

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

Judicial District 6



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I. INTRODUCTION¹

A. Acknowledgements

The Firm conveys its sincere appreciation to the following 20 volunteers who assisted with this project:

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Additional Volunteers: Jerolyn W. Ferrari, Attorney (Interviewer), Ann Marin Russell, Law Student (Interviewer), Lauren Zeldin, Attorney (Interviewer)

These volunteers spent countless hours traveling to and from the Sixth District to interview stakeholders whose views are conveyed in this report. Lead partners also worked diligently to ensure the project's success by attending meetings, making numerous telephone calls, and supervising the overall progress of the project.

B. Statement By Reporting Law Firm

This report will summarize the information, ideas and opinions concerning the current juvenile justice system in Georgia elicited during interviews conducted by attorneys at Hunton & Williams LLP (“H&W” or the “Firm”) and other individuals who live and work in the Georgia’s Sixth Judicial District (the “District”) and have a stake in the Juvenile Justice System. Between September 2007 and April 2008, H&W attorneys conducted thirty-two (32) interviews of fifty-four (54) stakeholders in the District, including current and former juvenile court judges, officials with the Department of Family and Children Services (“DFCS”), Special Assistant Attorneys General (“SAAG”) who represent DFCS in deprivation proceedings, volunteers with the Court Appointed Special Advocates (“CASA”) program, state legislators, a juvenile court administrator, juvenile court probation officers, a juvenile prosecutor, a juvenile mental health provider, police detectives who work with juveniles, parents whose children were adjudicated

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² No longer with Hunton & Williams.

delinquent, parents with custody of a child found to be deprived, an older child still in foster care, a former foster child, a juvenile court intake officer, officials employed by the juvenile courts, the director of a Headstart program, attorneys who represent both parents and children in juvenile court and guardians *ad litem* (“GALs”). The report also includes information gathered at a town hall meeting on juvenile justice reform sponsored by the JUSTGeorgia Project in Griffin, Georgia on November 1, 2007.³

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, JUSTGeorgia⁴ 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

³ Please note that all views expressed are solely those of the subjects interviewed. The views reported are 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.

⁴ 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.

to ensure that everyone who attended a town hall meeting would have an opportunity to participate and provide input. Sophisticated software enabled the facilitators to capture citizens' comments anonymously and project them onto a large screen for other participants to see and use as a springboard for additional brainstorming and reaction.

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

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

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

II. DESCRIPTION OF THE SIXTH JUDICIAL DISTRICT

A. Basic Information About The District

The Sixth Judicial District is located in west-central Georgia and extends from south metro Atlanta to the Alabama border. The District is comprised of fourteen (14) counties: Butts, Carroll, Clayton, Coweta, Fayette, Heard, Henry, Lamar, Meriwether, Monroe, Pike, Spalding, Troup, and Upson. The District also encompasses five (5) of the state's judicial circuits: Clayton, Coweta, Flint, Griffin, and Towaliga.

Georgia's Sixth Judicial District



The estimated population of the District in 2006 was 1,041,138, or 11.1 percent of the total population of Georgia. The median age in the District was 34.2 years.⁵ The racial composition of the District in 2006 generally was comparable to that of Georgia overall.⁶ Slightly more than sixty-two percent (62.3%) of the District's residents were "White," 34.4 percent were "Black" or "African American," 0.3 percent were "American Indian & Alaska Native," 2.5 percent were "Asian," 0.1 percent were "Native Hawaiian & Other Pacific Islander," 1.1 percent were of "two or more races," and 5.6 percent were of "Hispanic or Latino" origin of any race.

The median income for the District was \$47,193. Nine and one-half percent of the general population lived below the poverty line. Children under 18 made up 12.1 percent of those living below the poverty line. The unemployment rate for the District overall was 4.5 percent. More than fifty percent (55.2%) of the working population was employed in "management, professional and related occupations" or "sales and office occupations." Another 15.3 percent were "government workers" and 15.1 percent were employed in the manufacturing sector.

⁵ The demographic data was obtained from the U.S. Census Bureau's website <http://quickfacts.census.gov>. Estimated data for the year 2006 is provided where available and indicated as such. Otherwise, the figures provided represent the most recent data from the year 2000. Median age and statistical indices presented as percentages were derived by calculating the weighted average of the median ages and other indices provided by the U.S. Census Bureau for each county within the District

⁶ When compared to Georgia overall, the District was estimated to have a slightly higher percentage of "Black" or "African American" (34.4% vs. 29.9%) and slightly fewer "Hispanic or Latino" residents in 2006 (5.6% vs. 7.5%).

B. The Juvenile Justice System In The District

Six full-time judges, five part-time judges, and two part-time associate judges serve the District’s juvenile courts. In 2005, these judges heard 20,088 juvenile cases, as follows:

• Delinquency Cases	9,951
• Unruly Cases	2,410
• Termination of Parental Rights	225
• Deprivation Cases	4,955
• Traffic Cases	1,986
• Special Proceedings	561

According to statistics from the Georgia Department of Juvenile Justice (“DJJ”), a total of 7,143 individual children in the District were involved in delinquency cases in fiscal year 2006. Of these children, 1,339 were placed on probation, 587 were sentenced to a short-term program of sixty (60) days or less, and 1,834 were committed to the DJJ.

