 15-12-160. All designated felony offenses and offenses under 15-11-28 et seq. shall receive a trial by jury and no waiver of trial shall be permitted in the absence of a plea that is accepted on the record. Juries shall be selected as proscribed by Article I, Sec 1, Paragraph XI; juries are afforded to adults for both misdemeanor and felony offenses and children shall be entitled to the same protections free from impartial triers of fact. (Article I, Sec. I, Paragraph I and II.)

Insert/Amend. O.C.G.A. 15-11-79. Inspection of court files and records.

Insert/Amend. . . (c)(1) The judge shall permit representatives from recognized organizations who are authorized by the organization to gather information and data . . . .

(2) . . . Insert at the end. Parents and Defense counsel shall be notified in advance of the school receiving any juvenile records or information about a child and shall have the legal right to be heard on the record if they decline the request.

Strike. O.C.G.A. 15-11-79.1 Use of disposition and evidence.

Strike - "except in the establishment of conditions of bail, plea negotiations, and sentencing in felony offenses; and, in such cases, such record of dispositions and evidence shall be available to district attorney and superior court judges and the accused and may be used in the same manner as adult records."

Strike/Insert. O.C.G.A. 15-11-79.2. Sealing of records; expugement; grounds; notice and hearing; effect of order; limitation on issuing orders

(a) Strike - "following completion of the informal adjustment"

(b) The court shall automatically seal records of every child who was adjudicated delinquent and who has completed the terms and conditions of their sentencing, treatment and rehabilitation. No application shall be required by the child or the parent to seal the record. This provision is important for children who are indigent and whose attorneys may not make an application on their behalf or children whose parents are not aware of the protocol to make an application. The court shall establish a system wherein the records are automatically sealed and are no longer available to the court, the child or the public. The records shall be expunged.

The court shall automatically seal the records as follows:

(1) Within six months following the final discharge of a status offense or misdemeanor; within one year for all person adjudicated for a felony offense, provided they have completed their sentence; the court shall after the completion of their sentence, provided that they have not re-offended, seal their records. If the child is within a few months of reaching the age of majority and the child has not re-offended and has successfully completed their sentence, but a six month period did not elapse, the child shall be entitled to sealing of the records.

(2) and (3) Repeal.

(c) No hearing shall be required for the sealing of records; see paragraph (b) of this section. The court shall implement a program that causes for a review of their files every six months, and every child who otherwise qualifies for sealed records shall be notified by the court that their records have been sealed and the court shall be responsible for notifying all other person or entities.

(d) Insert. "Upon sealing the record," all . . . .

(e) Repeal

Strike. O.C.G.A. 15-11-80. Notice to school officials

Strike/Insert: “in which a child is adjudicated delinquent under O.C.G.A. 15-11-28 et seq or for a designated felony involving attempted murder, sexual offenses,, the actual making of a bomb, or possession of a firearm on school grounds. The court shall add in the notice that the child has either completed, is completing or will complete a treatment and rehabilitation program as prescribed by the court; the court shall notify the school official that the child is entitle to an education despite his delinquent act and that the school notification is for informational purposes only and shall not have a discriminatory effect on the child’s ability to enroll in school in furtherance of his rehabilitative process. . .

Insert. O.C.G.A. 15-11-81. Preservation and destruction of records.

(b) **Insert at end. . .** Provided that the clerk shall not use this information to release to the public concerning records that are under seal and impingement.

Insert. O.C.G.A. 15-11-82. Law Enforcement Records.

(8) **Insert/Amend**. Schools shall only have access to the files of children if it is established that they have a need for such records because they are either a party to an incident involving the child or the child committed and is adjudge delinquent of a designated felony or an offense under 15-11-28
(g) Records shall be expunged

Insert/Amend. O.C.G.A. 15-11-83. Fingerprinting and Photographs

(e) Records shall be expunged following two years after their last offense.
(g)(2) Photos and fingerprints shall only be taken for offenses under 15-11-63 and 15-11-28

OVERVIEW OF ADDITIONAL LEGAL ISSUES

From Pre-Arrest to Sentencing

Pre-Arrest/Interrogation: No child shall be questioned by law enforcement, or school officials with a parent present; nor child shall be questioned about a criminal investigation without being advised that they are entitled to an attorney. The local office of the Public Defender shall be notified when any child is brought to a police department for questioning. No probation officer or court personnel shall assist the police in interrogating a child. No probation officer or court personnel shall serve as a 'false friend."

