

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

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## Judicial District 3



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## I. INTRODUCTION<sup>1</sup>

### A. Acknowledgements

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## **B. Statement By Reporting Law Firm**

The report summarizes information, ideas and opinions concerning the current juvenile justice system in Georgia, and was developed from interviews conducted by our attorney and non-attorney interviewers representing many different practice groups in the law firms, including corporate, employment, litigation, healthcare, bankruptcy, real estate, franchising, and white collar crime. While several of our interviewers had assisted on pro bono projects involving child or family projects in the past, the majority had not been involved previously in projects involving child or family advocacy or juvenile justice issues.

Nelson Mullins and DLA Piper interviewed seventy-eight (78) individuals between July 2007 and January 2008, in twenty two (22) stakeholder categories. *See Attachment A.* Our interviews were typically conducted by a two-member team consisting of one attorney and one non-attorney (paralegals, project assistants, law students, or college interns). We identified stakeholders for interviews through contact with attorneys, community and business leaders, local chambers of commerce, Family Connection groups, and through recommendations made by other stakeholders in the counties that comprise the Third Judicial District. The stakeholders ranged in age from 17 to 90, with an equal number of men and women. Twenty five to thirty percent of our stakeholders were African American.

## **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This report is one of ten judicial district reports prepared to help guide a much-needed effort to replace Georgia's outdated juvenile code with new legislation that will better serve the public safety and child welfare goals of this State. Judges, lawyers, and others who must turn to the juvenile code on a daily basis agree that it is unclear, outdated and difficult to apply.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, JUSTGeorgia<sup>2</sup> 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

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<sup>2</sup> 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.

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 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](http://www.GaAppleseed.org) and [www.justga.org](http://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 during the 2009-10 legislative session.

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 THIRD JUDICIAL DISTRICT

### A. Basic Information About the District

The Third Judicial District is located in west central Georgia and is made up of sixteen (16), primarily rural, counties. The District contains four judicial circuits: Chattahoochee, which is made up Muscogee, Harris, Chattahoochee, Marion, Talbot and Taylor counties; Southwestern, which contains Lee, Sumter, Schley, Macon, Stewart and Webster counties; the Houston Circuit, which contains only Houston County; and the Macon Circuit, which is comprised of Peach, Crawford and Bibb counties. The two largest urban areas in the District are Columbus, in Muscogee County, and the City of Macon, located in Bibb County. The Census Bureau estimates the racial make up of the District as 58% Caucasian, 40% African American, and 2% Hispanic or other minority. The largest employer in the District is the state government including public schools, hospitals, manufacturing, and military facilities. Approximately 17% of households in the District have income below the poverty line (as compared to the statewide average of 13.7 %).



### B. The Juvenile Court System in the District

The Third Judicial District has nine juvenile court judges: three in the Chattahoochee Circuit, one in the Southwestern Circuit, two in the Houston Circuit, and three in the Macon Circuit. According to data obtained from each Circuit, almost 17,000 cases were filed in the District. The District accounts for approximately 11% of case files statewide. The greatest concentration of case filing was in the Macon Circuit which accounts for 6700, followed by the Chattahoochee Circuit which averages approximately 4500 case filings per year. In three of the circuits, Chattahoochee, Houston and Southeastern, the vast majority of juvenile cases concern delinquency. There are four (4) regional youth detention centers in the District, one each in Muscogee, Crisp and Bibb counties. In addition, Macon is home to the only all-girl facility the state.

### **C. Particular Challenges Confronting Third Judicial District**

Shortage of staffing is one problem facing the District. In the Houston Circuit, another full time judge and additional court staff are being sought.

The more rural counties in the Third Judicial District face a low tax base, widespread poverty, substance abuse, lack of deferral program options, lack of program/jobs for teens and overcrowded detention centers.

## **III. STATE OF THE DISTRICT'S JUVENILE SYSTEM**

### **A. Construction and Purpose of the Juvenile Code – O.C.G.A. §15-11-1**

Stakeholders in the Third Judicial District hold a range of views on the purpose and goals of the Code. Said one stakeholder, “The State needs to decide what the proper balance is between rehabilitation and punishment for juvenile offenders and have the Code reflect that philosophy.” Another said, “The law should outline and measure what we want as an outcome for our children in state custody, deprived or delinquent, and we should designate resources towards those goals.” A district attorney urges the Legislature not to constrain penalties that may be applied to juvenile offenders and to give juvenile court judges authority to fashion sentences that include incarceration, if necessary, to deter delinquent behavior. Another prosecutor echoed this, stating that punishments are not severe enough for juvenile delinquents because detention is seen as a last resort. Victims of juvenile crimes echoed the concern noting in their experience there were no real consequences for juvenile offenders. One judge agrees, believing that the purpose of the juvenile justice system is not only to treat the children but also to correct them and to provide justice for persons who are the victims of the children’s actions.

Other stakeholders believe that rehabilitation – not punishment – should be the Code’s focus. A judge, prosecutor, and defense attorney all agreed that case plans focusing on rehabilitation work best. Similarly, both a head of a nonprofit organization that supports those with mental health issues and a legislator agreed that the system, as it is now structured, focuses too much on “warehousing” children and not enough on rehabilitating them. These stakeholders believe that the system waits too long to get involved in children’s lives – focusing on reactive, instead of proactive, measures.

A business leader believes that the Code should establish a "bill of rights" for deprived and delinquent children -- an avenue through which the child can make himself heard – and that the Code should be constructed so that it supports the best outcome possible for all the State’s deprived or delinquent children. A legislator reports constituency opinion that it is impractical and impossible to construct a juvenile justice system geared to salvaging one hundred percent of children who pass through it.

