

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

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## Judicial District 5



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

### A. Acknowledgements

This report is the product of numerous individuals' efforts. Troutman Sanders LLP and Southern Company thank Lynette Eaddy Smith and Anna Curry for writing this report, James T. Martin for his research assistance, and the following attorneys who conducted the interviews that form the foundation of this report: Adam Bassing; Melissa Caen; Anna Curry; Art Domby; Judith Fuller; John Lamberski; Melissa Lu; James T. Martin; Jeffrey Nix; Tera Pullen; Steve Ruth; Ryan Schneider; Heather Shirley; Mark Vanderbroek; and M. Drew Wooldridge.

### B. Statement of Reporting Law Firm

This report summarizes information, opinions and recommendations gathered from individuals serving in a variety of capacities throughout Georgia's Fifth Judicial District about the current status of the laws that govern children and families in cases of delinquency, child abuse, neglect and truancy. In particular, the information compiled in this report summarizes the views within the Fifth Judicial District regarding the strengths and weakness of the Georgia Juvenile Code and the changes needed to the current Juvenile Code in order to improve the welfare of Georgia's children and society in general.

To compile this report, attorney volunteers interviewed a variety of stakeholders within the Fifth Judicial District, including juvenile court judges, assistant district attorneys in juvenile court, defense attorneys in juvenile court, child attorneys, special appointed attorney generals in juvenile court, representatives from the Division of Family and Children Services, a Court Appointed Special Advocate, the juvenile court administrator, juvenile court probation officers, a mental health care provider, police officers, the parent of a child who has been alleged or adjudicated delinquent, a young adult who has aged out of foster care, an older child in foster care, a member of the business community, victims of juvenile delinquency, and a Georgia senator. In total, 32 individuals were interviewed for this report. In addition, information for this report was received from participants in a town hall meeting on juvenile justice reform that was sponsored by the JUSTGeorgia Project and held on October 30, 2007.<sup>2</sup>

### 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

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<sup>2</sup> 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.

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>3</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 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

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<sup>3</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.

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. THE FIFTH JUDICIAL DISTRICT

### A. Description of the Fifth Judicial District

The Fifth Judicial District is comprised of only one county, Fulton County, and encompasses only one state judicial circuit, the Atlanta Circuit. The Fifth Judicial District is located in the northeast part of the state and is home to the state's capital, Atlanta.

Based on 2006 estimates by the United States Census Bureau, the population of Fulton County is the largest of any county in Georgia and is growing.<sup>4</sup> In 2006, the population of Fulton County was approximately 960,009, an increase of approximately 17.7 percent since 2000. The percentage of the county's residents that are under the age of 18 is nearly average for the state at about 25.3 percent. The racial composition of Fulton County is approximately 51.4 percent white, 42.8 percent black, 7.9 percent persons of Hispanic or Latino origin, and 4.2 percent Asian.

The Fifth Judicial District is an urban area with a median household income of \$45,819, which is slightly above the state average of \$42,679. The education level of Fulton County's residents who are over 25 is higher than that of Georgia generally. Eighty-four percent are high school graduates (compared to 78.6 percent statewide) and 41.4 percent have a bachelor's degree or higher (compared to 24.3 percent statewide). In 2004, approximately 22.9 percent of the children in Fulton County were living in poverty, which is higher than the state's average of 19.4 percent.<sup>5</sup>

### B. Description of the Fifth Judicial District's Juvenile Court System

The Fulton County Juvenile Court is an independent juvenile court organized under Chapter 11 of Title 15 of the Official Code of Georgia. The court is considered independent because it provides not only court operations but also rehabilitation services independent of the state of Georgia. The court consists of two appointed judges and five associate judges. Associate judges have limited authority in that parties have discretion to request *de novo* review by judges of associate judges' decisions. The two judges in the Fifth Judicial District each have a judicial

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<sup>4</sup> All population statistics were obtained from <http://quickfacts.census.gov/>.

<sup>5</sup> Information regarding the percentage of children in Fulton County living in poverty was obtained from the website for the Annie E. Casey Foundation at <http://www.kidscount.org>

assistant, a case manager, a court reporter, and a staff attorney. Each associate judge has a judicial assistant, a case manager, and access to a court reporter. Cases are assigned evenly between the two judges, with associate judges assisting one of the two judges with their caseload. Each judge handles particular types of cases with more frequency than the other judges; for example, one associate judge may handle drug court cases while another handles domestic violence cases.