Arrest: Whenever the school resource officer or police deem it necessary to arrest a child, no child shall be placed in handcuffs for any status or misdemeanor offense and this includes a school fight not involving a weapon or serious injury. No child shall be transported by police vehicle to the police department where a parent can be notified to come to the school, mall or area of interest and transport the child for questioning. Unless it involves a felony of a violent nature or use of a firearm or bomb, etc. No child shall be fingerprinted or photographed unless the child has committed a felony of a violent nature or is charged with a crime involving a firearm or bomb. No probation officer or court personnel shall assist the police in interrogating a child. No probation officer or court personnel shall serve as a 'false friend."

Search/Arrest with/without warrants: shall comply with O.C.G.A. 17-5-1; 17-5-22 through 17-5-28

Detention: Discussed already herein

Bond/Bail: Discussed already herein

Indictment and Present of case: O.C.G.A. 15-11-28 et seq. shall be indicted within 180 days (six months).

Juvenile Grand Jury System for all felony offenses: As prescribed under O.C.G.A. 17-7-50

Motion Calendars: Defense attorneys shall be able to Motion the court and the district attorney shall be required to respond to the motion via hearing or in writing; no court shall rule on a motion without affording both parties the right to be heard. There shall be a record of all motions per the request of the movant and all motions for dismiss and to suppress (O.C.G.A. 17-5-30 et seq). shall be heard on the record. Either party shall move the court for change of venue as prescribed under O.C.G.A. 17-7-150.

Pleas: All children shall be entitled to negotiate pleas in accordance with Chapter 7 and Title 17 this shall include O.C.G.A. 17-7-95; O.C.G.A. 17-7-111, O.C.G.A., 17-130,

O.C.G.A. 17-7-130.1 and O.C.G.A. 17-7-131.

Trials: Discussed already herein

Juries: As prescribed under Chapter 12 of Title 15 including O.C.G.A. 15-12-40, 15-12-131 through 135, O.C.G.A. 15-12-164, O.C.G.A. 15-12-162, and O.C.G.A. 15-12-17

Immigration: That the district shall inform the defense,, during the probable cause hearing or detention hearing, whether it will notify or whether the law enforcement has notified INS or ICE of an immigrants' arrest. Defense attorneys are not under any duty to inform the court of their client's legal status. However, upon being asked, criminal defense attorneys will not lie about their status. Defense attorneys are under an affirmative duty via the American Bar Association (ABA Standards 14-3.2 Comment 75 (2d ed. 1982 -- subject to revision) to "fully advise the child/parents (defendant) of these consequences." Consequences shall include deportation or other immigration issues that the child and/or their family shall face. Defense attorneys shall be abreast of The Immigration and Nationality Act, 8 U.S.C. sec 1101 et seq. The judge shall not impose a sentence upon an immigrant child that the court knows is legally impossible to be achieved. This includes, but is not limited to, attaining a license.

JUVENILE COURT AND THE SCHOOL SYSTEM

The following are other recommendation that can be enacted or promulgated as suggestions for local school board.

- If a student is found to be in possession of drugs and it is determined that the student is NOT selling drugs, the school agrees to offer or refer the child to drug educational programming rather than penalizing their alleged addiction.
- When the school must involve the juvenile court, the school agrees to withhold suspension or tribunal until the case is disposed of by either adjudication or acquittal.
- The school agrees that after each child has served their sentence that they will be able to re-enter their traditional school environment and will NOT be sent to an alternative school.
- Aside, students who are referred to alternative schools as a form of disciplinary action should be given a plan of action, which will return the child to traditional schooling after each term or semester. There MUST be a plan of action in place, alternative school should be corrective not penal or punitive. When a child is placed into alternative school without a plan to return the child back to a traditional school, it is punitive not remedial.
- The school system agrees that the children will NOT be shackled and transported to the juvenile court system via SRO or police services.
- Children who are engaged in a fistfight on school campus will NOT be transported to juvenile court unless there is a weapon involved, which was either used or exposed during the altercation. Upon confiscating the weapon, the child parents must be notified immediately **and** before the child is transported off school campus.
- The student has fifth (5^{th}) Amendment protections and should not be asked to prepare a written statement, oral statement or video statement unless a parent or an attorney is notified. Especially since the school knows in advance that it will use this information against the child. The SRO needs to Mirandize the all of the students, (elementary and middle school students must be Mirandize on video and if the student is in high school the student must sign his Miranda rights form). If the student is disabled, the officer must wait for the parent and an attorney before the child is question in order to verify that the child understands his legal rights. An IEP staff must be appointed to assist with the questioning depending upon the child's disorder.
- The school will not file petitions with the juvenile court without consulting with the parent and exhausting all remedies available through use of the school's disciplinary guidelines and code of conduct procedures.
- The school will not prevent students from riding the school bus or preventing in school related activities if the child is not involved in a violent act.