A juvenile court judge asks that the Code be revised to more clearly separate delinquency from deprivation issues and to provide processes for efficient and equitable handling of children presenting with overlapping deprivation and delinquency issues. Another judge echoed those

sentiments, finding the current Code to be poorly written and lacking clarity. That sentiment is shared by various types of stakeholders, including a DFACS supervisor who commented that because of budget restrictions, children who enter the system both as deprivation and delinquency cases often become "hot potatoes" with each side of the juvenile justice system insisting that the child be handled by the other side. As a possible solution, one probation officer stated that DJJ and DFACS would benefit from joint training to help each agency learn the other's policies, procedures, and limitations.

A district attorney notes that clarification of the coordination between the deprivation and delinquency sides of the system would ensure that children accused of delinquencies are screened to determine if they are victims of abuse or other deprivation and require assistance and services to address abuse and neglect issues.

**B. Stakeholder reaction to the concept of Juvenile Code revision.**

The vast majority of stakeholders interviewed welcomed efforts to revise the Code. Their reasons for supporting revision efforts differed, but most felt that there were numerous provisions that do not work as effectively as they should. There is also interest (and concern) among stakeholders about who is undertaking the revisions and how those revisions are being made.

A juvenile court judge observed that despite serving many years on the bench, he had been consulted only once by any representative of the Georgia Legislature regarding bills that directly impacted the juvenile justice system. The judge believes that improved communication between the juvenile court and the Legislature is important to the success of changes in the juvenile justice system in the State. Some legislators commented that if it cannot be demonstrated that the Code revision was a non-partisan effort, accomplished free from undue or direct influence by child advocacy groups, many legislators in Georgia will look upon the revision negatively. One legislator stated that his constituency wants to be tough on juvenile crime and that he believes that any revision to the Code spearheaded by child advocacy groups will not be well received in the Legislature unless they also have the support of juvenile court judges and prosecutors. These same legislators were pessimistic about the likelihood of the Legislature voting substantial additional funding to juvenile justice programs with or without revisions to the Code. One legislator notes that if the revised Code stayed tough on serious crime, revisions to the Code impacting lesser offenders might be palatable. Another legislator had information that the Code revisions were being made to track model juvenile codes from other states and was strongly supportive of JUSTGeorgia's goal of gathering specific information from Georgia citizens of all types in creating a code that was more than just a model, but one that would work well in the state of Georgia.

#### **IV. Stakeholder Comments on How the District's Juvenile Systems is Doing and Specific Recommendations for Change.**

##### **A. Juvenile Court Administration Generally – O.C.G.A. §15-11-18**

Stakeholders interviewed who had experience with the juvenile court system in the Third District, including judges, court personnel, CASAs, SAAGs, district attorneys, child and parent attorneys, DFACS workers and foster parents were generally complimentary of the court system and its ability to serve the needs of children in the District.

The juvenile court judges interviewed felt that improvements could be made. Several commented that securing funding for the court and programs was always a struggle. A uniform pay scale across the State, offering competitive pay for juvenile court judges and court personnel, including prosecutors and appointed defense attorneys, would greatly improve the system, attracting additional qualified people. A SAAG suggested that a revised Code could build in checks and balances on the work being done by SAAGs, DFACS workers and court personnel to make that process more efficient, noting that management issues at many of the juvenile courts exacerbate an already difficult situation.

A juvenile court judge felt that standardization of procedures among juvenile courts statewide would be helpful, as would more information sharing. This judge specifically commented that a computer tracking system would greatly assist the administration of the juvenile courts statewide. One juvenile court judge indicated that part time juvenile court judge status does not work well because conflicts arise in balancing judicial responsibilities and one's private practice. A prosecutor who had worked outside the District noted that having separate juvenile court judges, rather than having superior court judges also serving as juvenile court judges, provides far better service to children.

All judges interviewed support continued appointment, rather than election, of juvenile court judges, noting that competent and impartial juvenile court judges have routinely been appointed.

Various stakeholders discussed the need to maintain confidentiality in juvenile cases by excluding the public from proceedings and sealing records, even in some designated felony cases. O.C.G.A. §§15-11-12 and 15-11-56. However, one judge felt that confidentiality hinders the juvenile justice system from receiving input from the public. This judge would continue confidentiality only where sexual abuse of a child is involved. A defense attorney also felt that children charged with designated felonies should be entitled to request a jury trial – which, by its nature, would preclude confidentiality. A SAAG noted that in deprivation cases very personal information may be obtained, necessitating a "deep dialogue" important to rendering a correct decision on the best placement for the child, and therefore requiring a high degree of confidentiality.

Several stakeholders, including a judge, DFACS worker and juvenile court clerk, working directly with the juvenile courts felt that the deadlines for actions relating to juvenile

deprivation and delinquency cases were unreasonable and burdensome, and lead to abuse of court procedures, repeated continuances and inefficiencies. A DFACS supervisor noted, however, that deadlines had to be set and honored to provide deprived children and their families with due process and best outcomes.

Stakeholders discussed the concept of developing a separate "family court" in the District. That court would handle all divorce, alimony, child support and child custody issues rather than separating those between superior and juvenile courts. It was suggested that this court have its own investigators, which would improve the speed and quality of information relevant to custody issues. These stakeholders felt that development of a "family court" would unburden both the superior and juvenile courts to some extent and more efficiently handle domestic issues.

**B. Child Deprivation Matters – O.C.G.A. §15-11-54 through 58**

1. Identification and Disposition of a Deprived Child

a. Role of DFACS

Our stakeholder group expressed mixed opinions regarding the role of and quality of services that DFACS is performing in the Third Judicial District. Some felt DFACS staff was performing well and in the best interest of children while others felt that DFACS was overburdened, under-trained and incapable of acting in the best interest of the children under its jurisdiction.

Stakeholders stated that DFACS's role was to ensure that deprived children were identified, monitored, communicated with, protected and placed in the safest living arrangements possible. In the case of deprived children, DFACS is responsible for establishing and executing court-ordered case plans for the child and family. A defense attorney who has represented children and parents on many occasions in deprivation cases noted that the Code should be revised to clarify the policy regarding how case plans are crafted and specifically govern how DFACS is to follow reunification plans developed for the family.

