

Common Wisdom: Making the Case for a New Georgia Juvenile Code

Judicial District 10



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I. INTRODUCTION¹

A. Acknowledgements

Kilpatrick Stockton LLP acknowledges and thanks all of the stakeholders in the Tenth Judicial District who were interviewed for this project. These stakeholders candidly discussed their experiences with us and generously shared their recommendations for improving the juvenile justice system in Georgia.

B. Statement by Reporting Law Firm

This Report summarizes the issues, opinions, suggestions and other ideas concerning Georgia's juvenile justice system elicited from a diverse group of 35 stakeholders who live or work in Georgia's Tenth Judicial District (the "District") in interviews conducted by attorneys of Kilpatrick Stockton LLP ("Kilpatrick Stockton") between August 2007 and January 2008. These stakeholders included current and former juvenile court judges, juvenile court administrators, Department of Family and Children Services ("DFACS") officials, Court Appointed Special Advocates ("CASA"), Chamber of Commerce board members, school resource officers and other school administrators, attorneys who represent parents and/or children in juvenile proceedings, persons who serve as guardians *ad litem*, a young adult who was reared in the foster care system and is now employed within the juvenile justice system, and others who have had involvement with the juvenile justice system.

Kilpatrick Stockton attorneys also attended and recorded comments by participants at a town hall meeting on juvenile justice reform, sponsored by the JUSTGeorgia Project held in the District in Augusta, Georgia, on October 30, 2007.²

Respecting the confidential nature of the interview process, no attributions are made to specific stakeholders in this Report, even where certain comments are presented as quotes. Where a stakeholder's specific connection to the juvenile justice system or the District might augment the context of a comment, that connection is referenced generically.

Kilpatrick Stockton thanks all of its personnel who participated in and contributed to this very important project. The following individuals were directly involved in this

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² Please note that all views expressed herein are solely those of the subjects interviewed. The views reported are opinions and perceptions of the interviewees based upon their experiences within Georgia's juvenile justice system. The firm does not take a position on any of the views summarized in this report.

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A special thank you to Randy Eaddy, who was responsible for writing this Report, ably assisted by Forrest Fu, and to Jessica McKinney and Adj Awotwi, who tag-teamed admirably to coordinate and ensure completion of the indispensable stakeholder interviews and related summaries.

C. Overview of JUSTGeorgia Project

This report is one of ten judicial district reports prepared to help guide a much-needed effort to replace Georgia's outdated juvenile code with new legislation that will better serve the public safety and child welfare goals of this State. Judges, lawyers, and others who must turn to the juvenile code on a daily basis agree that it is unclear, outdated and difficult to apply. Responding to these views, JUSTGeorgia³ seeks passage of a new juvenile code that will better organize current state law regarding juvenile justice and child welfare, better reflect the impact of federal law throughout the juvenile code, incorporate research-based scientific findings and best practices in the child development field and respond to the hard-earned wisdom of Georgians who work with or are impacted by the current juvenile code on a regular basis. Under the direction of JUSTGeorgia Partner Georgia Appleseed, teams of trained volunteers set out all across the state to ask stakeholders three simple but important questions about the current juvenile code that governs child neglect and abuse (deprivation), foster care, delinquency and the juvenile courts: What's working? What's not? And how would you, the stakeholder, make it better?

Throughout the State's ten judicial districts, JUSTGeorgia volunteers, mainly lawyers, conducted face-to-face interviews with hundreds of individuals who have a stake in the Juvenile Court system: juvenile court judges, law enforcement officers, child advocates, public defenders, prosecutors, legislators, educators, child welfare experts, school social workers, parents, children, and other community members. Every effort

³ JUSTGeorgia is a joint project partnered by Voices for Georgia's Children, Georgia Appleseed, and the Barton Child Law & Policy Clinic at the Emory School of Law. Formed in 2006, JUSTGeorgia is working to build a statewide coalition that will advocate, monitor, and report on the conditions, laws, and policies that affect Georgia's youth.

was made to be as inclusive as possible so that members of every demographic and geographic component of the State would have an opportunity to provide input.

To reach an even more diverse group of citizens, JUSTGeorgia conducted a town hall meeting in each of Georgia's ten judicial districts. The ten town hall meetings were publicized throughout the districts in a variety of ways, including radio, television, newspapers, flyers, statewide email distribution lists and personal contact. JUSTGeorgia engaged professional facilitators through The University of Georgia's Fanning Institute to ensure that everyone who attended a town hall meeting would have an opportunity to participate and provide input. Sophisticated software enabled the facilitators to capture citizens' comments anonymously and project them onto a large screen for other participants to see and use as a springboard for additional brainstorming and reaction.