There are two (2) Regional Youth Development Campuses (RYDCs) in the District: the Martha K. Glaze RYDC in Clayton County and the Griffin RYDC in Spalding County. There are no Youth Development Campuses in the District. In 2006, 1,932 children in the District were placed at a Youth Development Campus (“YDC”) or a Regional YDC (“RYDC”) awaiting placement. The statewide average length of stay for children placed at an YDC is 369 days.

STATUS OF THE DISTRICT’S JUVENILE SYSTEM

While stakeholders expressed a broad range of thoughts and opinions, certain discernable trends and opinions emerged from the interviews regarding what aspects of the Georgia Juvenile Code (the “Code”) and the juvenile justice system (collectively, the “System”) work well and what aspects need improvement.

C. What Is Working

Positive comments about the System were expressed in the interviews far less frequently than criticism. However, stakeholders identified the following as strong points:

- ▶ The processes and procedures for case intake, the filing of petitions and complaints, and other procedure and due process provisions of the Code.

▶ The Court Appointed Special Advocates (“CASA”) program. In particular, the combined Fayette-Spalding County CASA agency was cited for good communication and cooperation.

▶ Public defenders and guardians *ad litem* were in some instances cited in a positive light.⁷

▶ Probation officers who work to rehabilitate children.

▶ Legislation that has “bridge[d] the gap” to ensure that funding flows to grandparents with whom children are placed.

▶ As cited by three stakeholders, the Code section defining deprivation and court proceedings on adjudication of deprivation.

▶ “Substantial cooperation” among the district attorneys’ offices, the public defenders’ offices and the juvenile courts.

▶ A generally positive relationship between the Griffin RYDC and the juvenile court. A stakeholder in the District’s town hall meeting stated that “[t]he people work well together, and it is the only place with both a court and RYDC in close proximity, so juveniles have easy access to defense attorneys.”

▶ A cooperative relationship between juvenile courts and the school system, law enforcement officials, local mental health facilities, and/or other social service agencies in some areas of the District. For instance, one stakeholder praised a partnership between an YDC and the local school district, whereby teachers at the YDC could participate in training and other opportunities offered by the school system.

▶ The Spalding Truancy and Attendance Task Forces.

▶ Improved training for judges, attorneys, SAAGs, and case managers, although at least one stakeholder feels that further mandatory training should be required, as noted below.

D. What Is Not Working

In contrast to the few aspects of the current juvenile justice system that were identified as working relatively well, stakeholders interviewed and persons who attended the town hall meeting in the District identified numerous aspects of the System that are problematic and in need of reform. These are described below.

⁷ Others have noted ineffective assistance of counsel to be a challenge to the System. See below.

1. Code Structure and Organization

Numerous stakeholders identified the very structure and organization of the current Juvenile Code as one of the primary sources of the System's problems. With the exception of one stakeholder who views the Code as "well-written, well-organized, and straightforward," virtually every other person interviewed found the Code to be confusing in structure and language, difficult to comprehend, and obsolete. Stakeholders in both interviews and the town hall meeting referred to the Code as "inconsistent and flawed," "long and repetitive," "overly complicated and confusing," "haphazardly organized," "mismatched," "too broad," "difficult to read, to navigate, and to use," among other things.

As an example, one juvenile court judge believes O.C.G.A. § 15-11-58, which addresses deprivation proceedings, Section 15-11-58 is too long (six full pages); and is also unclear and "full of redundancy and hard to understand language." The judge confessed that even he has trouble untangling the redundancies and is forced to re-read the section at least monthly. Another section cited by a juvenile prosecutor as difficult to read and enforce is O.C.G.A. § 15-11-63, which addresses designated felony acts in delinquency proceedings.

Currently, several provisions associated with both delinquency and deprivation proceedings in the Code are intermingled, and most stakeholders felt that the two proceedings should be separated and clearly demarcated for better understanding. As an example, one stakeholder pointed to a single Code section that addresses filing procedures for both delinquency and deprivation actions, which are two very different kinds of cases. In addition, stakeholders stated the Code appears to have been cobbled together in hodgepodge fashion as new sections were added. As one stakeholder pointed out, the requirements of the federal Adoption and Safe Families Act ("ASFA") were not truly integrated into the existing Code, but simply were patched onto it. This piecemeal approach, say stakeholders, has resulted in unnecessarily long and complex statutes, as well as inconsistencies between older and newer sections in the Juvenile Code.

For these and other reasons, some stakeholders see the Code as "out of date" and "largely irrelevant in actual juvenile court practice." One solution identified by several stakeholders may be to include a "good, thorough index" or summary of the various sections to assist users in navigating the Code.

2. DFCS

Inadequate funding for DFCS frequently was cited as one of the most profound problems in the juvenile justice system. Numerous stakeholders discussed the high turnover rate for DFCS employees in the District as a severe problem. DFCS case managers are viewed as "overworked, underpaid, and frustrated." One former foster child who worked part-time in her local DFCS office recalls one caseworker with 56 open and active cases at one time, an unreasonable number, in part, because case workers were supposed to see each child face-to-face at least once a month, according to this stakeholder. Because DFCS is "understaffed and underfunded" and caseworkers are

underpaid, new caseworkers often leave within a short period of time, resulting in a “huge waste of resources,” according to stakeholders. One stakeholder, a CASA volunteer, remembers that three different caseworkers were assigned to the same case in a three-week period because of turnover and attrition.