In 2006, 12,056 cases were filed in the Fulton County Juvenile Court, and the court scheduled 35,247 hearings. Of the matters handled by the court, approximately 25 percent are deprivation matters and 40 percent are delinquency matters. Other proceedings, those involving status offenses, termination of parental rights and guardianships, comprise the remaining 35 percent of cases heard by the court.

Fulton County does not have its own juvenile detention facility. The Fifth Judicial District refers youth to the Metro Regional Youth Development Center (“Metro RYDC”), a facility operated by the Georgia Department of Juvenile Justice. The Metro RYDC has a capacity of 200 persons. Children are transferred to other facilities throughout the state if the center reaches capacity. Fulton County Juvenile Court does have a holding facility in its building where children can be held securely while awaiting their court appearances. This is a very short-term facility, however, and is not residential.

The Fifth Judicial District has three major diversion programs: counseling for at-risk children; informal mediation between probation officers and the parties involved; and community restorative boards, which are comprised of community volunteers who hear low-level offense cases and order restorative measures. The Fifth Judicial District has some foster care options, as well, including a mix of group homes and individual foster homes. Fulton County has an active Court Appointed Special Advocate (“CASA”) program. In 2006, more than 100 volunteers handled deprivation proceedings affecting more than 267 children through the Fulton County CASA program. The Fifth Judicial District also has Guardian ad Litem programs for educational neglect cases. Additionally, the Fifth Judicial District has citizen review panels, which are groups of trained volunteers who review previously adjudicated deprivation cases at least every 6 months to review progress in each case. Other resources include, among others, the Juvenile Justice Fund, a non-profit organization dedicated to helping children in Fulton County; Angela’s House, a residential facility designed to meet the specialized needs of sexually exploited teen girls; and Atlanta Family Fulton County Connection, an organization aimed at combining available public resources to address the needs of children and families in Fulton County.

### **III. FUNCTIONING OF THE FIFTH JUDICIAL DISTRICT’S JUVENILE JUSTICE SYSTEM**

#### **A. Aspects of the District’s Juvenile Justice System That Work**

When asked about aspects of Fulton County’s juvenile justice system that work, two programs in particular were repeatedly mentioned. Several individuals characterized the Court Appointed Special Advocate (CASA) Program, designed to give a voice to abused and neglected

children, as a “wonderful program” that should be used more. The Truancy Intervention Project (“TIP”), a program that seeks to provide an early, positive intervention with children reported as truants, was also widely lauded.<sup>6</sup> One parent of a child who had gone through Fulton County’s juvenile justice system was adamant that, had it not been for TIP, her experience with the system would have been “difficult and miserable.” She was extremely thankful for her TIP representative’s detailed explanations of the juvenile justice process and his assistance in her interactions with court personnel, especially the judge and probation officer. This parent identified TIP as, by far, the most positive aspect of her experience with the juvenile justice system.

**B. Aspects of the District’s Juvenile Justice System That Do Not Work**

The aspects of the Fifth Judicial District’s juvenile justice system that are viewed as not working cannot be easily or quickly summarized. While many stakeholders made a point that, despite its many flaws, the juvenile justice system functions reasonably well and that the services provided “do right” for the children in the system, none was at a loss to list numerous ways the system could be improved. One stakeholder within the juvenile court summarized the Georgia juvenile justice system as a whole as woefully under-resourced, uncoordinated between different court systems and counties, and in desperate need of re-engineering. Similarly, one manager of apartment properties, the site of frequent juvenile delinquencies in the District, lamented that there is “nothing about the juvenile justice system that is working.”

Stakeholders identified a wide range of individual problems with the juvenile justice system and the juvenile code during the town hall meeting and interviews that were conducted. Certain themes emerged. A summary of the most predominant themes and issues is provided below.

**1. Better coordination is needed among the various agencies and departments that serve children’s needs.**

One juvenile court judge explained that delinquent and deprived children do not always fit into neat categories. Rather, they almost always have numerous needs requiring attention from several different child-serving agencies and departments. Numerous individuals interviewed expressed dissatisfaction and frustration with the lack of effective coordination between the various agencies and departments that serve children’s needs (*e.g.*, the Georgia Department of Human Resources (“DHR”), the Georgia Division of Family and Children Services (“DFCS”), the Department of Juvenile Justice (“DJJ”) and the Department of Mental Health, Developmental Disabilities and Addictive Diseases (“MHDDAD”)). Stakeholders noted that, because each is independently funded, managed and adheres to different rules, the needs of children are sometimes lost in the effort to adhere to each agency’s requirements and demands.