Hundreds of interview summaries, together with the town hall meeting notes, were then compiled by district and summarized into ten judicial district reports. The district reports, in turn, have been compiled into one comprehensive statewide report, summarizing the strengths and weaknesses of Georgia's current juvenile code and making practical and realistic recommendations for fixing it. All reports are accessible through www.GaAppleseed.org and www.justga.org.

In March 2008, the Young Lawyers Division of the State Bar of Georgia (YLD) released its Proposed Model Juvenile Code for Georgia, a compilation of best practices based on four years of intensive research. With the YLD's Proposed Model Juvenile Code as the starting point, JUSTGeorgia is preparing a legislative package for the comprehensive revision of the Georgia Juvenile Code, preserving best practices where feasible and tailoring the proposed legislation to meet Georgia's unique needs as informed by the input of the hundreds of stakeholders who took the time to share their views with the JUSTGeorgia volunteers. The resulting legislative package will be submitted to the Georgia General Assembly.

The goal from the beginning of this project has been to hear from the people who have a stake in the workings of the Juvenile Court system. Throughout this process, JUSTGeorgia has remained true to its commitment to listen to and report the views of these stakeholders as accurately as possible.

II. DESCRIPTION OF THE TENTH JUDICIAL DISTRICT

A. Basic Information About the District

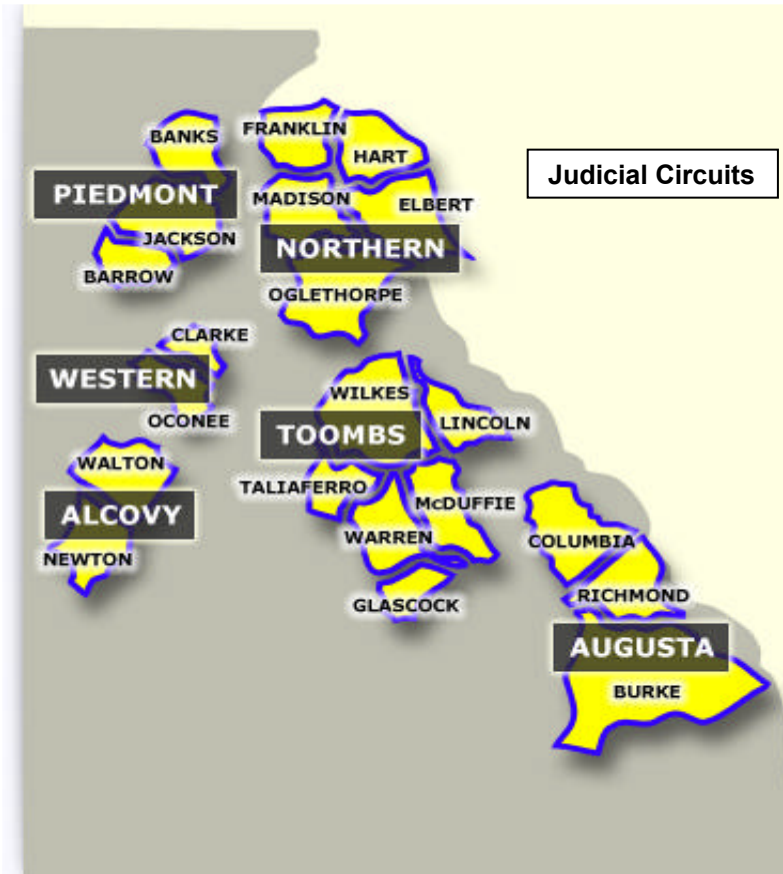
The District is located in the northeastern part of Georgia, encompasses all of Athens and Augusta, and borders South Carolina. It covers 10.79% of the land area of the State, and includes 10% of the State's residents. The District is comprised of (21)

counties⁴ and encompasses six (6) of the State's judicial circuits, as reflected in the following two maps.⁵



⁴ Banks, Barrow, Burke, Clarke, Columbia, Elbert, Franklin, Glascock, Hart, Jackson, Lincoln, Madison, McDuffie, Newton, Oconee, Oglethorpe, Richmond, Taliaferro, Walton, Warren and Wilkes

⁵ Alcovy, Augusta, Northern, Piedmont, Toombs and Western



Based on 2006 estimates by the United States Census Bureau, the population of the District is approximately 934,417. Approximately 24.5% of the population is under the age of 18. The racial/ethnic makeup of the District is approximately 67.7% white, 26.4% black and 3.5% Hispanic.