Lack of Accountability and Favoritism

Because of DFCS’s heavy turnover and inadequate staffing, caseloads are heavy and individual caseworkers are “overworked, burned out, and not rewarded appropriately” and they often do not know the children well, according to a number of stakeholders. According to one former foster child, the most serious problem she had in foster care was a persistent lack of communication with her DFCS caseworkers. In one week, for example, she claimed to have left five messages with her caseworker before the call was returned, and recalls another foster child calling seven times in a single day trying to reach his caseworker, presumably regarding an urgent matter.

Stakeholders also cite a general lack of accountability among DFCS workers, including a frequent failure to investigate foster placements appropriately or to respond to complaints or requests from parents and other parties in a timely manner. For example, one guardian *ad litem* recounted a case in which DFCS failed to notify her of no fewer than eight different changes to the child’s placement. In another case, a stakeholder remembered the time that DFCS allegedly failed to notify a child’s parents after a foster mother had placed soap in the child’s vagina (causing severe burning) to punish her for wetting the bed, even though the parents reportedly had complained about the foster placement in the past.

Stakeholders described a number of instances in which they believe DFCS caseworkers inappropriately responded to families in different situations. For example, one child advocate sees a systemic bias against fathers, typically biological fathers who are not “legal” fathers under the Code.⁸ According to this individual, DFCS will work with a mother, but will refuse to assist the father, and in some instances will provide more assistance to extended family members on the mother’s side than to the child’s own father. This stakeholder sees the missed potential when DFCS fails to access the father and his side of the family for the benefit of the child.⁹

⁸ Biological fathers who never marry the mother of the child or fail to legitimate their relationship with their biological children are not “legal” fathers as defined under the Juvenile Code.

⁹ To the extent that the problem is the father’s lack of “legal” status under the law, a suggestion might be for DFCS to help the biological father understand the importance of legitimating his relationship with his child. One way DFCS can do this is by adding the goal of legitimation to a case plan and by encouraging the father to seek a legitimation order through the juvenile court as a part of the overall deprivation case. Without the father’s legitimation action, paternal relatives are legally “strangers” to the child and not generally eligible for placement consideration unless they go through a foster parent training program.

The socioeconomic status of the parents and their ability to retain private legal counsel also has influenced how DFCS treats a case, according to another child advocate, who has seen caseworkers leave a child in an unsafe environment or return a child to the home prematurely if the parents issue a credible threat to sue the department if the child is not returned to them.

Different stakeholders recounted story after story of lapses in oversight and failure to assess risk that anecdotally described a child welfare system in turmoil in the Sixth Judicial District. Yet, some positive accounts were also given of individuals who made a difference.

One former foster child praised her DFCS caseworkers. Although she had difficulty reaching them, once she was able to make contact, she claims her caseworkers generally were “attentive and helpful” and sometimes exceeded her expectations. For example, her caseworker worked closely with the guardian *ad litem* assigned to the case to resolve potential legal action against the foster child as the result of numerous checks her mother had forged on the child’s bank account.

Because of a belief that appropriate DFCS involvement can make a difference, a juvenile court judge urges DFCS to take a more hands-on approach to assist parents in satisfying the requirements of their case plan. This hands-on approach will either ensure timely reunification of the child with the parents or allow the case to move more quickly to permanency.

Internal Structural Problems

Stakeholders also identified several structural deficiencies in DFCS operations. First, several stakeholders criticized the lack of continuity of care DFCS provides for children in its custody. As cases move between departments within the agency, children are transferred between several different caseworkers. One stakeholder described the process as follows:

- ▶ A case first is assigned to a caseworker who investigates allegations of deprivation.
- ▶ If the child is removed from the home, the case then is assigned to a different intake caseworker.
- ▶ Once the child is ready to be placed with a foster parent or family member, he or she is assigned to yet another caseworker.

One former foster child told her interviewer that four different caseworkers were assigned to her in the four and a half years she was in foster care. She complained about having to “reiterate everything” with each new caseworker. One child advocate remembers cases in which as many as eight or nine different case managers were

assigned. According to this child advocate, there also is a general lack of coordination between the departments within DFCS. A knowledgeable stakeholder contends that a single, well-trained DFCS caseworker is able, and should be assigned, to stay with a child through all three phases of a child's experience with the department: the investigation phase, the removal phase, and the foster care/permanency phase.

Second, some stakeholders noted that DFCS promulgates largely non-discretionary internal policies that caseworkers are expected to follow in rote fashion, even if such policies are not truly in the best interest of the child. For example, it was reported that DFCS has—and automatically follows—a policy requiring placement of a deprived child in the custody of a fit and willing relative, notwithstanding whether such placement is viable or even the most favorable option for the child.