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<sup>6</sup> Some stakeholders identified citizen panels as an aspect of the Fulton County juvenile justice program that “works.” This program, however, received mixed reviews. Some thought such panels should be used in all cases, while others characterized them as a “complete waste of time” or ineffective because of the confusion regarding when reviews should be held.

There is reportedly no ability for one service provider to “override” another’s rules or procedure. As a result, “common sense” and the interests of the child are too often ignored. Repeatedly, stakeholders shared that the agencies, departments and courts need the ability to better coordinate with each other to meet the various needs of and serve the *whole* child.

Although many expressed frustration with having to navigate numerous, sometimes inconsistent, agency and department rules, frustration is also felt when agency rules are not adhered to. For example, individuals at DFCS complained of federal reviews and Title IV-E funding that is jeopardized whenever an order is not worded in the precise manner needed or is not dated correctly. DFCS stresses that, in these instances, agency rules simply cannot be ignored or manipulated, or children’s interests will be jeopardized.

**2. Stakeholders question whether the juvenile courts have sufficient authority to control the outcome of a child’s case.**

Several judges and other stakeholders interviewed expressed frustration at the inability of the juvenile courts to “make things happen.” They report that there is too often a “disconnect,” especially in deprivation cases, between court dispositions and state implementation. These stakeholders gave a simple example that a juvenile court judge cannot order that a pair of glasses be provided to a deprived child.

The opinion was expressed that the system would be more effective if juvenile court judges were allotted more authority to control the treatment, placement and educational environments provided a child and if the providers of children’s services could be held accountable for complying with juvenile court orders. Similarly, stakeholders complained that the juvenile courts are powerless to intervene on a child’s behalf once a child is committed to the Department of Juvenile Justice (“DJJ”) or placed in the custody of DFCS. This practice was cited as leading to a lack of continuity of care or attention from one branch of government to the next, often to the child’s detriment.

At least a few stakeholders also voiced an opinion that juvenile court judges’ authority should be expanded to include deciding whether a juvenile should be tried as a child or adult. Specifically, these stakeholders thought that the automatic waiver of Senate Bill 440 cases to adult court should be revoked and that such waivers should be discretionary after hearing and upon the order of the juvenile court judge.

This feeling that juvenile court judges’ authority should be expanded was not universal, however. At the town hall meeting, some participants expressed the view that judicial discretion in the juvenile courts was too broad and without foundation. Also, members of DFCS conveyed that any revised juvenile code should re-emphasize and support the authority of DFCS to determine placement of a child; that the court should not have such authority when the child is placed in the legal custody of DFCS. These stakeholders noted that a court can authorize placement, but DFCS, not the court, should choose the specific foster home or actual placement for an individual child.

3. **The Juvenile Code needs to be internally consistent, practical and follow common sense.**

Throughout the interview process, numerous inconsistencies and incongruities within the juvenile code were noted and stakeholders repeatedly urged that these be addressed and reconciled. Sometimes, in the views of those interviewed, the distinctions and procedures outlined in the juvenile code simply defy common sense.

For example, stakeholders noted that different adjudications use inconsistent or varying ages, without any apparent justification. For example, 17 is the cut-off for delinquency, 18 is the cut-off for deprivation and 16 is the cut-off for truancy. Also, a child can be held criminally responsible as an adult at age 13 but cannot consent to sex until 14 or 16. At the age of 11, a person is considered a child who cannot be held criminally responsible, at the age of 12 a person can be held criminally responsible, and at the age of 13 a person can be held criminally responsible as an adult. At least one stakeholder questioned the basis for such drastic changes in liability.