The District is comprised of both urban and rural areas and has a relatively wide range of income levels among its population. The District includes three (3) counties with a population of at least 100,000 – Clarke (*pop.* 112,787), Columbia (*pop.* 106,887), Richmond (*pop.* 194,398), and 14 counties with a population of less than 50,000. In addition, the District includes two significant urban areas, both home to major academic institutions: Athens (*pop.* 102,498) and Augusta (*pop.* 193,916).

As of 2004, the median household income in the District was approximately \$31,665, ranging from a low of \$23,772 in Taliaferro County to a high of \$61,966 in Oconee County. The District has an average median household income range below the entire State, which was approximately \$42,679. As of 2004, approximately 14.4% of persons in the District were considered to be living below the poverty line, which is slightly more than the 13.7% poverty figure in the state of Georgia as a whole. Of the (21) counties in the District, four (4) have 20% or more of residents living below the poverty line.

B. The Juvenile Court System In The District

Given the size of the District, the juvenile justice system in the District operates with modest personnel and other resources. There are six (6) judicial circuits within the District and a total of 18 juvenile court judges, most of whom are part-time. The District's ratio of juvenile court judges per resident under the age of 18 is 1 to 12,707, based on 2006 United States Census Bureau population estimates and disregarding the judges' part-time status.

According to statistics from the Georgia Department of Juvenile Justice ("DJJ"), a total of 5,883 individual children in the District were involved in new delinquency intake proceedings in fiscal year 2006. This number does not include the ongoing delinquency and deprivation cases that were on the courts' dockets at the beginning of 2006.

There is one Regional Youth Detention Center (RYDC) in the District, located in Augusta, and one Youth Development Campus (YDC), also located in Augusta. Both the RYDC and the YDC are facilities used to hold young people in secure detention before or after the child's delinquency hearing is completed.

C. Particular Challenges Confronting The District

The District confronts numerous challenges found in the other districts and the overall system for juvenile justice in Georgia. The one exception may be that the District has only one Regional Youth Detention Center and one Youth Development Campus in the District, both located in Augusta. Some stakeholders described transportation to and from those facilities as causing significant problems at several stages of the delinquency adjudication process. For example, it is more difficult for legal counsel and parents or guardians to visit or meet with children who are assigned to one of those facilities from distant parts of the District. In addition, the distance may also contribute to the reluctance to fashion programs that would involve such children in meaningful, community-based activities.

The District's economic disadvantages are comparable to most other districts, including areas of significant poverty. Fortunately, while the District includes urban areas, and faces urban-related juvenile problems, it does not have the high volume of issues typically associated with very large urban areas. Still, the District is significantly challenged by the modest, at best, resources available to it for the dispensation of juvenile justice given its population base. Several stakeholders expressed a belief that the District does not receive its fair share of resources, pointing particularly to the limited number (and location) of detention and rehabilitation facilities in the District as illustrative facts.

III. STATUS OF THE DISTRICT'S JUVENILE SYSTEM

The 35 stakeholders interviewed expressed a broad range of assessments, opinions and other thoughts about the status and quality of the operation of juvenile justice system in the District. Many observations describe problems that, while significant, are more circumstantial than systemic. However, a large number of

comments are related to systemic matters that involve the current Juvenile Code (the “Code”) or the juvenile justice system as a whole, rather than problems with individual participants in the system’s processes. Notwithstanding the great diversity among the stakeholders about several areas that need significant improvement, there was virtual consensus on a number of systemic observations.

A. General Perceptions of the Juvenile System

The stakeholders, both active players in the system and those on the fringes, virtually unanimously agreed that the juvenile justice system is deeply flawed in numerous important areas. A common theme among the substantial majority of stakeholders familiar with the Code was that the Code is disconnected from the realities with which persons involved in or with the juvenile justice system must contend on a daily basis. One stakeholder, a juvenile court judge, expressed the view that the Code “needs to be tied to what actually goes on.”

The view that the current Code is disconnected from the day-to-day realities of the court was also manifest among the few stakeholders who were not expressly critical of the Code and those who were relatively unfamiliar with the Code. While several of these stakeholders highlighted perceived desirable outcomes in individual cases, they noted these outcomes were achieved because a person within the system took actions outside of what the Code permits. These stakeholders recommended as essential to the proper functioning of the system, in the “real world,” a scope of authority and/or discretion for juvenile court judges that the Code does not presently offer.