RENEW THE MISSION OF THE DEPARTMENT OF FAMILY AND CHILDREN SERVICES

The mission of the Georgia's Foster Care Service is to protect children from abuse and neglect by strengthen families and assuring that every child has permanent placement and a stable family life. Although the State of Georgia has a statutory framework to comply with federal mandates, the statutes, as written, do not provide a framework to keep child and families unified. The Department of Human Services also referred to as the Department of Family and Children Services are reasonable for addressing issues of child deprivation and the termination of parental rights. AAJJP is very concerned about the Georgia rush to remove children from their homes and their failure to implement or monitor reunification plans that provide permanent placement for children. This is particularly true of African-American children. AAJJP recommends simple but effective changes to the current laws that govern DHR. AAJJP wants DHR to renew its mission in protecting children from abuse and neglect and to provide stable, yet, permanent homes for children.

LEGISLATIVE RECOMMENDATION TO RENEW THE MISSION OF DHR/DFCS

O.C.G.A. 49-5-1 through 49-5-23
DHR is solely responsible for providing all aspects of public child welfare and youth services.

RECOMMENDATIONS

I. State versus Privatization

AAJP, at first glance thinks that the State Office of the Child Advocate rather than local counties shall oversee child welfare and youth services. However, AAJJP is concerned about the children in the state's care via the Department of Juvenile Justice and the mishaps, constitutional and human rights violations that have occurred within their care. Since their agency was subject to a federal oversight and memorandum of agreement, and still violates constitutional rights, it appears that state oversight is not a good idea for purposes of protecting the most vulnerable of our population.

Alternately, the state could privatized the Department of Human Resources/DFSC division, like Kansas[33], and run it similar to a managed care program as demonstrated in part by HMO's without the financial pitfalls. In this regard, the private companies would run each county or regional office under the auspice of a corporate setting. This type of management would prove beneficial to the state and children because when their office is not productive the social workers are easier to terminate and the children will not suffer from a "government employee" mentality that feels that sovereign immunity or government employee status guarantees the rights of the social worker over the child.

Furthermore, there is greater oversight with a private business approach that operates under a plan of action. The plan of action would include fewer case load, business meetings, agendas and timeframes, and goals and strategies that are proven to be effective. Companies are more likely to demand performance and the consequences will be grater when employees do not meet the demands. America is outsourcing everything, AAJJP believes that the state should outsource their DFSC division to private companies, it may even prove to be a cost saving alternative.

In addition, it will improve kinship care; reduce the number of displacement of children, and screening of foster care parents.

a. Professional Standards Council for Social Workers

AAJJP proposes the privatization of an oversight office that manages the services that children receive by social workers. This would include a division for standards for social services workers. Similar to the professional standards for teachers, the

[33] www.cjonline.com/stories/111098/kan_fostercare_shtml; www.heartland.org/article.cfm?artld=38And other sources on Kansas program.

implementation of a Professional Standards Council and Committee for Social Workers would ensure that the social workers are properly educated, trained and monitored. This division would ensure that they are screened and successfully pass a background check that includes a psychological evaluation. The department can collect a fee for certification and review. Within this office shall be a division that sets the standards for monitoring caseload assignments and professional standards compliance that shall include continuing education and training programs. Another division can be dedicated to handling complaints and can serve as an Ombudsman. Currently, complaints are filed through the county and in-house personnel, the Office of the Commissioner or, if people know to do so, through the Office of the Child Advocate. None of these complaints are thoroughly investigated and most people never hear back from anyone, so we are told. Notwithstanding, the standards office can implement a grade system that will determine the category or abilities of each social worker. Social workers with certain educational and training backgrounds would be graded S5, for example, and then those with fewer educational credentials would be graded S1 - S4; salaries and office duties would be determined upon skills and training. A panel, rather than county offices would be responsible for selecting the most highly trained and skilled employees. Then a second interview can be scheduled by the local office. This also avoids nepotism, and allows for diverse selection process. All new hires must complete 40 hour training program similar to the CASA, MAPP or IMPACT.

O.C.G.A. 15-11-54 through 15-11-58

The current code is convoluted with legalese and uses terms like "reasonable time, reasonable notice, reasonable efforts, and defines evidence for displacement or reunification of children as "helpful information." AAJJP recognizes the need for a clear and concise code section, one that defines time frames, efforts and notice requirements.