A stakeholder from DFCS highlighted another example of the juvenile code seemingly working at odds with itself. That stakeholder explained that when a child is removed from a home, the current juvenile code requires DFCS to search for relatives as possible placements for the child. Many times, placement with a relative does not work so DFCS has to locate a foster family to take in the child. Sometimes that foster family decides to seek adoption of the child. When a foster family wants to adopt the child, DFCS will move for termination of parental rights. Usually this move occurs long after the relatives were first notified of their opportunity to get involved in the child's life. Yet at the time of the termination hearing, the current code requires that the child's relatives be contacted again. At that point, if the relatives decide that they want the child and want to stop the foster family from adopting, then it seems as though the current code essentially gives them greater rights to receive the child than the foster parents who have cared for the child in the interim and have sought to make the relationship permanent through adoption. Sometimes the second contact with the relatives occurs one to two years after the initial contact. If the relatives decide that they want the child, after all, then a potentially stable placement for the child through adoption by the foster family is lost, and, as importantly, the child loses the experience of permanence when he or she has to leave the foster family and has to move in with relatives who feel more like strangers than family to the child.

Time requirements within the current juvenile code were also criticized by some as too demanding and too unrealistic. For example, the current juvenile code requires a probable cause hearing within 72 hours and a full hearing within ten calendar days of the filing of a petition if a child is detained. In practice, however, courts often end up granting multiple continuances to allow thorough investigations to be completed. This practice of granting so many continuances, some stakeholders said, wastes time and court resources because each continuance requires a scheduled hearing. In another example, section 15-11-106 of the current juvenile code, which requires termination hearings to be held within 90 days after the filing date, subject to good cause, was cited as unworkable in Fulton County because most cases involve absent or unknown fathers. An absent or unknown father must be served by publication, which cannot be completed

within 90 days and therefore always results in a continuance hearing that clogs the court calendar.

Another stakeholder noted that procedures within the child welfare system are too lengthy and bureaucratic to be understandable, and as a result simply are not followed. For example, children placed with a grandmother in another county may need daycare services in that county. In that instance, DFCS is required to complete several different forms in order to place the child in the proper daycare. According to one stakeholder, there are so many complicated forms that the DFCS workers are sometimes dissuaded from completing them and the child may be adversely affected as a result.

Complaints about the slowness and inefficiencies of the juvenile justice and child welfare systems were also heard at the District's town hall meeting. Participants, some of whom were from neighboring Judicial Districts, cited as problematic the many continuances in delinquency cases and the general lack of adherence to time limits. They also complained of the inconsistent outcomes, decisions and treatment by the juvenile courts. In addition, they cited the mechanism for service of process as problematic in juvenile court.

**4. The strict confidentiality requirements involved in juvenile justice sometimes create problems.**

Law enforcement and other community stakeholders all recited problems in the juvenile justice system that are aggravated by the strict confidentiality requirements that govern juvenile courts. All who spoke on this topic recognized the need for confidentiality when working with juveniles, however, they also all emphasized that additional critical thought was needed in order to successfully work around the problems caused by strict confidentiality mandates.

Confidentiality rules were attacked from almost every angle. More openness was demanded for the purpose of agency transparency: stakeholders wanted to be sure that confidentiality provisions did not work for the "protection of agencies" and to the detriment of children. The fact that juvenile records are sealed was also criticized for allowing juveniles who are recidivists to repeatedly appear before the court as "first offenders." According to those interviewed, this occurs because the juvenile's record of previous offenses can be sealed, or, at the very least, not routinely disclosed, absent very limited circumstances, to adult court authorities. As a result, a 17 year old in adult court, for instance, can be put back on the street as a first offender even though, in reality, he or she has a history of multiple offenses in juvenile court. The same problem occurs with younger offenders whose initial violations of the law are "informally adjusted." One court officer suggested that this problem could be reduced if adjustments were sealed at the discretion of the judge rather than automatically by operation of law.

The rules of juvenile court confidentiality also contribute to the public's lack of confidence in the County's ability to effectively deal with juveniles who commit delinquencies. Victims of juvenile delinquency expressed frustration at not being able to discover what steps

were being taken to punish or rehabilitate the child who harmed them.<sup>7</sup> As a result, these victims did not feel assured that the child had learned his lesson and did not believe that they would not become repeat victims. This concern is especially compelling in light of the fact that juvenile delinquencies are not, by definition, minor, but can be serious crimes. As one victim of a juvenile delinquency summarized, “The juvenile justice code should recognize the competing interest of members of a community to be assured of their safety. When communities are being stalked by a dangerous juvenile predator, the government should not be permitted to hide behind confidentiality provisions and to refuse to provide any information about the steps being taken to assure [the community’s] safety.”