Two other observations reflected near-consensus among the 35 stakeholders. First, stakeholders recommend that juvenile court judgeships should be full-time positions, and should be filled on the basis of relevant expertise (whether through training or experience) with the types of matters that confront juveniles, their parents or guardians, and those responsible for juvenile welfare. Stakeholders also expressed the view that the various state agencies responsible for important aspects of the welfare of juveniles are, for varying reasons, insufficiently accountable for their substantive performance, working “at odds with each other”, and plagued by high turnover (especially DFACS) and the absence of a clearly articulated and consistent mission and set of objectives for their respective roles within the juvenile justice system.

Other more specific problem areas and concerns expressed are set forth in Part III.C of this Report. It is fair to say, however, on various levels there is almost universal dissatisfaction with major aspects of the juvenile justice system in the District that can be addressed, in part, by revisions to the current Code.

B. What Is Working Well?

Most of the 35 stakeholders had difficulty identifying aspects of the juvenile justice system in the District that are working well. Indeed, no stakeholder responded to that question with an observation that can be fairly characterized as an endorsement of any significant systemic feature of the current regime. Rather, most of the positive

observations were focused on particular situations where individuals were perceived as going beyond the call of duty in the current system, or were made with respect to features of the current system that are clearly ancillary, albeit useful, components of its operations. Some stakeholders identified the following as significant positive aspects of the current system:

- ▶ Although a few stakeholders indicated that parents are not entitled to counsel separately from their child, which can cause significant practical problems for the child’s attorney, the provision of counsel and other resources to indigent parties is viewed as positive.
- ▶ While several stakeholders were dismayed by the “reality” of continuances and other delays that undermine time frames, the short timeframes prescribed by law for action in deprivation cases were viewed by others as a positive aspect of the system.
- ▶ The Court Appointed Special Advocates (“CASA”) program received mixed reviews, suggesting that the concept is perceived to be good, but that the outcome of a CASA’s involvement depends primarily upon the care with which the person is selected for appointment.
- ▶ Citizen review panels and the “Fast Start” program both received favorable comments from several stakeholders as ways to elicit beneficial involvement by members of local communities in the welfare of their juveniles. In addition, the Fast Start program is perceived as working well to help get more “kids on track” earlier, and as a way to give them “busy hands,” with tangible connections to their communities, before they fall prey to other temptations.
- ▶ One stakeholder, an adult who was reared for a time in foster care, emphasized the value of being able to speak directly and privately with the judge at several stages in her case.

C. What Is Not Working Well?

In stark contrast to the few aspects of the juvenile justice system that were identified as working relatively well, stakeholders in the District identified numerous aspects of the system as extremely problematic.

1. Problems With The Juvenile Code

a. Organizational Issues

Numerous stakeholders identified the very structure and organization of the current Code as a primary source of many of the juvenile justice system’s problems. The piecemeal origins of the provisions that together comprise the current Code – major portions of which are scattered about in two different titles, the one focused on juvenile court actions and the one focused on DFACS, with several other provisions that affect the juvenile justice system being drawn from other Georgia statutes or regulations – is

believed to contribute to difficulty in using the Code. In addition, the Code's two primary substantive areas – delinquency and deprivation – are perceived not to be logically organized or adequately marked to guide users, including judges, attorneys, and laypersons.

Four (4) stakeholders, including three (3) juvenile court judges who commented to the effect that the current Code is “not bad” or “okay,” indicated one or more significant areas that should or could be improved. Each also indicated that the Code is complex and may be difficult for non-lawyers to understand well.

b. Limitations on Judicial Authority

Many stakeholders expressed concern about the limited authority and discretion under the current Code afforded to juvenile court judges to handle cases in the manner most appropriate to best serving the interests of the children involved. Such limitations on the judges are perceived as conspicuous examples of “the disconnect” between the Code and day-to-day realities faced by the courts.

Several stakeholders referred expressly to the “all or nothing” approach of the current Code with respect to the types of remedies that juvenile court judges could fashion, in both delinquency and deprivation cases. These stakeholders also said that, even where juvenile court judges have authority under the Code to grant relief or impose remedial measures in a situation, they too often only have authority to act at the extreme ends of the spectrum and lack discretion to fashion punishment or rehabilitation programs that would better address the problems presented by the specific case.