Some stakeholders stated that DFACS should play a more aggressive role in auditing foster homes and decertifying foster homes that do not meet high standards. A foster parent noted that there is no emergency plan in place through DFACS to handle issues arising with children in state custody during non-business hours. According to an educator, DFACS needs to provide more programs on domestic violence, marriage counseling, parenting, and teen crime prevention. A defense attorney recommended that DFACS regulations be harmonized with the Code.

A SAAG stated that the case plans for deprivation cases are far too long (the form is sometimes 40 pages long) making it difficult for parents to know if they are meeting plan goals. He recommends returning to a simpler, shorter format with easier ways to evaluate progress.

Several stakeholders spoke to the quality of the performance of DFACS workers in their area. Several felt that DFACS workers carry too many cases. Some stakeholders reported that DFACS workers were poorly screened, lacked training, lacked supervision, and lacked mental health counseling support, resulting both in poor quality work and high turnover. One therapeutic foster parent believed that DFACS workers need more training to handle special needs children, especially those who need special mental health care or therapeutic foster care. Many children in therapeutic foster care have extreme anxiety regarding strangers or being abandoned. Turnover among DFACS workers is especially difficult for special needs children

Others commented that DFACS workers are generally doing a good job, that they were properly, and within the time period statutorily required, inspecting the deprived child's home, conducting necessary background investigation and interviews of potential alternative placements, and trying to keep children with family members when possible.

A foster parent commented that DFACS workers need to increase the quality and quantity of their communications with service providers and foster families assigned to them. One young adult who went through the foster care system voiced her frustration with how inconsistent DFACS contact was. Some caseworkers would perform a home visit every two weeks while others might come once a quarter at most. A CASA volunteer relayed her similar experience with DFACS losing track of one child for several months before becoming re-involved and working on a non-reunification plan even though a reunification plan had been ordered. A police officer noted that there should be greater coordination between parents, educators and DFACS with respect to deprived children. DFACS workers and supervisors reported that turnover was a problem, resulting in duplication of effort, loss of trust between DFACS and the family, which stalls forward momentum in certain cases. They felt that high turnover was the result of, among other things, low pay, inadequate sick leave policy, inadequate retirement, workers' compensation and medical benefits, lack of autonomy in their work and judgment, exposure to traumatic cases, lack of psychological preparation for the job, and lack of mental health counseling support. One DFACS worker stated that the first question she is usually asked by a newly assigned child is "how long are you going to be here?"

Some stakeholders discussed the short time periods for which the Code requires investigation and action with respect to a deprived child. They noted current law dictates that a child can only be held 72 hours after being removed from his or her family before an interim hearing must be held and that this short timeframe often does not allow for adequate investigation by DFACS. As result, DFACS can and does delay a full hearing on the case by not filing its petition for removal immediately. O.C.G.A. §15-11-49 (3); §15-11-39. Stakeholders believed that the Code should require DFACS to file its petition promptly, give DFACS a reasonable time for investigation clearly dictated by the Code and not permit continuances of cases except in extraordinary circumstances. A defense attorney and SAAG noted that the 10-day period for initial hearing is rarely enough time to sufficiently investigate the case and subpoena necessary witnesses. He recommends that the Code retain the 10 day period between taking the child into custody and an initial hearing but that the Code allow an automatic 30-day period necessary to investigate and hold the initial hearing, upon notice by the child's counsel or DFACS of the need for additional time. This, he believes, avoids the need for formal requests for continuances and allows counsel to properly prepare and present these cases. A defense attorney

would like to see Code revisions that require more cooperation and communication between DFACS and parents/family members in deprivation cases.

Concern was voiced that DFACS is not reviewing its cases with enough frequency, is not placing children in its custody in optimum care facilities and is creating unnecessary tension between DFACS and private facilities in the District that are able to provide competent child care programs. Stakeholders who discussed this issue gave as an example DFACS' decision to place four male teens in a single foster home with an elderly foster mother. They observed that this foster home was not a sufficiently controlled environment to ensure the safety of the children and that it did not have the resources to teach life skills to these teens.

Several stakeholders raised other concerns regarding both foster care home quality and problems created due to the continual movement of children from one foster home to another. An older child, who was adjudicated as a delinquent, noted that she was moved around far too frequently once she went into the juvenile justice system. This caused problems with keeping up with her schoolwork and with staying on grade level. One CASA provided statistics asserting that the average foster-care child is moved 19 times before "aging out." This CASA was aware of one case in which the child had moved 55 times. A juvenile court administrator felt that there needs to be accountability when a child is moved from one placement to another and that children (by early teenage years) need to have input into the placement decision. A foster child recommended that restrictions on the activities of children in foster care be reduced and that foster parents be allowed the same authority to govern foster children's activities, visits to friends' homes and public places as birth parents would have.

Various stakeholders recommended more screening, including psychological screening, and training for foster parents. Others noted that the system is lacking in sufficient therapeutic foster care. Even when therapeutic foster care is used, one therapeutic foster care parent complained that DFACS returns children to the same environment from which the child came without first requiring the parent to learn how to provide the therapeutic care that the child needs.

b. Role of Special Assistant Attorneys General (SAAGs) –  
O.C.G.A. §45-15-30

The role of the Special Assistant Attorney General (SAAG) in the juvenile justice system is to represent DFACS in all juvenile court proceedings. Stakeholders interviewed about the SAAG program felt it was a necessary function that assists DFACS in presenting cases in court and helps the agency represent the best interests of children. However, stakeholders also stated that changes and improvements to the SAAG program are needed.