In addition to addressing confidentiality concerns, a variety of stakeholders voiced the need for Georgia to have an automated system for juvenile records. As one stakeholder recognized, “The real estate record keeping system in Georgia is far superior to the recordkeeping system for that of children who are in trouble and involved in the juvenile justice system.” The lack of a good, accessible, statewide record system frustrates both court officers and police officers. Police officers explained that they routinely take juveniles into custody yet have no information regarding the child’s delinquent history or whether any charges are pending against him or her. Attorneys in the District Attorney’s office also criticize the inability to discover a juvenile’s delinquency background. They explain that “hardened juveniles” in the Atlanta area simply move their criminal acts between counties to avoid getting caught.

A stakeholder who had aged out of the foster care system also lamented the lack of good records. That individual explained that the paper records of Fulton County<sup>8</sup> are “a mess.” She reported that, consequently, whenever a child gets a new coordinator or caseworker, records are declared lost or misplaced. According to the stakeholder, the new coordinator or caseworker will then “begin from scratch” to understand the issues surrounding the particular child.

**5. Some stakeholders question whether the sanctions employed by the juvenile courts are effective.**

The concerns voiced regarding the sanctions available to the juvenile courts varied, but were consistent.

Stakeholders involved with defending children and youth expressed concern that the trend in prosecuting juveniles is moving away from graduated sanctions, which give a juvenile the opportunity to learn from his mistakes, and more towards final sanctions.

The juvenile system was also criticized for making no provision to decrease the amount of time a juvenile is kept in custody if he or she exhibits good behavior. As one stakeholder explained, under the “designated felonies” statute, a court can sentence a child to restricted

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<sup>7</sup> The current juvenile code allows for victim impact statements in some, but not all, cases of delinquency. Under the current juvenile code, victims may be involved in some delinquency hearings and participate in developing some outcomes, but victims are not entitled to information regarding the outcome of every delinquency handled by the court.

<sup>8</sup> Unclear if the stakeholder was referring to the paperwork maintained by the juvenile court or the county DFCS office or both.

custody for up to five (5) years. When the court system enters a DFA disposition of a child, it is a final order that cannot be amended based on the child's conduct for good behavior and early release. Thus, while the adult penal system allows adults to leave correctional care early for good behavior, there is no similar option for children who make positive progress toward rehabilitation. Instead, juveniles are committed for their entire sentence, regardless of good behavior.

At the same time that some stakeholders questioned the perceived unfairness of juvenile court sanctions, other stakeholders voiced strong opinions that the juvenile courts were ill-equipped to handle repeat or "hardened" juvenile offenders. Several police officers who were interviewed were of the opinion that, when a juvenile finally appears in court before a juvenile court judge, the judge's attitude is that the juvenile is there for rehabilitation, not punishment. While that attitude may be effective for many children, police officers noted that repeat offenders should be treated differently because they have already had their second chance. These stakeholders believe that youth who are repeat offenders should be punished by spending some time in detention right from the beginning -- when the young person is first taken into custody. According to these police officers, of the juveniles who are detained before the probable cause hearing, "99 percent" of them have a preliminary hearing and then are released to their parents, without even a bail requirement to return for the formal hearing. This process is frustrating to many stakeholders who perceive the act of releasing a child pending the formal hearing as being soft on crime. Other stakeholders also see the existing juvenile code as establishing a "catch and release" program that does not, in their opinion, work for "hardened juvenile criminals" in urban settings like Atlanta. Victims, too, harshly criticized the perceived inability of the juvenile courts to effectively deal with the few juveniles who are dangerous repeat offenders. One victim explained that it takes too long for a repeat juvenile offender to be removed from a neighborhood.

#### **6. Police cannot effectively detain juveniles who commit delinquencies.**

Police officers, assistant district attorneys and at least one community member expressed extreme dissatisfaction with the Detention Assessment Instrument. According to those interviewed, the Detention Assessment Point System, which is mandated by DJJ policy, governs whether an arrested juvenile is physically detained at a juvenile detention facility or released to his or her parents or guardian. When a juvenile is taken into custody (arrested), a juvenile intake officer prepares a Detention Assessment Instrument (DAI) form, which assigns points based on the seriousness of the offense, the juvenile's prior record and pending charges, and certain other factors. Stakeholders explained that a certain number of points on the DAI permits detention in the juvenile detention center while a lower score would require release to a parent or guardian.