A related matter identified by several stakeholders, which is discussed separately in Part III.C.4 of this Report, is the need for juvenile court judges to be able to order forms of community service as alternatives to customary detention or rehabilitation programs in many situations.

A part of the overall authority-limitation issue raised by several stakeholders is that the current Code does not confer any authority on juvenile court judges to act in some situations until late in the overall process, after a juvenile is accused of committing a serious delinquent act. By that time, many stakeholders observed, it is too late for the judge's involvement to have the beneficial impact that earlier involvement would likely have yielded.

Moreover, several stakeholders observed that juvenile court judgeships should be full-time positions, which would help ensure the level of commitment and expertise required for sustained, high-quality, attention to and monitoring of individual cases.

c. Criminalization of Consensual Sex Between Teenagers

Numerous stakeholders were highly critical of the criminalization of consensual sex acts between teenagers – so-called “Romeo and Juliet” situations – which can subject a child to prosecution as an adult and to the jeopardy of being classified as a predatory

child molester and subjected to extremely severe penalties, including lengthy terms in prison and the life-long stigma of that status.

d. Overall Integration with the Adult System

Beyond the “Romeo and Juliet” concerns, numerous stakeholders also complained more generally about the integration of the juvenile justice system with the adult justice system, including the allocation of jurisdiction between the respective courts under the current system. Many stakeholders also felt strongly that juvenile court judges should have the authority to decide whether juveniles charged with a crime will be tried in a juvenile court rather than a superior court when the current Code confers jurisdiction in both courts. Several stakeholders observed that it is fairly common in such cases where a juvenile is charged in superior court to endure a long wait because of a crowded docket or other factors at the superior court, and then ultimately the case be remanded to the juvenile court. This often occurs, as a technical matter, by a change in the charges (*e.g.*, dropping the “aggravated” portion of the charge). Court observers, including the interviewees raising this point, question instead if the superior court simply did not have the time and/or resources to act in timely fashion, which ultimately delays needed attention, intervention and possibly treatment for the child whose case is finally returned to juvenile court for adjudication.

2. Ineffective Communication Throughout the System

Communication breakdowns – and even “structured” non-communication regimes – plague the juvenile justice system, according to virtually all stakeholders, across the spectrum of participants in the system, including between and among courts and state agencies. All of the juvenile court judges interviewed expressed frustration with not being kept abreast of the progress in cases over which they presided, and often not being entitled to updating or follow-up information. For example, the Code provides that juvenile court judges should be “advocates,” implying that they should stay intimately involved in each case. Without timely and proper communication among juvenile court judges, state agencies and the State’s other courts, such involvement can be extremely difficult, if not impossible, according to the interviewees commenting on this issue.

Several stakeholders, including school officials, commented on the ineffectiveness of communication among law enforcement officials, the juvenile courts, detention facilities and the school system. They indicate that it is the norm (rather than the exception) that the school is not notified when a child is taken into the juvenile justice system for an incident occurring away from the school. The current code assigns no one the responsibility of notifying the school when a child is taken into custody for off-campus incidents. As a result, the school often is unaware that the child is considered to be delinquent, or that he or she is facing deprivation issues, which limits the ability of school officials to be proactive in providing assistance.

It was reported that CASA volunteers often are not notified of significant developments relating to a child placed under CASA observation, even though, pursuant to 15-11-9.1(f)(1), “a CASA shall be notified of all court hearings . . . and other

significant changes of the child’s case....” Another stakeholder expressed his desire for more “coordination of services” among agencies and healthcare providers.

3. Problems With DFACS and Other State Agencies

Almost all of the stakeholders were critical of the state agencies involved in the juvenile justice system, particularly Department of Family and Children Services (“DFACS”) and the Department of Juvenile Justice (“DJJ”). There was broad criticism about the lack of accountability and cooperation among and within the agencies. One stakeholder was critical of the Code as “pit[ting] the agencies against each other.” Another underlying perception among stakeholders seems to be that the agencies do not have clearly articulated, consistent missions under the current Code that guide, motivate and reward high-quality, substantive performance that is attentive and seeks affirmatively to achieve the best welfare outcomes for the District’s children and communities. The following reflects more specific beliefs about the functioning of DFACS and other state agencies:

- ▶ Several stakeholders criticized DFACS for not adequately investigating potential deprivation cases; presenting inadequate case plans in deprivation cases; and inadequate ongoing monitoring; recommendations that do not reflect the real circumstances that children or parents are confronting and inadequate preparation for court hearings.
- ▶ Several stakeholders commented that the typical case plans prepared by DFACS are inadequate because they are not specific enough to give meaningful guidance and directions to parents about what is expected from them and how to achieve the desired results. As a result, these stakeholders feel some parents fail to meet the plan requirements delaying reunification of the family.
- ▶ Other factors noted as contributing DFACS’s inadequacies included large caseloads, lack of experienced and well-trained DFACS employees, inadequate resources, and a high turnover rate among DFACS employees. These factors are also believed to contribute to a lack of continuity and consistency in handling individual cases. While such factors relate most directly to matters that do not appear to be addressable through a reform of the Code, a few stakeholders raised expressly the broader issues of accountability, clarity and consistency of mission, which are systemic matters that properly could be subject to legislative remediation. One stakeholder suggested that the supervision of the attorneys who represent DFACS in juvenile court should not be handled by the Office of the Attorney General.

More than one stakeholder – including a DFACS employee – observed that DFACS and its employees seem more interested in “getting their numbers right,” to maintain eligibility for federal funding, than in “really working their cases” to achieve good substantive outcomes for children and families.

The Department of Juvenile Justice (DJJ) also received criticism from several stakeholders interviewed. For example, DJJ was described by several stakeholders as being bogged down by bureaucracy, thereby undermining meaningful participation in

cases. One stakeholder, a guardian ad litem attorney, noted that on occasion DJJ representatives have responded to the court's search for a practical and workable remedy with the response that their "hands [were] tied" by DJJ policy.

With respect to the CASA program, a program that appoints volunteer advocates for abused and neglected children, one stakeholder observed that in that stakeholder's experience CASAs are "only sporadically and randomly involved" in the cases. Another stakeholder, a juvenile court judge, commented that greater involvement by CASAs could make a meaningful difference if they were given more exposure to and training about the "real world" issues involved in juvenile court cases.

4. Limited Short-Term Detention or Rehabilitation Options; Consequences of Non-Enforcement

Several stakeholders expressed concern about the limited options for short-term detention and other rehabilitation programs, such as "boot camp" and structured "community service." In their view, the unavailability of such options reduces the capacity and motivation of juvenile system participants to fashion and implement effective solutions for many juveniles whose behavior, while not warranting extended detention, should not go without a meaningful sanction and where either extreme would be a disservice to both the children and the community.

These stakeholders find problematic that the current system seems to favor only longer-term detention, which focuses primarily on violent or other "serious" actions that rise to the felony level. They believe that other problematic behavior, which typically signals the potential for more serious future conduct, often goes unaddressed because no viable alternative to long-term detention is available. Moreover, where such behavior involves actions that are actually prosecuted, and the juveniles are convicted of non-violent crimes, they typically receive only probation, which these stakeholders believe is not regarded by most juveniles as being a serious consequence.

These stakeholders also believe most juveniles do not see probation as real punishment for their actions and that probation is not administered in a way that rehabilitates or acts as a disincentive for future criminal behavior. They expressed the view that probation is not effectively monitored, and probation violations are not enforced diligently. These stakeholders believe that these factors serve to reinforce perceptions among some juveniles, their families and others in the community that orders issued by juvenile courts need not be followed or taken seriously.

In suggesting the need for courts to have greater flexibility and options in ordering rehabilitation and even punishment, one stakeholder suggested that some form of community service should be available. She pointed out that the rehabilitation potential of such programs could be immense for many juveniles who are experiencing problems because of a lack of meaningful connections to their communities. Participation in a well-designed community service program would be a constructive way to allow children to get to know and begin developing important personal relationships

with positive community residents and participants. Such connections, if formed at early stages, can help a child engage in lawful and appropriate social behavior.

A larger number of stakeholders validated the above concerns regarding the perception that there are no real consequences for juveniles who break the law in non-violent, non-felonious ways. These stakeholders believe that younger juveniles, in particular, are disadvantaged when the system fails to sanction them appropriately for their offenses. Alternatively, if the system fails to seek to help rehabilitate them before they reach adulthood, these children may become involved in more serious criminal activity. The system's failure to impose real consequences also generates apathy for juvenile cases in law enforcement circles. According to a number of stakeholders, law enforcement officials come to believe that investigating juvenile offenses is a waste of their time.

5. Funding-Related Problems

Stakeholders identified a range of problems with the current juvenile justice system that are primarily the result of insufficient funding. For instance, many of the criticisms of DFACS – including inadequate training, the large number of inexperienced DFACS employees and high turnover rate – could be remedied by increased funding for agencies involved in administering the juvenile justice system as these factors are believed by most stakeholders to be directly tied to low-pay levels and the absence of a “career track” within DFACS.