According to DFACS stakeholders, SAAGs are inadequately paid, resulting in high turnover which leads to inefficiencies, necessitates retraining and relearning of cases, and lack of consistent support for DFACS workers. SAAGs complain that their offices need to be better organized and have improved and computerized filing systems. They note that cases are difficult to monitor, paperwork is sometimes lost and has to be regenerated, and that the billing process for payment of SAAGs is burdensome. A DFACS worker suggests that full time in-house counsel be hired by DFACS to perform the various responsibilities that SAAGs now handle.

This DFACS worker believes that this change would promote efficiency, knowledge of the cases, and be more cost effective.

At least one DFACS worker complimented the SAAG with whom she had worked, stating that the SAAG was attentive to detail and made sure the court included specific language in orders to trigger additional state and federal funding sources and programs.

### c. Role of the Court

The juvenile court's primary role in deprivation cases is to review and approve child placement decisions. Deprivation cases make up 25%-60% of the case dockets in different juvenile courts in the District. Several stakeholders commented that the juvenile court judges should inquire more extensively and contribute more to placement decisions. To do so, these stakeholders feel that juvenile court judges need greater flexibility and discretion under the Code to fashion and enforce proper placement arrangements for the children who come before them.

A juvenile court judge stated that judges should contribute more to the placement decisions for deprived children. Under the current system, DFACS has the jurisdiction and authority to make the placement. Consequently, it is difficult for a judge to change a placement decision. One DFACS worker interviewed agreed that the court should have more involvement and discretion in placement decisions. A juvenile court clerk noted that when a child is moved from one placement to another, there should be court oversight and DFACS accountability for the change. A revision to the Code giving a 48-hour automatic stay of transfer was recommended to allow interested persons and the Court to review the transfer of placement decisions. Some stakeholders felt that children age 14 and over should have input into placement changes.

A guardian ad litem and defense attorney recommended that the Code require more timely review of temporary custody orders as the circumstances involving a particular child change. Numerous stakeholders identified temporary custody decisions as problematic – specifically the automatic expiration of the order after two years.<sup>3</sup> These stakeholders recommended giving judges more discretion in setting timeframes for expiration of temporary custody. One defense attorney suggested allowing temporary custody orders to be worded such that custody is deemed permanent until the court enters another order. A defense attorney recommended that termination of parental rights hearings (O.C.G.A. §15-11-58 (e – i) be set on one calendar per month and handled separately from other deprivation hearings because they require substantially greater preparation and testimony from many more witnesses.

Two judges, a prosecutor, and a defense attorney commented that O.C.G.A. § 15-11-58 (the provision governing deprivation proceedings) is cumbersome, poorly written, and hard to understand, read and interpret. One judge called the code section a “bear” to deal with.

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<sup>3</sup> Under the current juvenile code, a 12-month deprivation order can only be extended one additional 12-month period.

d. Role of public education

Stakeholders stated that the public school system has a critical role to play in assisting the juvenile justice system specifically with respect to identifying and following children who are deprived or at risk of being deprived. They noted that there is a lack of coordination between the school system, DFACS and the juvenile court system. According to one defense attorney, schools are not doing a good job of identifying and reporting child deprivation cases. Some stakeholders, including a school social worker, believe that school officials and administrators need training on the Juvenile Code so that schools can play a contributing role in the system. A defense attorney and SAAG stated that school systems have reported that they regularly identify children they believe are deprived but that DFACS is slow to act, if at all.

e. Resources for deprived children and their families –  
O.C.G.A §15-11-9, -10  
(i) CASAs and Citizen Review Panels.

Several stakeholders discussed the role of Court Appointed Special Advocates (CASA) and citizen review panels in deprivation cases in the District. The vast majority stated that these programs improved the services to deprived children and their families resulting in fewer children being improperly taken into custody or in faster reunification of families in appropriate cases.

Defense attorneys felt that a CASA, Guardian Ad Litem (GAL) or other child advocate should be appointed in every deprivation case, and that such appointments need to be streamlined in the District. Currently, it can take weeks to have a CASA appointed, which can unnecessarily delay proceedings. Some stakeholders felt that the Code should extend authority to the CASA in cases where a child has both a deprivation and delinquency case before the Court allowing the CASA to coordinate both cases. These stakeholders felt this would serve the interests of the child and the State well, adding efficiency to the process. At least one DFACS worker pointed out that the District has a great deal of turnover in the management of the CASA program, which has caused some problems.

Some stakeholders, including a defense attorney, hold the view that the Code does not define the role, or the authority, of the CASA well enough; that some CASAs are not well trained, there is an insufficient number of CASAs recruited from diverse populations, and that some CASAs do not act independently of DFACS. A DFACS supervisor also noted that CASAs need training to understand DFACS placement recommendations so that they did not undermine the good judgment of DFACS on placement issues.

Stakeholders noted that citizen review panels added depth to review and support of deprived children's cases, calling on extended family members to assist, adding creativity to plans for children's safety and eventual reunification with families. These panels can ensure that education, healthcare and other benefits available to the child are being provided. A police officer who felt these panels made a positive difference in reunifying families recommended that the Code create full time positions for a panel review coordinator to work in conjunction with the juvenile court and DFACS. One defense (parent) attorney, however, felt that the panels tended to

push for permanent placement of a child outside of the family reunification plan. A therapeutic foster parent, on the other hand, had positive experiences with review panels, seeing the panel members as good people trying to make good decisions in the best interests of children. A CASA agreed, citing the members' neutrality as key. Finally, a former foster child stated that she preferred the panel reviews over a judicial review because she felt that the panel members asked her direct questions and wanted to hear her feedback. One DFACS caseworker pointed out that the citizen review panels are not available in many rural parts of the District.