RECOMMENDATIONS

O.C.G.A. 15-11-2 (8) defines, in pertinent part, deprivation as "without parental care, or control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, or emotional health or morals; has been placed for care or adoption in violation of law, has been abandoned by his or her parents or legal custodians; or is without a parent, guardian or custodian. However, the Code section under 15-11-54 does not adequately define what findings are required to substantiate deprivation. In some instances, a common sense approach is all that is required. However, what about incidences where children are removed from home because their mother lost a job and are living with relatives from home to home. Currently, there is a pending case before the Cobb County court in the matter of T.B. in which the court declared their child deprived because they did not have a stable home life. Rather than providing housing, they removed the children ages 3, 6, and nine. The children were removed right before Christmas holiday. They were not otherwise neglected. Both parents lost their employment and the children always had a place to sleep, eat and

otherwise live, it just was not their "parents" home. In addition, the parents were required to receive seek evaluations before regaining custody of their children.

In another incident that was brought to the attention of AAJJP, County Clayton DFCS removed three children days before Christmas because the mother was alleged to have committed the offense of fraud by receiving a check for landlord services in her daughter name rather than her own. While this is an offense, it is not deprivation because the children were residing in a private home in Fulton County with their mother who is gainfully employed and has been for more than six year, has college education and no other criminal record. Further, she was never arrested for this alleged offense. The children had food, clothing and shelter and were not otherwise harmed by this alleged offense. Again, she was asked to take a psychological evaluation before regaining custody of her children. So what findings are required to substantiate a claim of deprivation? **O.C.G.A. 15-11-54** shall state what specific acts constitute deprivation at the time of removal of children from their home. The Court of Appeals held that juvenile courts do not have jurisdiction over child who may be deprived in the future, have been deprived in the past, or who will be deprived. **Lewis v. Winzenreid**, 263 Ga. 459, 461 (1993). Since 1993, Georgia legislators have failed to define what standard is used to 'define deprivation' for purposes of removing children from their home.

Amend/Insert. O.C.G.A. 15-11-54. Findings in deprivation proceedings.

Insert/Amend:
Construction and Purpose:
Define what findings are required to declare a child deprived; The court shall make a written finding that deprivation exist if:

(1) The child(ren) is without parental care (food, shelter, clothing, or living quarters) or control (the court shall make a finding as to what, if any, the parent has tried to do to secure control over their child(ren)), subsistence as a result of purposeful neglect by the parent and not as a result of poverty and lack of social services or the parents failure to seek financial assistance. The court shall make a finding as to whether the allegations of lack of parental care is based on an isolated incident or report or if there exist a pattern of neglect;

(2) The court shall make a written finding as to whether the child is enrolled in school and is not attending; if the child does not attend school and is enrolled, the court shall make a written finding as to whether or not the school has complied with their notice requirement and advise the parent of the child's non attendance. If the school demonstrates that they satisfied their notice requirement and the parent failed to respond, the notice shall suffice and a written finding of deprivation has been established. If the parent has responded but the child still has not attended school, the court cannot find the parent negligent or the child deprived and social services shall provide educational resources to review why the child is not in attendance.

(3) The court shall make a written finding of the exact care or control necessary for the

child's physical, mental, or emotional health or morals that the child lacks. If the allegations are that the child is subject to physical abuse, the court shall make a written finding if the alleged abuse is a first offense, or if there is a pattern of abuse. The state shall carry the burden to get a forensic test to determine if the child has latent bruises or fractures, etc This information shall be submitted to the court to make a finding of physical abuse along with any other photos. If the incident is established as an isolated incident, the child is not deprived, depending upon the extend of the physical abuse, and the court shall dismiss the case and return the child home with DFSC/DHR providing parent classes and/or in home services for 60 - 90 days. If the allegations are mental, emotional or psychological, the court shall make a written finding as to whether or not the parent has tried to secure services prior to the allegations of deprivation. The court shall make a written finding of the religious beliefs of the family if medication is required for the child and the parents refuse to administer the medication; or if there are medical issues that the parent has otherwise addressed with a physician prior to the allegations of deprivation. In addition to the afore-mentioned, the court shall use discretion for additional findings, such findings shall be written.

(4) The court shall make a written finding that the parent knowing and intentionally placed a child for care or adoption in violation of law, and that they were not subject to fraud, duress or harm. The court shall make a written finding that the placement or care is in violation of the law, but if the parent did not neglect the child in doing so, the child shall not be declared deprived and shall be returned to the home provided the home is a safe and stable environment and the parent cooperates with the authorities concerning the adoption or care services.