One stakeholder, a children's defense attorney, commented that the law should provide financial assistance for indigent parents to have separate representation from their child in delinquency and deprivation cases. She pointed out that, where the parents have no legal representation, the child's attorney is frequently “caught in the middle” when approached innocently and sincerely by the parents with earnest questions and pleas for advice.

Several stakeholders commented on the critical need for providing early and effective psychological evaluations (and effective treatment programs) to achieving successful long-term outcomes for many juveniles and parents involved in the system. These stakeholders pointed out that such evaluations and/or treatment are not currently pursued primarily because funding is not available. Similarly, alternative rehabilitation options – such as “boot camps” and community service programs discussed above in Part III.C.4 – are not available, or are not considered, due to lack of funding.

6. Misuses of the Detention Assessment Instrument

Several stakeholders expressed dissatisfaction with the Detention Assessment Instrument (“DAI”), the point system used by the DJJ in delinquency cases to determine whether a child is eligible for detention. The DAI is perceived as being too rigid, even arbitrary, and as being applied without appropriate sensitivity to the circumstances of particular cases. The 10 points routinely required for a recommendation of detention is seen as too high when it is applied rigidly. Stakeholders referred to situations where a

child, who is clearly at risk if not detained, but who has not yet accumulated 10 points on the DAI, will be recommended for release by DJJ, a recommendation the judge generally follows, even though the child will be at greater risk if not detained.

Several juvenile court judges are frustrated because the current DAI system does not permit the judge to become involved in delinquency situations until it is too late to have maximum potential impact upon the child.

Several other stakeholders also made comments that seemed to implicate the DAI, at least in part. They believed that the direct involvement of a judge with a juvenile at an early stage – before serious delinquency behavior is manifested – can have a powerful salutary effect, but that several aspects of the current system do not permit matters to be brought before a judge until a child engages in more serious behavior. When that reality is combined with limited options for rehabilitation programs generally, the likelihood of successful rehabilitation is significantly reduced.

7. Truancy-Related Problems

Several stakeholders expressed severe frustration with how the current juvenile justice system deals with truancy cases, especially those that do not involve physical deprivation or non-truant delinquency. Such cases are rarely prosecuted against the parents. When parents are prosecuted, DFACS generally does not become involved, leaving limited options to intervene with families of habitually truant children.

Another stakeholder has a different perspective observing that the basic truancy process tends to involve law enforcement officers and other juvenile justice system participants in essentially minor matters that consume an inordinate amount of time. As a result, such persons, including the part-time juvenile court judges, often do not have time to focus appropriate attention on more serious matters. She believes this situation contributes to the case overload and excessive delays that are experienced generally, and thus leads to inadequate handling of more serious situations.

This stakeholder, along with several others, suggested that truancy situations that do not involve deprivation or potentially serious delinquency should be handled separately. They believe that the system should be in the business of separating the “wheat from the chaff” in addressing juvenile problems and that the commingling of the basic truancy process with the rest of the juvenile justice process is a significant obstacle to doing so effectively.

8. Issues Facing Defense Attorneys

Several stakeholders emphasized that defense attorneys typically have inadequate time to prepare their cases, and sometimes do not have the opportunity to meet and talk to their clients before hearings or trials. One stakeholder described several logistical matters, such as the location of the detention facility in relationship to the courts, as contributing to the problem. Stakeholders also complained that defense attorneys frequently are unable to obtain sufficient information to defend their cases because there

is no discovery procedure and no funding for public defenders to obtain their own psychological evaluations or expert testimony.

Several stakeholders pointed out that, while certain provisions of the Code require expedited proceedings and dispositions as a theoretical matter, the actual practice in the District is replete with continuances and other frustrating delays that result in a much longer time before Code-prescribed outcomes are reached. One stakeholder commented that “the kids get lost in the middle” and have to remain in detention unnecessarily. Another stakeholder described a general docket scheduling process where all hearings are set for one day, at the same time, so that everyone arrives at the court and sits and waits until his or her particular case is called. Such scheduling is extremely time-consuming for all participants and makes it especially difficult to arrange for certain potential witnesses, such as school officials who are called to court frequently because of their position, to appear at hearings without losing valuable time that the community would prefer be spent on education business.