Police officers interviewed expressed unanimously that this DAI point system was not working, at least not for repeat juvenile offenders who have figured out the system. Typically, a property crime and/or weapons possession is not considered serious enough to warrant detention. Many children know that if they get arrested for a crime such as theft, burglary, or weapons possession, they will not be detained, even for a short period of time. One of the officers interviewed said that he recently had arrested the same juvenile on six straight nights for

burglary. According to the police officer, the DAI score finally rose to a number that allowed the child to be detained after the sixth arrest.

According to police officers who were interviewed, under the old juvenile detention system, before the DAI system went into effect, when the police arrested a juvenile, that juvenile was taken to the juvenile detention center. The detention center personnel completed “an intake” and detained the child until a parent or other guardian came to pick him up. Under the present system, however, when police officers takes a child into custody, the officer has to keep the child at the police precinct (which does not include holding facilities) while the officer calls the juvenile intake officer who then administers the DAI over the telephone. If the DAI point total does not allow detention, the officer must release the juvenile to a parent or guardian. If the parent or guardian cannot be reached, the police officer can call DFCS to come pick up the child. Or, if the juvenile states that he has taken any drugs in the last couple of days, the police officer is supposed to take the juvenile to a hospital for an examination. Thus, the juvenile arrest process can take several hours, and the child is usually released to parents or guardians with no detention.

The law enforcement stakeholders noted that many of the juveniles they take into custody are repeat offenders who, upon release, go right back to committing delinquencies, before they even have to appear in court for their initial charge. According to the interviewees, these youth have no fear of retribution or punishment. One of the officers stated that the level of police officers’ frustration about these problems is “in the stratosphere.” According to him, police officers are getting to the point of asking why they should even bother arresting a juvenile, when he or she will not be detained pending the formal hearing<sup>9</sup> and will instead just be released to the parents until the time of the adjudication.

Not surprisingly, victims also voice frustration at the perceived inability of law enforcement to detain delinquents. One stakeholder who manages apartment properties in an area of high juvenile delinquencies complained that police officers refuse to take juveniles into custody unless the officers are confident that the child’s delinquency rises to the level at which the juvenile will be held. The juveniles are well aware of this fact, as are the adults who work with them. According to the stakeholder interviewed, this has led to rampant delinquency by juveniles who are effectively immune from prosecution. This stakeholder also noted that the inability of police to detain juveniles, and particularly hardened juveniles, scares the community. He explained that many juveniles in his community under the age of 17 are “sophisticated,” own cell phones, and have access to guns and drugs.

**7. The Fifth Judicial District needs programs specifically tailored to its needs.**

Because the Fifth Judicial District is a strictly urban district, several stakeholders felt that the needs of the District are unique and expressed the need for programs and procedures specifically tailored to meet the needs of juveniles living in a large city.

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<sup>9</sup> The current juvenile code does not permit detention for the purpose of punishment before the formal hearing. The reason is grounded in the presumption of innocence that is accorded to juveniles as it is to adults.

One assistant district attorney explained that many of the children arrested have no identification and either give a false address or do not have a permanent address. The inability to find these children later so that a warrant or notice of a hearing can be served is extremely problematic, especially because the young people are routinely released before a court date is set. The assistant district attorneys reported that the problem is exacerbated by the fact that there are multiple police jurisdictions within the city of Atlanta. For example, a juvenile may be taken into custody by the Atlanta Police, the MARTA police, the Morehouse Police, the Clark Atlanta University Police, the Fulton County Sheriff's Office, or a variety of other law enforcement agencies operating within the Fifth Judicial District. Assistant district attorney stakeholders also expressed frustration at the seeming inability to address the problems created by repeat offenders who threaten or intimidate victims and witnesses. One court officer stressed the need for programs designed to teach and encourage a healthy attitude toward education, gender-specific programs designed to reduce the District's rate of teen pregnancy, and a "fully-functioning diversion program" designed to advance the goals of the juvenile justice system and decrease recidivism.

**8. The process for identifying children's mental health needs and the resources to meet those needs must be improved.**

One area of children's services that was routinely cited as an area of concern was the funding available to identify and service children with mental health needs. Several stakeholders noted the "severe" lack of adequate funds for children's mental health services. One stakeholder characterized the process of getting mental health needs identified and treated as a "nightmare." The lack of treatment facilities for children with mental health challenges was cited at the District's town hall meeting as a "critical issue."

One mental health provider noted that, while children with severe mental health issues generally do get the help they need, children with less severe mental health issues often do not. For example, she explained, mental health problems that present as behavioral problems too often go untreated.