A foster parent who was interviewed also commented on certain counterproductive DFCS policies adhered to by allegedly autonomous caseworkers. As an example, she recounted how DFCS refused to override its policy that the consent of a child's parent must be obtained before a child is allowed to seek a learner's permit to drive a car while in foster care, even though the biological mother's refusal in that case was, in the foster parent's opinion, nothing more than a vindictive "trump card" she used, resulting in unnecessary anguish for the child. The foster parent did not understand why the caseworker, who knew the true situation better than a policy writer could, did not have the authority to override the provision requiring the parent's permission.¹⁰

Insufficient Funding of Agencies or Programs

Stakeholders identified a number of problems with the current juvenile justice system that are primarily the result of insufficient funding. Numerous stakeholders agreed there is a need for significant additional funding of the juvenile justice system. The common perception, according to one juvenile prosecutor, is that juvenile court is a "kiddie court" and not worthy of enhanced resources. However, as one stakeholder articulated, until the Legislature and the Governor conclude that funding the juvenile justice system is a priority, "there will be chaos."

In addition to the scarcity of diversion programs for first-time offenders and "community-based services" in general, the most frequently identified insufficiently funded services were mental health services and residential treatment programs. For instance, several stakeholders stated that Georgia Regional Hospital has an insufficient

¹⁰ Some speculate that this DFCS policy arises from the concern that the foster child, who obtains a driver's license without permission of the parent, could get into accident, perhaps suffer injury, and that the parent would sue DFCS as a consequence. The foster parent's point in sharing this story is straightforward: DFCS policies should allow youth in its custody to do what is age appropriate – getting a driver's license being an example – without being so rigid in application that the child misses out on age appropriate milestones that the child would probably have met if the child had been in a stable family environment.

number of beds to treat all the children who need services. As a result, some children are re-routed to a mental health facility in Milledgeville (Central State Hospital), which does not have adequate psychiatric staff on the premises, according to one group of respondents. According to one young teen's guardians, for example, the teen was placed at the hospital by a juvenile court, after allegedly making a serious threat against the life of another child. Despite the serious allegations, the girl had to wait several weeks for a psychological evaluation, according to the teen's guardians, because the hospital reportedly had such limited resources that it had only one doctor who could handle the task.

In addition, stakeholders pointed out that group homes or residential treatment centers often have long waiting lists, usually six months to a year, as well as strict eligibility requirements. According to another group of stakeholders, children suffer while waiting to be placed in these facilities because they often are not provided with proper counseling or medication during the wait. The mother of an adult child, who was charged with a delinquency as a minor, argues that courts should order psychological evaluations more frequently and regularly consider mental health issues in sentencing. In addition, stakeholders in the town hall meeting commented on the insufficient funding of specialized services, such as treatment for children who are sexual offenders. There is, therefore, a prevailing perception that more funds devoted to mental health treatment and counseling will yield better outcomes for children, families and communities.

Stakeholders also identified inadequate funding of services in deprivation cases. A former foster child, for example, stated that she had to wait three months before a foster placement in her own county became available, and knew of "many children that would be placed in foster homes several counties away" from their schools and homes. One stakeholder, a GAL, advocated that DFCS augment the amount of in-home services it provides to prevent removal of a child from the home in the first place.

Another stakeholder likewise complained that after a child is removed, DFCS does not take the time to individualize a case plan to address the actual problems that led to the removal, especially when the removal has little to do with the care the parent is providing to the child and much to do with the general poverty experienced by the family. She recounted a particularly egregious story to illustrate her point:

Two sisters (one an adult at age 18, and the other a minor at age 17) were both single mothers living in poverty with their mother and the rest of their immediate family. The entire family eventually had to move in with a relative in a dilapidated house. Because of the housing conditions, DFCS became involved and removed all the minor children and grandchildren, including the 17-year-old mother. Because she was a minor, the younger of the two sibling mothers was placed in a home for single mothers with her child and "blossomed." She learned how to take care of her child and eventually finished her education successfully. However, there was no similar service available for the 18-year-old mother. She was subjected to a huge battery of psychological evaluations and found to be below average in intelligence and suffering from

depression. The court ordered her to comply with a case plan that required her to get a job, get in school, and take parenting and drug education classes. However, DFCS did not assist her in any meaningful way except by paying for the parenting class. Although the 18-year-old mother tried to work the case plan, she was forced to drop out of the parenting class due to a scheduling conflict with one of the GED classes she was taking pursuant to the case plan. In the meantime, her case was scheduled for review by the court. DFCS formally argued that the young mother had not followed the plan and therefore should not be allowed to reunite with her child. The child was ultimately put up for adoption.

In this example, the best case plan for the 18-year-old mother would have been to join her sister at the home for teen mothers. Whether the issue was space or age, the failure to put the 18-year-old mother in the same program with her sister, especially after seeing the success the sister enjoyed, is a telling story of the importance of DFCS treating each case individually based upon the needs of the parent and the child.

The lack of funding for child-related services is particularly acute in rural settings. One juvenile court judge referred to the problem as an “uneven distribution of justice” throughout the state. Counties in more urban areas with higher income levels typically have enhanced resources to provide children in the juvenile justice system, according to one juvenile court administrator. In fact, the claim was made that children in rural areas are more likely to be incarcerated than those in metro Atlanta counties, who have access to a broader array of treatment and rehabilitative services, simply because of the lack of alternatives to detention outside urban and suburban areas. In addition, there appears to be a relative shortage of qualified CASA volunteers in rural areas.