One stakeholder suggested that the Code should permit (if not require) venue in delinquency proceedings based on an alleged criminal act to be established in the community where the juvenile lives as opposed to the community in which the alleged criminal act occurred. This stakeholder believed that holding such proceedings in the child’s residential community would improve the prospects for successful rehabilitation.

9. Foster Care Issues

Relatively few of the 35 stakeholders commented specifically about the foster care system, apart from criticisms of DFACS discussed in Part III.C.3 of this Report. However, two other observations are worth noting.

First, several stakeholders expressed a concern that foster care is being overused as the preferred remedy and that courts typically agree with DFACS’s recommendations for removal from the family. These stakeholders believe that recommending or ordering foster care has become the default position for DFACS and the courts because they perceive foster care to be the “safe” or “low risk” option. In addition, they believe the system is not designed to encourage either DFACS or the courts to do the work necessary to ascertain the relevant facts that would lead fashioning a less intrusive remedy.

Second, a few stakeholders were concerned about certain terminology used in the foster care context, which they believe lead to stigmas that have tangible and deleterious long-term effects, starting with the term “foster care” itself. While no suggestion was offered as a replacement for “foster care,” it was suggested that both “delinquent” and “deprived child” be replaced by a concept and term such as “child in need of services.”

10. Guardianship Issues

Observations by the relatively few stakeholders who commented on guardianship issues were mostly positive. However, a few suggestions were made for improvement especially around monitoring. One stakeholder, an attorney/guardian ad litem, suggested

that guardianship should be available, at least on a temporary basis, in delinquency, as well as deprivation cases.

D. What Can be Done to Improve the System?

Stakeholders made a number of specific suggestions for improving the Code and the juvenile justice system in general. While most were cited in other parts of this Report, the summary below focuses on systemic concerns that can be addressed by a major legislative initiative.

▶ First, stakeholders believe the Code needs to be better organized so that it can be understood and, therefore, used more effectively. Stakeholders believe moving and combining into Title 15, Chapter 11, the provisions currently in Title 49 that apply to juvenile proceedings and agencies is key. They also believe the provisions in Title 15, Chapter 11, dealing with deprivation and delinquency need to be separated and organized more logically so that users can more easily determine which provisions apply to a given case.

▶ Second, stakeholders believe practical realities should be paramount in revising the Code. Practical considerations should lead to providing greater authority and discretion for the principle participants in the system to address circumstances of cases, fashion and implement solutions that are finely-tailored to maximize effectiveness in particular cases, and monitor cases closely with accountability for compliance with court orders.

▶ Third, juvenile court judgeships should be full-time positions, and judges should have expanded authority and discretion to fashion and order sanctions and rehabilitation programs across a broad spectrum of alternatives, to supervise case follow-up monitoring, and to make the initial decision in all criminal cases of whether juveniles will be tried in the juvenile court system versus the adult court system.

▶ Fourth, a comprehensive training and continuing education program should be developed and implemented for juvenile justice system participants, with periodic reassessment and revisions to ensure that the training and knowledge levels remain relevant and current.

▶ Fifth, the implications of descriptive terminology used in the juvenile justice system should be assessed and, if indicated by appropriate evidence, revised to ensure that potentially debilitating and unintended stigmas do not attach to juveniles who become involved in the system.

▶ Sixth, practical realities that presently undermine important time frames for actions in the juvenile justice system should be recognized, and appropriate requirements should be instituted (and resources allocated) to ensure reasonable time frames for dispositions in juvenile matters, without defaulting to inflexible or impractical agency recommendations or court orders that do not reflect the imperatives of particular cases.

▶ Seventh, the agencies responsible for important functions must be accountable to meaningful oversight. While each agency may have a particular role or discrete set of responsibilities, those should be clearly articulated and coordinated among the agencies to be consistent with the overall mission and objectives of the juvenile justice system so as to facilitate cooperation among the agencies.

▶ Eighth, an Office of Juvenile Solicitor should be established to provide ongoing oversight over the operation of the juvenile justice system throughout the State in order to ensure greater consistency and quality of performance.

▶ Ninth, the process for handling basic truancy cases should be separated from deprivation and non-truant delinquency cases.

IV. CONCLUSIONS

Without notable exception, the 35 stakeholders interviewed by Kilpatrick Stockton believe serious issues plague the current juvenile justice system. With the exception of only two juvenile court judges, all of the stakeholders who were familiar with the Code believe urgent reforms are needed. All stakeholders recognize the need for improvements. The stakeholders are by and large supportive of Code reform efforts, believing such efforts are essential to improving the system of justice for children.