The mental health provider stakeholder also lamented that children with mental health problems may not meet the threshold showing necessary to justify removal from their home environment and placement in a treatment facility. She explained that, even if a judge is aware that, for safety reasons, a child with mental health problems should not be sent back to his home environment, the judge will have nowhere else to send the child except detention. The stakeholder even cited cases in which judges have gone on the record to say that they are ordering detention only because there was no other available placement for the child. This, according to the stakeholder, sends a message to the children that they have done something wrong when, in fact, they are not to blame for the behavior that they display when the behavior is truly a manifestation of their mental illness. This problem is particularly prominent where the child with mental health needs poses a low risk of harm to the community or to themselves.

**9. The Juvenile Code needs to be better organized and made more practical.**

None of the stakeholders familiar with the juvenile code believed the juvenile code to be well written, easy to use or practical. As one stakeholder explained, the juvenile code as drafted is “just awful.”

More than one stakeholder suggested that the juvenile code either incorporate or cross-reference the various other laws that impact child services. For example, the juvenile code should incorporate or cross-reference the Georgia Education Code, the Civil Practice Act and the Code of Federal Regulations, all of which significantly impact juvenile cases. A desire to have more of the case law that governs so much of child advocacy proceedings codified was also viewed as a helpful, practical improvement to the juvenile code.

The various stakeholders interviewed would also welcome purely practical improvements to the juvenile code. Seemingly simple improvements such as better organization, a good table of contents, headings that use the language used by the people working within the juvenile justice system, a comprehensive definitions section and the separation into distinct categories of the provisions governing the various areas of juvenile law (*e.g.*, deprivation, delinquency, status and guardianship) were all suggested.

Although not directly a product of the juvenile code itself, one other seemingly easily rectified impracticality of the juvenile justice system was noted by various stakeholders. Several stakeholders expressed extreme frustration at the lack of coordination between courtroom calendars in the juvenile courts and the resulting waste of time and resources for all those involved. For example, stakeholders explained that Special Appointed Attorney Generals (“SAAGs”) must cover multiple juvenile cases in multiple courtrooms throughout the courthouse. The SAAGs were characterized as literally having to “run all over the courthouse” while children wait for their cases to be called. As one SAAG summarized, “the calendaring system is out of control.”

#### **10. Stakeholders identified a variety of provisions within the Juvenile Code as problematic.**

In addition to describing over-arching problems with the juvenile code and the juvenile justice system, many stakeholders also identified specific provisions within the juvenile code that they believed needed to be addressed. Following are some of the examples provided:

- The law should not allow juveniles to be put on the sex offender registry.
- Juveniles should not have to go into custody simply because no one is willing to take them home.
- The juvenile code needs to be more specific about what a permanency hearing is and what should take place at a permanency hearing.
- The juvenile code should define the “compelling reason” standard for filing a termination if a child is in foster care for 15 out of 22 months.

- The juvenile code should clearly spell out the differences between a guardian ad litem and a child advocate.
- The juvenile code should be revised to do away with private deprivation petitions. They too often are just disguised custody cases that should be brought before the superior court.
- The juvenile code should require protective orders to be issued within less than 2 weeks from application.
- The juvenile code should be revised to eliminate the 16-year cut off for children to be allowed to drop out of school.<sup>10</sup>
- O.C.G.A. §15-11-58, which addresses the process for reunification or non-unification and permanent placement in foster care, is “unmanageable” and “confusing” and, in some cases, leads to results that are inconsistent with other juvenile code sections and simply does not make any sense.
- O.C.G.A. § 15-11-64, sometimes referred to as the “runaway” statute, affords no standing for the district attorney to intervene in runaway situations. As a result, “first” runaways are often simply returned to a parent or legal guardian, even in situations where the child’s flight was prompted by abuse.
- Juvenile court judges should not be able to easily exclude admissions by juveniles without even a motion by the defense.
- Admissions alone should be sufficient to support an adjudication of delinquency.
- The juvenile code should provide incentives for plea bargains and for juveniles to admit responsibility for their actions.