One partial solution proposed by a juvenile court judge may be to expand the sources to which supervision fees, collected pursuant to O.C.G.A. § 15-11-71 from parents of children placed on probation in the juvenile courts, may be allocated. Currently, these fees may be used by the courts to provide mediation, counseling, educational, and other services. The judge feels this list should be expanded to include all types of services or programs for children.

3. Lack Of Collaboration And Integration Among State And Private Sector Agencies

Insufficient collaboration and communication among courts, state agencies, and private sector resources was cited as another significant weakness in the current juvenile justice system. In fact, one characterized the main problem with the System as the inability of various government agencies to work together for the benefit of the child. As he pointed out, a system riddled with “turf battles” is inherently dysfunctional.

a. Lack Of Collaboration Among State Agencies

Quite a few stakeholders mentioned the lack of cooperation between DJJ and the juvenile courts. Judges, for example, and DJJ officials clash over the amount of judicial discretion in sentencing juvenile offenders to short-stay detention programs. In addition, juvenile court mental health staff stakeholders disagree in some instances with DJJ's practice of sending a child home for treatment in an outpatient, community treatment program before treating the child in an inpatient setting. These stakeholders contend that the Code should not include a provision requiring treatment in a least restrictive environment.

In response to the clash between DJJ and the courts, a juvenile court administrator suggested that the Code mandate a division of labor between DJJ and local juvenile court probation officers, such that the DJJ handles felonies and local juvenile court probation officers handle misdemeanor cases. Creation of family courts under the Code also was noted by one child advocate as a means to achieve better collaboration, at least among the various state courts themselves. A juvenile prosecutor recommended that the DJJ be dismantled as an enforcement agency and instead focus on distributing state funding to the counties to be used as dictated by the needs as determined at the local level.

There is similar disagreement about how expenses associated with service of process and incarceration should be allocated. One SAAG, for instance, asserted that expenses arising from service of process should be borne by the juvenile courts and not the state. The Code also is ambiguous as to whether juvenile courts or one of several government agencies are required to pay a child's expenses while incarcerated. For example, one juvenile court judge noted it is not clear which entity pays for drug testing as a prerequisite to admission to an RYDC or who pays when a child is injured while in the custody of an RYDC. The judge suggests that this ambiguity in the current code be clarified.

According to some respondents, DJJ and DFCS also have difficulty working together. In particular, several DFCS supervisors complained that DJJ attempts to avoid sending delinquent children to already overcrowded YDC facilities by claiming that the children have been deprived and attempting to place them in DFCS custody instead. These supervisors argue that, although juvenile offenders often come from deprived homes, officials sometimes do not carefully consider each child's individual circumstances before attempting to place them in DFCS care. Because these children frequently are teenagers with a long history of serious offenses, such as sexual molestation, fire-starting, and assault, it is very difficult to place them in foster care. Moreover, as noted above, residential treatment programs are very expensive, have long waiting lists, and require time-consuming referral processes. At least one town hall meeting stakeholder saw the solution to this conflict as a merger of the two departments.

Town hall meeting stakeholders also mentioned inadequate communication between DJJ and local school systems. In particular, schools in certain communities have not been informed on a regular basis when one of their students has been incarcerated or released from incarceration. Spalding County was held up as an example of good

communication between these organizations. The stakeholders recommended that a protocol be established to ensure the proper flow of information. In addition, the mother of an adult child who was charged with delinquency as a minor recommends that public schools be vigilant in recognizing which children should be sent to “alternative” schools to help prevent delinquency before it starts, and that juvenile courts should consider placing delinquent children in these schools, as opposed to incarcerating them.

Finally, there is a perceived statutory impediment to sharing a child’s medical records and information among various governmental agencies, such as DJJ, DFCS, the Division of Mental Health, Developmental Disabilities and Addictive Diseases (“MHDDAD”), juvenile courts, and local schools. One juvenile court administrator recommended that the Code be revised to facilitate sharing of relevant information without what he sees as the currently onerous documentation requirements. Stakeholders indicated that an amended Code needs to include some sort of “safe harbor” that would permit this information to be accessible in such circumstances.

In addition to the breakdown in communication and collaboration between various agencies, a few stakeholders also noted similar difficulties between state and local levels *within* agencies. For example, a former foster child suggested that cases should be transferred to the local DFCS office if a child later is placed in a different county, recounting her own situation in which her case worker had to drive over five hours to visit her after she moved to a different area of the state. One CASA volunteer described what she saw as a lack of state support for local DFCS offices. She recounted a situation in which children had been sleeping in a local DFCS office due to a shortage of foster placements. It was not until the situation was reported in the local papers that state DFCS officials reportedly became involved. Another stakeholder recommended that DJJ should be restructured to confer greater discretion and funding authority on local DJJ officials.