(5) The court shall make a written finding that the child has been abandoned by his or her parents or legal custodians; or is without a parent, guardian or custodian; and shall define in its finding how the child is or was abandoned; the court shall make a written finding if the abandonment is an isolated case of leaving a child unattended or if the child is left to care for him/herself.

The agency carries the burden to prove deprivation .Deprivation shall be distinguished from poverty and shall be distinguished as an intentional neglect. The agency shall prove by clear and convincing evidence that a child is deprived. Allegations alone do not suffice to remove a child from the home, unless they are allegations of sexual abuse. Under due process, the court shall review actual evidence of deprivation. Evidence shall be, but is not limited to, photographs, written sworn statements, video interview of the child(ren), the court shall state in its written finding what evidence was introduced, proffered or considered by the court and said evidence shall be made part of the record. A record shall be made of the deprivation of the hearing. Failure of the state to prove its case of deprivation shall result in an automatic dismissal. The child(ren) shall not remain in detention to allow the state to make its case, when the child is removed from the home, the state shall have evidence that will warrant the removal or allegation of deprivation. Unless for legal excuse or legal cause, no shall be continued if the child is in detention. All delays shall be recorded for the record.

(b) Insert/Amend: Findings with regard to result of alcohol or drug abuse. If the court finds that a child is deprived, the court shall also make a written finding as to whether such deprivation is the result of alcohol or drug abuse by a parent or guardian. The court shall make a written finding of the alleged abuse that led to the deprivation allegations. The court shall distinguish between a parent who is using drugs or alcohol and a parent who has deprived their child as a result of drug or alcohol abuse. The written findings shall be based on a current state of deprivation and not upon belief that the child may, one day in the future, be neglected as a result of the abuse. The state shall carry the burden of proving that the parent is abusing drugs or alcohol and this includes proffering blood, salvia, hair sample testing, for the date that the child is alleged to be deprived. If a child is abandoned so that a parent can go do drugs, the court shall make a written finding of the same; if the child is sexually abused to support a parent's drug or alcohol addiction, the finding shall so state; if the child is neglected of food, shelter and clothing as a result of the parent's abuse, the court shall so state in its written finding.

(c) Disposition: (**Insert**) The court shall proceed immediately or within 48 hours (2 days) (if the child is detained or is in foster care services) or within five (5) days if the child is placed with relatives to make a proper disposition of the case . . . Provided that at the time of the deprivation hearing the child has not been detained or displaced for more than a total of five days since removal from the home.

Amend/Insert. O.C.G.A. 15-11-55. Disposition of deprived child; state's policy favoring stable placement. Timeframes, Limitations

(a) Strike/Insert. . . .the court shall make any of the following (strike - may) . . . The court shall define with specificity, in its written disposition order, the "condition and limitation" it shall impose upon the parent; the court shall also define the timeframe that it imposes for completion for all task in this section
(1)Amend. The court shall order the agency to search for a relative within the area or out of state if the parents are not suited to care for the child. The court shall permit a relative to care for the child(ren).
(2) Insert. The court shall state with specificity why the child is transferred, when the child is expected to return, what the role of the parent and the state is in returning the child back to custody of its parent if possible.
(a) The court shall define, with specificity, the type of study the probation officer or other person or agency designated by the court shall perform; the study plan used by the court shall be provided to the parent, the child and their attorneys and shall be subject to cross examination; the probation officer or person conducting the study shall be competent in conducting its study. The study tool used by the court shall cover the areas that are required for qualification for return of the child, it shall include where the child will live, the academic background of the person, the employer of the person, or if self-employed proof of an income, a home inspection, and interview of the person. The qualification is to determine if the child will have a safe, stable and secure environment with food, shelter and clothing and that shall be the extent of what the study shall concentrate upon. The study shall be conducted with 5 days from the date the child was removed from the

home.

(2)(D**) Strike** 90 days, Amend: The search shall be completed within 30 days of removing the child from the home. A diligent search will begin as soon as the agency removes the child from the home.