(ii) Healthcare Resources – O.C.G.A. §15-11-8

Many stakeholders perceived that the State seriously lacks mental health facilities, particularly in-patient programs, for children. One former probation officer, currently employed by the Department of Juvenile Justice (“DJJ”) in another capacity, felt that unmet mental health needs are a major challenge for DJJ today because of a large influx of children presenting with significant mental health issues. Additional services are needed including a comprehensive program for home intervention, visitation of family members and among separated siblings, expanded drug treatment and counseling, psychological counseling, and other support systems for children and families.

Several stakeholders want the Code revised to require mental health screenings for children in the system. According to one judge, restrictions on the use of the mental health referral provisions governed by the current Code are daunting and impractical.

(iii) Other Funding Needs

Stakeholders expressed the need for funding for special training schools for children, GED programs, job programs, DJJ alternative treatment programs, and life skills programs for foster children. Other stakeholders expressed the need for parenting classes.

One DFACS stakeholder expressed that DFACS and the juvenile court need an electronic mail and computer tracking system in order to share information which would, among other things, speed up and ensure accuracy of communications, case handling and delivery of orders.

2. Rights/Responsibilities of Parents of deprived child

a. Responsibilities generally

A district attorney notes that there needs to be a "wholesale policy shift" in this State towards advocating personal responsibility, parental involvement and accountability. Other stakeholders agree. Some recommend that parents who abandon their children be located, prosecuted and required to pay child support to the State. One probation officer suggested the possible use of protective orders requiring parental involvement as a solution to some problems. Because these orders require parental action, stakeholders note that judges can hold parents in “contempt of court” and send parents to jail for violation of a protective order.

One stakeholder commented that the current Code, which allows a court to terminate parental rights if the parent and child are without contact for twelve months, makes it too easy for parents to have their rights terminated, thereby avoiding their responsibility. Similarly, a probation officer agreed that parents have too much control over the system – the parent can say that they do not want the child, and the system allows for termination without penalty to the parent. A stakeholder serving as the guardian of a child whose parents both were incarcerated added that guardians unfamiliar with the juvenile justice system should be provided with better support by the system to assist the guardian in carrying out his or her duties.

#### b. Legal Representation

In deprivation cases, stakeholders felt it was important that parents be represented and be given the opportunity to take an active role in the plan for the child and in reunification efforts. Many parents of children determined by DFACS to be deprived do not understand the system, do not know their rights, and are, therefore, at a disadvantage relative to DFACS in making their cases for child custody. According to one defense attorney, there are situations in the District when indigent parents, and children, go without legal counsel at initial and even subsequent hearings on child custody.

Several stakeholders expressed concern about lack of service, or timely service, of process on parents in deprivation cases, particularly with respect to non-custodial parents. They note that in addition to causing due process issues for these individuals, lack of service results in delays in disposition of deprivation cases. These stakeholders noted that the service requirements for parents that cannot be located need to be loosened so that action can be taken on the child's case. One SAAG believes that requiring advertisements for service on out-of-state parents costs the state thousands of dollars for each case merely to satisfy the Code without providing for meaningful due process – parents in these cases typically do not scour the “legal organ,” or legal newspaper, for notice of their hearings out of state. A judge, a prosecutor, and a defense attorney all agreed that a good solution to the service problem would be to have the notice requirement in deprivation cases mirror the adoption code’s notice provisions.

One judge identified the need for more court-appointed attorneys to represent parents and children in deprivation cases. A business leader who also serves on a citizen review panel in deprivation cases suggests that the Code be revised to include a specific parents' bill of rights that must be reviewed with parents of children taken into state custody. This, he believes will help parents understand, follow and accomplish case plan goals.

#### c. Reunification Plans

Some stakeholders believe that parents/family members should be involved in creation of reunification plans and supported in their execution of such plans. They believe that parents are not evaluated sufficiently along the way so as to keep them on track and to keep DFACS advised of progress. One stakeholder suggests review of these plans at least every 6 months. Some stakeholders believe that deprivation case plans, including plans for reunification, should include provisions requiring the parent or parents to pay a form of child support independent of the strict child support guidelines in child custody cases in divorce proceedings.

**C. Status offenses by Children – O.C.G.A. §15-11-2**

1. Disposition of Status Offender Children

a. Detention of children generally

A key issue that stakeholders raised time and again involves detaining children for status offenses. Status offenses are those acts that are violations of state law because of the “violator’s” status as a child. For instance, truancy, runaway, and “being beyond the control of one’s parents” are all status offenses. Several stakeholders believe that too many status offenders are being detained generally. Several probation officers feel the Code should be revised to eliminate status offenses entirely, stating that status offenses put many children into the juvenile justice system unnecessarily. At least one educator felt that detention is not always the proper choice when parents, neighbors, and educators can resolve a problem outside of the juvenile justice system.

Even as it relates to children adjudicated delinquent, many stakeholders believe that the system is biased toward detention. A legislator voiced concern that the current Code allows/requires severe sentencing of children, which she views as shortsighted. She notes that the state cannot afford to lock up children from age 8 to 80. She also believes that the severe sentences given to some juveniles may ensure that they "will never recapture their lost childhoods" and will never be able to become productive citizens – consequently the state will be paying for them for a lifetime. One educator stated that juveniles are too often detained and once a child is in the system, she or he falls into a cycle of recidivism, making it difficult to get back on track.

On the other hand, both a judge and a prosecutor believe that the system itself is biased *against* detaining delinquent children because of its focus on restoration of the child as a law-abiding citizen. These same stakeholders complained that some children know how to “game” the system – take advantage of the bias towards restoration -- to avoid detention. Fundamentally, the judge agreed that restoration was an appropriate purpose of the juvenile justice system, but not the only appropriate purpose. According to the judge, not only should the system treat the children, but it also should correct them and provide justice for persons who are the victims of the children’s actions.