On the other hand, a few stakeholders who observed that policies and procedures within DJJ and DFCS vary significantly among counties, sometimes resulting in undue discretion in the hands of local officials and even abuse in some instances, recommended greater centralization within the agencies. In addition, independent juvenile courts, which are not bound by DJJ policies, often emphasize certain policies that appear to diverge from those of the DJJ, according to these stakeholders. To partially reduce such divergence, some stakeholders suggested that even probation officers working in independent juvenile courts should be required to attend and receive certification in a formalized training program. Along similar lines, one juvenile prosecutor broadly suggested that more professionals specializing in juvenile law are needed at state level agencies.

b. Lack Of Collaboration Between State and Private Sector Entities

A number of stakeholders commented on what they perceived to be inadequate collaboration and communication between state agencies and private sector service providers.

CASA was noted repeatedly as a positive influence on the juvenile justice system because CASA volunteers, as the “eyes and ears of the court,” have time to investigate the facts of a case thoroughly and spot issues that others might fail to recognize. Nevertheless, it was reported that CASA volunteers often are not notified of significant developments in their cases. For example, court documents allegedly have been sent to the main CASA office, instead of the individual CASA volunteers, resulting in delayed information and confusion regarding impending hearing dates. In addition, several CASA volunteers reported that they have difficulty gaining access to DFCS files and suggested that DFCS interact more regularly with CASA volunteers.

Stakeholders also disapproved of restrictions that have been placed on funding faith-based organizations that could provide needed services to children in DFCS custody. Several juvenile court officers also recommended that the Code be revised to promote collaboration between courts and faith-based programs. A state legislator emphasized the positive aspects of public-private partnerships with local faith-based and civic organizations. One such organization, for example, has implemented a canine therapy program engaging children incarcerated at a local YDC to provide care for animals.

On the other hand, several DFCS supervisors in one interview questioned the utility of citizen review panels in light of the frequency with which DFCS must appear before the juvenile court under recently promulgated federal regulations.

4. Inconsistencies In Age Limits

The overwhelming consensus from stakeholders is that the lack of uniformity in various age restrictions under current Code provisions creates unnecessary confusion and adverse outcomes. The Code currently provides that juveniles up to 17 years of age are subject to the jurisdiction of the juvenile court for delinquency matters, except where the child has committed one of the “seven deadly sins” defined by SB 440 (see below). On the other hand, the court has jurisdiction over children until age 18 in deprivation and status offender cases, but only up to age 16 for truancy cases. Conferring jurisdiction on the juvenile courts based on inconsistent age limits creates a number of difficulties, according to many observers. For example, a 17-year old runaway child is subject to the jurisdiction of the juvenile court, whereas a 17-year old who has committed what otherwise would be a juvenile offense is instead transferred to the adult criminal justice system. If the child is in foster care under DFCS custody, he or she must be tried in an adult court for the alleged crime, while his or her deprivation case proceeds in juvenile court. According to one SAAG, DFCS generally will not provide bail when a 17-year-old foster child is held on adult charges; therefore, the child remains incarcerated until trial.

While the vast majority of stakeholders want the Code to be revised to eliminate these discrepancies, some observers specifically argued that the solution is to raise the maximum age of the court’s jurisdiction over a child who has committed a crime to age 18. One criminal defense attorney stated that the “gap” created by the 17-year old cutoff often produces arbitrary and unnecessarily harsh results. For example, a child age 16 or

younger who possesses illegal drugs at school likely would be brought before a tribunal and suspended or expelled from school. However, a child who possesses illegal drugs at school at any point the day before his 17th birthday and thereafter can be arrested and tried in the adult system for the same offense. This is true, according to the defense attorney stakeholder, despite the fact that a 17-year old high school student still “lives in a juvenile world” because many of his or her classmates may still be 16 years old. The mother of an adult child, who was charged with a delinquency when he was a minor, strongly feels that transferring juveniles to adult court “is a terrible idea” and she is grateful that her son’s case was handled in juvenile court. This stakeholder believes that had her son been tried in the adult system, he would not be functioning as well as he is now as an adult.

In addition to raising the maximum age for juvenile delinquency to age 18, a number of stakeholders also advocated to establish a minimum age for involvement in the juvenile justice system. These individuals feel that children under a certain age cannot form the requisite criminal intent or, if criminal intent can be imputed, they nevertheless are too young to be tried as adults. The Code currently is silent on this issue. Two individuals also recommended that the minimum age to be tried as an adult for commission of one or more of the “seven deadly sins” be increased. One stakeholder strongly felt that 13-year old children should *never* be tried as adults, regardless of the crime for which they have been charged.

Two other respondents also described their concerns with the Code provision that extends juvenile court jurisdiction to the age of 21 if an individual was charged with a delinquent offense while he or she was under the age of 17 and currently is under the supervision of the court. According to these stakeholders, an individual over the age of 18 cannot be placed in an YDC; nor is placement in an adult facility appropriate since DJJ or the juvenile court continues supervision over the individual. This Code provision is very difficult to put into practice and should be reconsidered.

5. Code Provisions Addressing Deprivation Proceedings

a. Limitations On Judicial Authority

Another frequently cited problem with the current Code is that it affords juvenile court judges insufficient discretion to handle each case in the manner that best suits the circumstances presented and the best interests of the child. The sentiment of most stakeholders was that the juvenile court needs to have a continuum of approaches available to deal with and help the families that come before it. In deprivation cases, numerous stakeholders indicated that the Code should confer juvenile court judges with the authority in certain instances to direct placement of children already in DFCS custody.