(3)(b) **Insert/Amend**. If a child who is deprived is also in the same transaction declared delinquent and has committed a status offense or a misdemeanor, the child shall not be detained as proscribed by *O.C.G.A. 15-11-39, O.C.G.A. 15-11-41, O.C.G.A. 15-11-45, O.C.G.A. 15-11-46, O.C.G.A. 15-11-46..1, O.C.G.A. 15-11-47, O.C.G.A. 15-11-48, and O.C.G.A. 15-11-66*

(3)(d) **Insert/Amend**. . . The policy of this state is that children in the custody of the Division of Family and Children Services **shall** have . . . . . Within 48 hours (2 days) before any change of placement, the division shall notify the court . . . The court shall hold a hearing within three days (3 days) of receiving a notice of a change of location. . ,. The agency shall provide counsel for the child and the parent with notice of the change as soon as the court is notified and the court shall provide notice of an emergency change of location hearing as soon as it schedules the hearing; the court shall record and make a written finding of the relocation hearing.. . .

(f) Insert/Amend. . . . (Strike 6 months) - - -
The court shall determine the extent of the drug and/or alcohol abuse and shall make a finding of the deprivation based solely upon the issue of drug and alcohol abuse. If an agency removes the child(ren) for drug or alcohol abuse of the parent, the agency shall put the parent into a treatment program. If it is determined that the parent is in need of residential care treatment, then the court shall make a finding that after release the treatment provider shall attest to the status of the parent's addiction or treatment; if it determined that the parent successfully completed a residential treatment program, the court shall return the child to the parent and the agency shall provide the parent with a parent resource or parent aide and after care via NA/AA. If the parent is deemed appropriate for a community based treatment program, like 12 steps or day reporting, the agency shall provide services to the parent and the child and the court shall return the child to the home under an in-home case plan.[34]

Amend/Insert: O.C.G.A. 15-11-55.1 Notice of hearing to parent, preadoptive parent, or relative, attorney for the child and attorney for the parent, Court Appointed Special Advocate and Guardian ad litem

Insert/Amend. . . Seven days, in advance of any hearing, unless it is an emergency hearing or for other legal cause then no less than 48 hours notice which shall include the court and the agency or party moving the court to make at least two due diligent efforts to reach all parties by telephone and/or email and fax, the court shall notify in advance all

[34] Drug court standards in Georgia do not remove children from parents in possession of drugs or addicted to drugs., instead, they agree to treatment and DFSC and the court do not intervene.

parties to the hearing. Parties shall be as prescribed by O.C.G.A. 15-11-39 (c) and (d), the court shall appoint or advise the parties of their right to legal representation in advance of any hearing; every child is entitled to competent and effective counsel and every child shall be provided with a Court Appointed Special Advocate in addition to an attorney or GAL; in addition every parent shall be appointed an attorney by the court. Every notice shall set forth the date, time and location of the hearing and the nature of the hearing. Every notice shall inform the parties of their legal right to representation and shall provide the name of the local CASA office, Office of the Public Defender and Office of the Child Advocate. . .. .

Amend (O.C.G.A. 15-11-6 (b) The court shall appoint the parent an attorney. The agency also has a duty to inform the parent at the time of taking the child that they have the legal right to receive a court appointed attorney and shall provide the contact information of the nearest public defender's office or the office of the child advocate.

Insert/Amend. O.C.G.A. 15-11-56. Evidence in proceedings; continuances; scheduling.

(a) Insert/Amend. Evidence shall include all evidence as set forth in Title 24, and as prescribed in 15-11-54 of this article. Any information used to remove a child from their home and to deprive a parent of their life, liberty or property, the court shall disclose all evidence including evidence alleged to be confidential. Every parent and child shall be afforded due process and this includes the right to cross examination anyone alleging deprivation. . . . .

(b) Insert/Amend: On its own motion or that of any moving party, the court may continue the hearings under subsection (c) of Code section 15-11-54; provided that the court shall making a written finding that the continuance is for legal cause or legal excuse and not for delay. The court shall establish in its findings of fact that due diligence was exercised on the part of the party making the request for the continuance to review reports, submit documents, review the case file, investigations, etc. The court shall give a five (5) day period for review of reports, investigations, etc., and this includes time to make a rebuttal. . . . . .

Insert/Amend. O.C.G.A. 15-11-57. Counseling or counsel and advice for children and their parents or guardians

Insert at end. Attorney may oppose on the record any request for counseling provided the attorney for the child or parent can substantiate that an evaluation is not required or necessary for reunification or to establish deprivation. No parent or child shall be required to take a forensic evaluation or mental health evaluation unless there is evidence before the court at the time of the request that the parent has mental health issues that are in-issue. Neither the court nor the agency shall request any counseling in order to advance a legal cause or position that is not before the court. The agency carries the burden to prove to the court why an evaluation or counseling is required for disposition or reunification of a parent and child.