One youthful offender indicated that she felt the punishment she received, which included secure detention in a Youth Development Center was fair and that her stay in a residential assistance program after her time at YDC was extremely helpful to getting her back on track.

b. Role of Law Enforcement and the Court

With respect to informal adjustments by intake and probation officers in the District, the general opinion is that the program is working well. One district attorney believes that the intake

officers are doing a good job handling minor offenses, the officers have the discretion appropriate for those cases, and they use that discretion well. The system works so well that one defense attorney recommended that all status offenses be routinely handled by adjustment. In dealing with repeat offenders, however, one police officer feels that the current adjustment system does not work and a new system is needed.

c. Role of Public Schools

Numerous stakeholders believe that schools are having a negative impact on the juvenile justice system by over referring children who exhibit behavior problems in school to the juvenile justice system – the so-called “school to prison pipeline.” They feel that too often poor school behavior that does not rise to felonious conduct is nevertheless the trigger that sends too many children into the juvenile justice system, which itself can reinforce a cycle of bad behavior. One probation officer believes that schools and courts are misusing an education code section prohibiting “disrupting public schools.” The code section was originally intended to stop persons from the outside coming on campus and causing problems (i.e., a response to gang activity), but it is being used instead to remove disruptive students from the classroom, and from the school building entirely, only to be locked up at the local regional youth detention center – a harsh version of “out-of-school suspension.”

**D. Child Delinquency Matters**

1. Identification and Intake of Delinquent Child

a. Role of Law Enforcement

Several stakeholders commented on the need to clarify the applicability of the Code to juveniles charged with serious crimes. A defense attorney, a police officer and a SAAG noted that some police agencies do not notify the juvenile court immediately when they have a juvenile in custody for serious crime, which often results in a delay in the child receiving legal counsel. These same stakeholders recommended further that the Code clarify the rights of 17 year-olds who are considered to be “adults” for their criminal acts, but are still legally “minors” lacking in most adult rights.

As it relates to the intake of children charged with delinquent acts, one defense attorney suggested that the police should be required to have a child-friendly *Miranda* warning, as it is his experience that children do not understand these warnings. He also believes that parents should be required to be present whenever children are interviewed by police.

b. Jurisdiction over the "Seven Deadly Sins" and Designated Felonies

Numerous stakeholders were interested in and commented about the “Seven Deadly Sins” statute – O.C.G.A. § 15-11-28 – and the Designated Felony Act – O.C.G.A. § 15-11-30.3. As background, O.C.G.A. § 15-11-28 provides for concurrent jurisdiction in the juvenile and superior courts for offenses committed by a child which, if tried in superior court, could result in punishment by death or life in prison, while providing for exclusive jurisdiction in the superior court for children aged 13 to 17 who have committed any of seven identified serious crimes -- the so-called “seven deadly sins.” (*O.C.G.A. § 15-11-28(b)*). O.C.G.A. § 15-11-30.3 defines the acts that are considered “designated felonies,” as those acts that are not one of the “seven deadly sins,” but nevertheless must be transferred to adult court, including, for example, the requirement that the juvenile court transfer to the superior court any case in which a child who is 15 years-old or older and is accused of a fourth offense of burglary. (*O.C.G.A. § 15-11-30.3*.)

(i) Procedural Issues

Only a few stakeholders stated that the system, as configured currently, works well with respect to the automatic transfers to superior court. Three different district attorneys stated that superior court oversight of children accused of the types of crimes described in §15-11-28(b) was working properly, feeling that the cases that should be handled in juvenile court were being returned to that court while cases that should be handled by superior court were being retained by that court.

Two stakeholders took a middle ground regarding how these two statutes operate. In discussing the initial intent for the automatic waiver statute, one legislator stated that he recalled that the statute was touted to the Legislature as directed at career gang members and hardened criminals. He did not believe that the statute was supposed to apply to a juvenile offender who had committed only one such crime. The legislator added that it is his belief that the types of felonies included in this statute should be revisited and/or the juvenile court should have more flexibility in deciding whether the facts and circumstances of a given case amounted to technical commission of the designated crimes. A director of a private child services organization agreed with the legislator that the offenses considered "deadly sins" should be revisited and the system made easier for the superior court to move appropriate cases more quickly back to the juvenile court.

While acknowledging the usefulness of the current system for handling juvenile cases involving serious felonies, other stakeholders believed that the current system could be improved. Two judges, two prosecutors, and two defense attorneys all agreed that the superior court’s jurisdiction over cases involving the "seven deadly sins" and designated felonies cases is appropriate, but that the Code should leave more discretion and authority with the superior court judge regarding transferring cases back to the juvenile court.

One defense attorney advocated changing the procedure for considering which court handles “deadly sins” cases. The defense attorney believes that the procedure should be that *all* cases involving juvenile crimes, including designated felonies and the “seven deadly sins,” should commence in juvenile court. This attorney added that he believes that superior and juvenile courts should have concurrent jurisdiction over juveniles accused of the serious crimes identified in this statute, with the juvenile court having the discretion to retain these cases or

transfer them to superior court. Another defense attorney takes the position that children charged with designated felonies should be allowed to demand a jury trial in juvenile court, which currently does not hold jury trials under the current juvenile code.

With respect to the ten-day rule for formal hearings on serious allegations, such as designated felonies, two judges have opposing views. One feels the short time period is unreasonable – that the rule puts too much strain on the court and the parties to act without sufficient time to prepare. Another judge felt that the short deadline for the hearing was important to retain, because he feels time spent by a juvenile in a detention center is the psychological equivalent of threefold that amount of jail time for an adult offender.