Currently, the Code does not permit a juvenile court judge to order the placement of a child already in DFCS custody. Although the judge could divest DFCS of custody and then grant custody to a relative or non-relative, and even order DFCS to perform a home evaluation of the relative or non-relative, critical DFCS funding for services and

child support would be terminated at the point DFCS custody ended. The only formal leverage the judge has to ensure DFCS accountability is the threat of finding that the department has failed to make “reasonable efforts” to reunify the child with his or her parents or guardians. The reasonable efforts finding is tied to federal money that is used by DFCS to fund its work with children and families. Moreover, as one stakeholder communicated, removing custody from DFCS often is not a viable option because the department typically is the “custodian of last resort” – if another relative were able to take the child, that option would probably have already been pursued.

While several stakeholders advocated for vesting juvenile court judges with greater discretion in directing placements, one SAAG suggested that the Code at least explicitly permit the judge to have veto power over a particular placement. Another SAAG supported a revision to the Code to clarify whether a hearing requested by a party objecting to a change in a child’s placement is mandatory or discretionary.

Whatever solution was articulated by these stakeholders, they all point to what is perceived as inflexible DFCS policies on child placements as the source of the problem and the primary reason for conferring greater discretion on juvenile court judges around the issue of where a child should be placed (with whom the child should live while in the temporary legal custody of DFCS). As one attorney for the department argued, a judge should have the discretion to direct placement of a child with a willing relative, even where internal DFCS policy would preclude such placement because of, for instance, prior (but long-resolved) drug use or minor criminal history. The alternative, according to this attorney, is for the child to languish in stranger foster care while DFCS attempts to find another placement.

Another stakeholder recounted a similar situation in which rigid application of internal departmental policy precluded placement of a child in the child’s best interests, which, ironically, would have been with the foster parent over a willing relative. The case involved three siblings who were very close and had a strong bond with their foster mother. However, the department recommended that the children go with their grandmother. The problem was that the paternal grandparent was willing to accept placement of the two youngest children only because they were her biological grandchildren; the oldest of the three was not. Because internal policy requires that the department place children with suitable relatives whenever possible, DFCS intended to split up the siblings and leave the oldest sibling with the foster parent. The judge had no power in that case to override the decision to keep the three children together with their foster parent.

However, contrary to the input of the other stakeholders, another SAAG strongly objected to giving the juvenile court judge authority to order placement of children in the legal custody of DFCS. In the opinion of this SAAG, once custody is granted to the department, it should have full authority to make placement decisions because the department, not the court, is solely responsible for the health and safety of the child under its custody. If judges could overrule placement decisions, DFCS essentially would have full liability for outcomes over which it had no authority.

Several stakeholders suggested that juvenile court judges should have the authority to order child support and at least concurrent jurisdiction with superior courts to preside at adoption proceedings. While one judge argued that juvenile court judges could handle adoption proceedings because the court terminates parental rights in deprivation cases relatively infrequently (thus, avoiding a backlog or delay in adoption proceedings), another judge suggested that the budgetary constraints of the juvenile courts would make it difficult to handle the additional caseload, particularly if the adoption decision is appealed. Finally, one judge suggested that the Code be revised to ensure that juvenile court judges and intake officers have discretion to pursue deprivation cases in the best interest of the public.

b. Procedural Issues In Deprivation Cases

(i) Court Deadlines

Many stakeholders stated that the Code should tighten or at least better enforce existing court deadlines to prevent extended deprivation and delinquency proceedings. Stakeholders complained, for instance, that some judges circumvent the existing Code provision mandating a trial in delinquency cases within 10 days of a child's detention by merely issuing an order within the ten-day period *scheduling* the trial date. See O.C.G.A. § 15-11-39(a). Others complained that the court allows too many continuances, which may unnecessarily prolong the time a child spends in detention or in foster care. A juvenile court judge also pointed out that the Code does not specify when DFCS must present a completed case plan to the court. A child advocate objected to how long it sometimes takes DFCS to complete a home study before placing a child in a relative's care. In short, these stakeholders favor a condensed timetable for court proceedings and stricter enforcement of court-imposed time limits.

Some stakeholders, however, expressed a contrary opinion. These stakeholders commented that some of the existing time periods in the Code were too short in some circumstances. For instance, according to three stakeholders (a guardian *ad litem* and two defense attorneys), it is very difficult to locate witnesses and develop sufficient evidence to support or defend a case within the maximum ten-day period required by the statute to hold a hearing in a delinquency or deprivation case. This is especially true when information must be obtained from a foreign state, for example, if DFCS alleges prior deprivation in that state.

(ii) Admissible Evidence

Two evidentiary issues surfaced in the stakeholder interviews. First, a juvenile court judge suggested that reports submitted by CASA volunteers should be treated similarly to any other report for evidentiary purposes. For instance, if the report contains hearsay, the objecting party should be afforded the opportunity to cross-examine the CASA in court. The judge recounted a situation in which he inadvertently ordered the placement of a child with an individual whom the judge previously had recommended for perjury prosecution in juvenile proceedings. Without complete information on the record

from a CASA, the judge fears that he could make a decision that would adversely affect the safety of a child.