O.C.G.A. 15-11-58

REPEAL: The entire O.C.G.A. 15-11-58. Reasonable efforts regarding reunification of family; reports and plans; custody orders when reunification found not to be in the child's best interest; duration of orders; review of determinations; hearings; supplemental orders

AAJJP suggests that DHR/DFSC adopt the policies and procedures of the National Resource Center for Foster Care and Permanency Planning[35] as a guide for reunification of displaced children. Included in this process shall be the obligations of DFSC protocol and timelines from their manual which shall be made law no longer a guide. In addition, McKinney-Vento Act and Kenny A guidelines shall be made part of the local statute. The NRCFCPP shall be a guide for establishing statue that is a clear and concise reunification planning. AAJJP has developed a plan based on the five (5) target areas for permanency is:

1. Placement Decision
2. Parent-Child Visitation
3. Intensive Service
4. Resource Parent - Birth Parent
5. After-Care

The department's manual shall no longer serve as a guide, it shall become law.

(a) Process for Deprivation Cases

1. Within 48 - 72 hrs after the complaint is filed, a deprivation hearing shall be held, if the child has a detention hearing then it shall be held within three days of the child being removed from the home;
2. The agency shall immediately notified family members and the designee of the apparent that the child is in custody both by telephone, home visit where possible and shall via certified mail with return receipt and shall file the same with the court
3. The department shall permit the family, both father and mother side of the family, contact time with the child. They shall be afforded the opportunity to accept the child(ren) for placement. The department shall also contract with a kincare placement agency to assist in these endeavors.
4. When the complaint is filed and served upon the parent, the parent shall be advised that they are entitled to counsel and the court shall appoint counsel prior to the hearing; the child shall automatically be assigned an attorney on the same day that the complaint is filed and the attorney shall be effective and competent and shall be provided with the case file to prepare for the detention or 72 hour hearing and all others, if necessary.
5. Counsel for both the child and the parent shall be in court.
6. A petition shall be filed within 72 hours after the hearings
7. Within 10 days from the child's removal from the home, the court shall hold an

[35] www.hunter.cuny.edu/socwork/ and www.nrcfcpp.org

adjunction hearing;
8. If the case is dismissed, the child shall be immediately, the same day, be returned to his home
9. If the case is not dismissed, the court shall immediately assign a CASA.
10. The department shall immediately
11. Within 30 days from when the child was removed from the home, the department and the court shall conduct a disposition hearing
12. If the child is returned to DFCS Custody, then the agency shall prepare a reunification case plan within 10 days and shall assign a reunification case worker to the parent and shall assign a case worker to the child.
13. The GAL, CASA and the child's case worker shall coordinate in an effort to bring an immediate resolution placement and reunification. The case worker shall cooperate with the GAL and CASA and failure to do so shall result in sanctions.
14. No extension for custody shall be granted without well document and recorded, legal cause and legal excuse.

(b) Permanency Planning

The department/agency shall adopt the following five step process for permanency planning:
1. Placement Decision
2. Parent-Child Visitation
3. Intensive Service
4. Resource Parent - Birth Parent
5. After-Care

The department/agency shall divide their services into these five divisions under the auspice of permanency department.

1. Placement Decision: This division shall be responsible for making placement decisions within 30 days after the disposition hearing and shall have the sole role of locating family members, friends and relatives to secure placement for the child. The division shall prepare a plan of action for review by the court within 5 days of in-take following the disposition hearing and shall work with community based kincare programs in securing placement for children with families as the priority. The division shall work closely with the GAL, CASA and the assigned caseworker.
2. Parent-Child Visitation: This division shall oversee parent-child visitation; if the allegations are non-violent and not life threaten, the parent shall immediately visit with the child within 48 hours following disposition, and shall see the child at least once per week, and shall be able to converse with the child at least three days per week and send gifts to the child. The child and parent shall be able to write letters to each other and send photos.
3. Intensive Service: This division shall be a staff on call and they shall oversee the caseload management of the permanency planning department; they shall also be responsible for assigning the reunified case worker for the child and the parent and shall oversee that the case plan are developed and that the caseworker is managing

her file and working towards reunification. They shall be available for internal and some external disputes concerning the other four areas and the failure of the caseworkers to do their job

4. Resource Parent - Birth Parent: This division is responsible for providing the parent a resource or a parent aid to make sure that the parent and the child can be reunified and receives reunification guidance while in the home. This division will review with the CASA, GAL and caseworker the feasibility of immediately returning a child home and providing in-home services. This division is responsible for making available all resources, including but not limited to, wraparound services, aides, in-home counseling, treatment for substance abuse, financial coordination for TNAF, and health insurance and job placement and housing, etc.
5. After-Care - This division shall be responsible for providing after care services to parents and child for 90 days after reunification. . This division is responsible for making available all resources, including but not limited to, wraparound services, aides, in-home counseling, treatment for substance abuse, financial coordination for TNAF, and health insurance and job placement and housing, etc.