(ii) Considerations regarding the offender’s age and the types of crimes included

A number of stakeholders discussed the various age limits in the designated felony/seven deadly sins context. One district attorney feels that automatic transfer of certain serious cases to superior court for children age 13 and older is appropriate. Conversely, a defense attorney pointed out that the designated felony statute uses different, and older, age limits depending upon the designated felony. A legislator feels that 13 years old is too young to be tried as an adult in arson and burglary cases. Another legislator feels there should be no statutory age “floor.” He believes that age should be one factor considered, but that factors such as whether the child was a gang member, whether he had committed other crimes prior to this serious crime, and whether the prosecutor had a viable case for the very serious crime should also be considered to determine whether the case should be heard in superior court. Finally, one district attorney feels that a house burglary or any crime in which a firearm was present should be included in the definition of "designated felonies" under §15-11-63, even if it was a first offense for the child and regardless of the child’s age.

c. Role of Legal Counsel for Child – O.C.G.A. §15-11-6

It appears that youthful offenders are routinely and timely receiving legal representation in the District. Comments regarding the effectiveness of that representation, however, varied considerably. For example, a youthful offender reported that while she received appointed counsel neither her counsel nor the court ever gave her an opportunity to “tell her story.” Another youth had a similar experience, stating that the public defender only read the police report and did not ask her any questions or explain the charges to her. This youth also felt the court did not care about or listen to her at all.

d. Coordinating matters involving both delinquency and deprivation

With respect to coordinating matters involving both delinquency and deprivation, a district attorney noted that he would like to see a Code revision to provide for immediate coordination of delinquency cases with DFACS to ensure that a child accused of a crime is not also deprived and in need of assistance and services. A DFACS worker agrees, noting that

coordination of delinquency and deprivation cases would support the best interest of the child and would also be more cost-effective.

e. Parental Training and the Role of Public Schools

With respect to education of parents and the public school system, numerous stakeholders felt that there are problems in the juvenile justice system caused by a lack of education. With respect to teaching parents, a judge and a CASA believe that more needs to be done to assist parents with parenting skills.

As it relates to the public school system, several stakeholders commented that changes need to be implemented in public school procedures for handling discipline. Numerous stakeholders believe that school behaviors that ought to be handled at the school are too often paving the way to the juvenile court system. Similarly, public schools routinely place children convicted of delinquency charges into alternative schools that, according to some stakeholders, are not appropriately equipped to provide the rehabilitation many of these children need. One defense attorney questions whether schools are “encouraged” by the requirements of the No Child Left Behind Act to use delinquency adjudications as an excuse to push troublesome children out of the school system.

2. Disposition of Delinquent Child

a. Hearings

Several stakeholders commented that the hearings on delinquency in their current form are flawed in certain respects. One defense attorney noted that district attorneys handling juvenile cases are overworked and not paying sufficient attention to the juvenile caseload, which has resulted in juveniles being charged with crimes of a greater severity than the facts support. Procedurally and in trying deprivation cases, one SAAG noted that proving chains of custody for drug tests is costly for the state. As in any court, when drug tests are performed, the SAAG or prosecutor will seek to use test results as evidence. However, if the child’s attorney objects on hearsay grounds, it becomes necessary lay a proper foundation for admission of the test results, which can be practically impossible and prohibitively expensive if the needed witness from the testing lab resides out of state. The SAAG feels an exemption for the juvenile court should be included in a new code to avoid this issue.

As it concerned those juveniles in the delinquency system, a therapeutic foster care parent and an older juvenile who was adjudicated delinquent complained that some judges only listen to certain parties, and discount testimony from foster parents and children. The older juvenile also raised the problem that juvenile court proceedings are conducted in language and with processes that children do not understand. She suggested that court proceedings should be revised somehow to be more “child-friendly.” Another child, in the system currently, complained similarly that judges need to explain why the child was found delinquent in the first place. Without this explanation, the child felt as if the court did not care about what he thought and that the whole process was “a show.”

b. Sentencing (Disposition)

At least twenty stakeholders voiced opinions about sentencing or disposition options under the designated felony and other delinquency code sections. While the reasons for their opinions differed, nearly all of these stakeholders, including all of the juvenile court judges interviewed, stated that juvenile court judges need more flexibility in sentencing. Several district attorneys, legislators, juvenile court judges, defense attorneys, a probation officer and a police officer all agreed that juvenile court judges need more flexibility in sentencing because sentences under the current Code were too lenient to provide rehabilitation and deterrence necessary to address children who become "career criminals" at an early age. These individuals noted that offenders are getting younger, sometimes as young as 7-years-old. According to these stakeholders, this change in demographics makes clear the need for more alternatives for meting out a range of punishment appropriate for a particular child. Two juvenile court judges recommended similarly that the Code should provide them greater flexibility in sentencing, whether in designated felony cases or lesser delinquencies. The judge noted that certain prescribed sentences are insufficient punishment in certain cases while prescribed sentences in other cases are too severe.

A defense attorney also mentioned as problematic the statutorily identified differences in sentencing. He stated that judges may currently either sentence the child to 60 days or refer the case to DJJ where the minimum sentence is a year. Those judges have to choose between 60 days or one year with no options in between. This defense attorney stated further that he believes judges "game" the system by postponing hearings while the child is in custody to lengthen the sentence in a *de facto* fashion. This attorney views as a viable solution giving a child credit for time served before the case is heard, as happens frequently in adult court.

A district attorney commented that "cookie cutter sentencing guidelines are not effective," noting that judges need to be able to fashion penalties based on the child's situation and the nature of his offense. His concern is that the current inflexibility in sentencing results in "victims not feel[ing] that they are getting adequate protection [because] . . . some offenders are able to manipulate the system for lesser punishments . . . [, then m]y concern is that victims may turn to vigilante forms of protection putting juveniles in the community at risk."

Several stakeholders agreed with this district attorney's view that delinquent juveniles who repeatedly pass through the system, as if through a revolving door, know the system better than many of the court personnel and work the system, avoiding any meaningful punishment under the current Code. This avoidance of meaningful accountability allows them to continue down the road until they commit serious crimes and cannot be rehabilitated. At least one judge agreed with this assessment.