C. **How the Juvenile Justice System Can Be Improved.**

1. **Stakeholders recognize the difficulty in achieving real improvement to the current Juvenile Code.**

While stakeholders had many suggestions for needed changes to the juvenile code, several recognized that achieving real improvement to the current juvenile code will be difficult. Judges noted that, for proposed improvements to be successful, all political entities will have to be brought to the table. Without a consensus among the different entities with an interest in improving the juvenile justice system, they expect proposed legislative improvements to the juvenile code to fail. As another stakeholder noted, the lack of political will, the lack of attention from the Legislature, the need for additional resources and the desperate need for intellectual

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<sup>10</sup> Compulsory school attendance to age 16 is found, not in the current juvenile code, but in the education code of Georgia (Title 20).

focus on the issues plaguing the juvenile justice system are obstacles to reform. Therefore, stakeholders felt the need for a concrete plan that legislators can easily endorse.

**2. Any changes to the juvenile justice system must strike a reasonable balance between the needs of children and the interests of society.**

Several stakeholders who work within the juvenile justice system voiced the concern that revisions to the juvenile code must adhere to an overarching theme of “What is in the best interests of the child?” As one stakeholder explained, the overriding theme of serving the best interests of the child needs to be balanced, with the competing interests of society and parents. One judge who was interviewed urged that the theme of any new juvenile justice code should be a “balance and restorative justice model.” Such a model, the interviewee explained, would balance three goals: (1) restoration of community safety; (2) development of the child’s competencies; and (3) accountability of the child to the victim.

While at least one stakeholder complained that the Department of Juvenile Justice has abdicated its responsibilities by reducing treatment options and simply focusing on the lock-up of juveniles with no pretense of treatment, others had a very different view. For example, assistant district attorneys and police officer stakeholders were of the opinion that the existing juvenile code is entirely rehabilitative with no deterrent or punitive purpose and no incentive to protect the community. These attorneys characterized the existing juvenile code as providing too much “love” for delinquents and not enough “tough love,” particularly for the “ten percent of juveniles” who, in their view “commit ninety percent of the juvenile delinquencies.”

Stakeholders also felt that the role of parents in solving juvenile problems should receive more attention. At the District’s town hall meeting, suggestions were made to create positive programs for child and parent participation and create parenting skills classes that teach more than just the basics. The individuals who attended the meeting were clear that they expected more accountability from parents as well as from organizations and institutions. These feelings were echoed by one of the probation officers. He viewed many of the problems facing children in the juvenile justice system as the result of problems at home. The officer further explained that the children’s problems will probably not be solved until parents are held more accountable for their children’s actions. According to this stakeholder, parent accountability is crucial in reducing juvenile recidivism.

**3. The juvenile justice system needs additional resources.**

Throughout the interviews, areas within the system requiring additional funding were identified. The juvenile justice system was characterized as overloaded and, at times, inefficient. Pleas were made for more resources for, among other things, children’s mental health programs, attorneys, case workers, a variety of child services, diversion programs, youth-focused community activities, a well-run mediation program, probation officers, and investigators who would work for the District Attorney’s office but independently of the probation office. One mental health provider specifically called for more resources for sexually exploited girls and children with substance abuse problems.

The need for additional resources was also raised at the District's town hall meeting. Many participants had concerns about the lack of services for juvenile offenders. Suggestions to address the problem included developing re-entry programs targeted specifically to juveniles with curriculum unique to juveniles, using zero-tolerance disciplinary removals for only the most serious and severe disruptive behaviors, attempting to reconnect alienated youth or students at-risk for behavior problems and violence and creating more positive incentives for staying in school.

DFCS, in particular, was an agency noted as most in need of additional resources. Stakeholders outside DFCS noted that caseworkers are underpaid, overworked, overwhelmed and in need of additional training. In supporting the plea for more funds for DFCS, one stakeholder noted the significant benefit derived from having one well-trained caseworker responsible for a child's entire case and available to testify at the termination hearing. When that happens, she reported, "things move along smoothly." Even the former foster care child who was interviewed noted that caseworkers have an extremely high workload and saw a consequential detrimental effect on caseworkers' abilities to meet the needs of the children for whom they are responsible.

#### **4. The Fulton County Juvenile Court needs seven full judges.**

Several stakeholders interviewed for this report felt that the Fulton County Juvenile Court would benefit from having seven juvenile court judges rather than two juvenile court judges who are assisted by five associate judges. According to these individuals, the parties' rights to a review of an associate judge's order creates additional work for the court while providing no benefit to the children in the system. This problem can be avoided by converting the seven positions to seven full judge positions for the Fifth Judicial District, which operates the busiest juvenile court in the state.