(c) Permanency Planning Guidelines

1. As soon as a child is placed into custody of DFCS, planning for the child's reunification or other permanent placement begins. These planning alternatives, include but shall not be limited to,
2. Immediately upon in-take every child shall have an attorney and a CASA and shall be assigned their caseworker who shall make a face to face visit with the child within 48 hours of intake and explain to the child and CASA the agency duties and role for reunification
3. Within 48 - 72 hours of In-take a conference shall be held with the permanency planning team as referenced in this Code section.
4. Within 2 - 3 days from the conference an investigative and placement plan shall be completed
5. When necessary, DFCS will secure Kincare placement service organizations and First Placement Services
6. Within 7 days from in-take a reunification case plan shall be completed and provided to the parent, the child, their attorneys, a GAL and CASA.
7. Within 20 days any assessment and testing for either parents or children, shall be ordered and completed with reports ready for submission to the court, a copy shall be provided to the parent, child, their attorney, and GAL and CASA;
8. Within 30 days CASA and the GAL shall review these reports and other information and provide the court with a recommendation for placement
9. Within 45 days a hearing shall be scheduled and held before the court to review the case plan, reports, assessments and recommendations, a decision shall be made on the record with written findings as to whether the child shall be returned home
10. If the child is not reunified, then the court shall schedule a hearing every 30 - 45 days to verify the status of reunification and if the agency fails to prove why the child is not reunified or placed then the court shall dismiss the petition provided the child will be placed or reunified into a safe, stable and healthy environment.

11. Every 60 days a planning meeting shall be held to review the status of reunifying a child, the caseworker shall make at a minimum two face to face visits with the child, CASA, and GAL per month.
12. The lawyer for the child shall meet face to face with the CASA and the Child at least twice per month and as required
13. The lawyer and caseworker for the parent shall conduct at least one face to face visit per month to discuss the reunification plan and to confirm what is required for reunification. The attorney shall communicate by telephone or email with the parent at least three times per month to keep abreast of her/his progress for reunification.
14. The child shall either be reunified with 6 but no later than 12 months and there shall be written findings by the court why reunification, where possible, did not or has not occurred.

Amend/Insert: O.C.G.A. 15-11-94. Termination of Parental Rights.

(a.1) Insert. The burden shall be on the department or agency to prove beyond a doubt that a parent is no longer capable of caring for their child or that they are a threat to the well-being of the child. The court shall make a written finding and show compelling reasons for termination of a child. The court shall impanel a jury as prescribed in criminal proceedings to secure a fair and impartial ruling to terminate the rights of a child beyond the highest burden, a reasonable doubt. The court then shall make a ruling concerning the best interest of the child. Both parents and their family units shall be notified and given the opportunity, even if there was an attempt in the past to reunify the child with relatives, prior to the termination hearing, the agency and the court shall notify both sides of the maternal and paternal families to secure placement and to inquire if they are interested in accepting the child for placement. The agency must show that they made these attempts by filing with the court the certified mail with return receipt and the letter sent to the families. Ten days before the hearing a notice shall be served upon these families, again, to advice of the termination proceedings. The agency shall present to the jury the grounds for termination which shall include that the child is deprived, lack proper care, and the agency may introduce evidence of abuse, criminal history, provided it will have an effect on the rearing of a child, misdemeanors and non-violent felonies shall not be permitted as evidence of a history unless the parent is incarcerated so much that they spend very little if any child with the family or otherwise place the child in danger, the agency shall establish that on the record prior to presenting the evidence to the jury; a history of drugs and alcohol abuse is admissible if the parent did not successfully attended or complete a treatment program, and evidence of abusive behavior toward other children in the home is also admissible.

Insert/Amend. 15-11-96.

(4)(e) Insert. The families, this include the father and mother's sides, are to be notified and provided an opportunity to receive the child for placement. This shall be done, again, if necessary, immediately before termination or adoption. The court and the agency shall adhere to O.C.G.A. 15-11-94 (a.1)

CONCLUSION

This concludes our version of HB 641.