A different district attorney, a child defense attorney, and a judge all added that the system's bias currently is toward lesser punishments – that there are no teeth in current sentencing guidelines for juveniles – and that the juvenile court judges need greater flexibility to

fashion the correct sentence for each child and circumstance. Currently, a judge often has no real option but to issue a disposition or sentencing order that both sides acknowledge will not work or is not the best solution. A defense attorney observed further that the statute requiring “graduated sanctions” (*O.C.G.A. §15-11-66.*) was not workable. He feels that because judges have so little discretion on sentencing for minor crimes, district attorneys look for ways to make cases into designated felonies so that the judge will have an option to order secure detention that would not be available otherwise.

One judge pointed to increased flexibility in sentencing as a way to reduce recidivism. The judge noted that more flexibility in sentencing would make certain informal adjustments unnecessary, resulting in more juveniles having to come before the judge formally, which this judge believes will result in less recidivism. On the other hand, three stakeholders – a defense attorney, a probation officer, and a DFACS director – felt that disparities in sentencing were too great and, therefore, that more uniformity is needed. The defense attorney pointed to disparities in sentencing in counties in which DJJ is involved in the juvenile justice system versus counties where DJJ is not involved. For example, a charge of child molestation in a DJJ county leads to probation and mandatory counseling, whereas a similar charge in a non-DJJ county results in as much as a 24-month sentence at the youth development center (YDC) because other options are not available. The probation officer specifically cited the need for more stringent sentencing for recidivists.

Lack of resources in rural areas can also be an issue, as one defense attorney felt that rural counties without a DJJ facility lack sufficient pre-hearing detention alternatives. A police officer recommended that the Code permit children detained for delinquent behavior to be detained in the same facilities as adults, temporarily, as long as they are separated from adult offenders.

- c. Resources available to delinquent child.
  - (i) Healthcare.

With respect to mental healthcare, several stakeholders commented that improvements need to be made. For example, one legislator would like to see the Code expand the pathways to mental health services for delinquent children in the State. A juvenile court judge notes this as a pressing need in that a significant number, upwards of 25%, of the delinquency cases in that court are the result of untreated mental health problems. The judge added that the current code provision providing for development of a mental competency plan and appointment of a plan manager (*O.C.G.A. § 15-11-15(a)*) is not workable and needs to be revised.

- (ii) Drug Court

The Chattahoochee and Macon circuits have established juvenile drug courts, which receive government and private funding. The drug courts process non-violent drug offenders using incentives, graduated sanctions, and check-ins every two weeks. In the Chattahoochee Circuit, the drug court received high marks from stakeholders because of its good results. Court

officials report a remarkably low recidivism rate of only 9% for offenders who complete the entire program.

d. Resources needed for delinquent children

Several stakeholders discussed the need for communities to assist in creating and funding programs for juveniles which support the development of life skills, completion of education, and assistance with higher education. These stakeholders believe that such measures keep children from entering the juvenile justice system and help rehabilitate those who have been in the system. Programs that were referenced include community based risk reduction programs working with law enforcement and the juvenile courts; psychological and life skills training; tutoring; mentoring; job programs and internships; and after school activity/skills training programs.

With the exception of one defense attorney, a number of stakeholders discussed unfavorably “boot camps.” Most of these stakeholders did not favor boot camps, noting that they did not have a good track record for rehabilitation. These stakeholders recommended expanding programs such as Job Corps.

3. Other Juvenile Issues

a. Traffic offenses

At least two juvenile court clerks mentioned that the majority of their caseload is comprised of traffic offenses. One clerk feels that all juvenile traffic offenses should come under the jurisdiction of the juvenile court to keep the court’s jurisdiction consistent in handling all juvenile offenses, while the other stated that traffic offenses were clogging their court’s docket.

One defense attorney stated that Georgia needs a joyriding statute. Many juveniles are charged with theft by receipt of an automobile when all they are doing is riding in a car that they know is stolen. This can lead to the child being charged with a designated felony on the second offense, which is an overreaction in this stakeholder’s opinion leading to consequences out of proportion to the act.

b. Abortion notification of parents for minor girls –  
O.C.G.A. § 15-11-152

A juvenile court judge would like the Code to include a different approach for representing and assisting girls who do not want to tell their parents about their decision to terminate a pregnancy. The judge does not believe that involving the juvenile court is the best way to handle this issue.

c. Consensual Sex between minors – O.C.G.A. § 17-1-6.2

A defense attorney and police officer believe the age of consent laws should be removed and these cases involving consensual sex between minors handled on a case-by-case basis, with the facts and circumstances of each case considered on its own.

**V. CONCLUSION**

The stakeholder groups interviewed for this Report held many opinions on the current Juvenile Code and made a number of recommendations regarding revisions to the Code that they believe would improve the juvenile justice system in Georgia. Despite concerns, stakeholders interviewed were generally complimentary about the court system and its ability to serve the needs of children in the District.

Their reasons for supporting efforts to revise the Code differed, but most find that numerous provisions in the Code do not work as effectively as they should. The majority of stakeholders interviewed, therefore, welcome efforts to revise Georgia's current Juvenile Code.

Attachment A  
Stakeholder Categories

Juvenile Court Judges	4
Prosecutors	5
Defense Attorneys	2
Parent Attorney	3
Child Attorney/ GAL in deprivation cases; CASA	4
SAAGs	2
DFACS Supervisors/case managers	5
Juvenile Court Administrators	5
Juvenile Court Probation Officers	4
Mental Health Providers for children includes individuals assisting with juvenile/family programs of various types	8
Police officers focusing on delinquency/truants	3
Parent whose child as been through delinquency proceedings	1
Child who has gone through delinquency proceedings	1
Older child in foster care	3
Older child who went through delinquency proceedings	1
Member of business community	3
Victim of juvenile crime	1
Member of Georgia House of Representatives (Republican)	3
Member of Georgia House of Representatives (Democrat)	3
Member of Georgia Senate (Republican)	1
Member of Georgia Senate (Democrat)	1