Second, a SAAG and another juvenile court judge recommended that the Code specifically address the admissibility of drug screen results. According to this SAAG, it can be very difficult to admit such results into evidence over the parent's objection because the accuracy of the test cannot be demonstrated without the testimony of an expert, which generally is not feasible in deprivation cases. Thus, if a SAAG wants to argue that a parent has failed a drug screen, the only readily available evidence is the testimony of the individual who took the sample for the drug screen, but this person generally cannot testify as to the accuracy and reliability of the test itself. The pamphlet from the drug testing company is not admissible. This SAAG recommends, therefore, that the Code should liberalize the admissibility of drug screen results in deprivation cases. The juvenile court judge agrees that the Code should address under what circumstances a drug test can be admissible as an exception to the hearsay rule.

(iii) Inadequate Representation Of Children

Although some stakeholders mentioned that children frequently are well-served by the guardians *ad litem* and juvenile attorneys in the District, one vocal group of CASA stakeholders characterized what they saw in their experience as inadequate and substandard performance by GALs. The CASA stakeholders stated that many attorneys walk into the courtroom with an apparent disrespect for the court, and are dressed as informally as many of the children. According to these volunteers, many children have not met their GAL before the hearing; therefore, the GAL rarely knows the facts of the case. Attorneys assigned to these cases often are the youngest and most inexperienced attorneys in their firms and become cynical and desensitized to the needs of the children soon after beginning their work in the juvenile court. According to these volunteers, the Code should set out clear responsibilities for GALs and juvenile defense attorneys and provide consequences for failing to carry out those responsibilities adequately. Both stakeholders in the town hall meeting and a GAL said that the Code needs to provide for enhanced training and require attorneys to take a certain number of continuing legal education units before practicing in the juvenile courts.

(iv) Presence of Children in the Courtroom

Two juvenile court judges explained that some child advocacy groups promote the right of children to be present in the courtroom during proceedings in order to empower and inform them of what transpires during the deprivation proceedings and how decisions are being made for them. The Code currently does not define children as parties and these judges are not in favor of a statutory provision that would include children as parties. One judge, who is uncomfortable with children hearing testimony about their injuries and mistreatment, recalls a 16-year old who broke down in court when she heard her mother's testimony rejecting the child in open court.

(v) Rights of Putative Fathers

Some stakeholders raised issues regarding the rights of putative fathers in deprivation proceedings. For example, the Code is not clear whether notice to putative fathers through publication is required in deprivation cases that do not involve a petition to terminate parental rights. Compare O.C.G.A. § 15-11-39.1 with § 15-11-96(h). One judge was ambivalent as to whether notice should be provided because, in his opinion, putative fathers have already demonstrated their lack of interest in their children’s lives by failing to legitimize their relationship with their child and care for their child so as to avoid the deprivation in the first place. Although this judge routinely requires notice to be provided to putative fathers, the judge “can count on one hand how many times someone has come in because he read the notice in the paper or someone told him about it.” The judge feels that \$160 for publication notice is a “horrendous charge [that the court has to pay] to summon” a disinterested parent lacking legal standing.

Other stakeholders expressed concern about the apparent difficulty in getting the court to accept the new administrative legitimation procedure¹¹ as “a real legitimation” of the relationship between the father and the child. One juvenile court judge explained that courts frequently do not consider administrative legitimation in proceedings to terminate parental rights, but consider only whether the putative father was married to the mother or otherwise petitioned the court to legitimate the child. On the other hand, two other stakeholders urged that legitimation should only be granted after first determining paternity through a DNA blood test. One juvenile court judge recalled presiding over a deprivation case in which it was not discovered until the late stages of the case that the putative father was not the child’s biological father. In addition, the judge supported keeping the current Code provisions that deny standing to a putative father who has failed to legitimate the child.

c. Substantive Issues In Deprivation Cases

(i) Code Definitions

Stakeholders identified several terms that should be defined or defined differently in the Code, including:

▶ The term “best interests of the child” for which a CASA volunteer or GAL must advocate. See, e.g., O.C.G.A. § 15-11-9.1(c);

▶ The term “reasonably diligent search,” which the Code requires the court and DFCS to perform in order to locate a parent or relative of the child or another person who has demonstrated an ongoing commitment to the child. O.C.G.A. § 15-11-55.

¹¹ The so-called “administrative legitimation” (a/k/a acknowledgement of legitimation) is found at O.C.G.A. Section 19-7-21.1.

► The term “reasonable efforts,” which the court must find DFCS has or has not made to preserve and reunify families, prevent removal of the child from the home, and facilitate safe return of the child to his or her home. O.C.G.A. § 15-11-58.

► Omission of the term “education as required by law” in the definition of “deprived child.” O.C.G.A. § 15-11-2(8). One stakeholder articulated the view that, while education is very important, child development and keeping families together are more important. According to this former SAAG, when a parent recognizes a unique need his or her child has and chooses to keep the child out of school to accommodate that need, the parent should not be worried about being put in jail because the child misses eight days of school during the year. For example, a parent may choose temporarily to discontinue administering medication for a child diagnosed with ADHD because the medicine makes the child nauseous and gives him or her headaches. Without the medication, the child may not be able to sleep and may be very tired the next morning. In one case the stakeholder recounted, no exception was made and the mother in the above-described situation was threatened with incarceration because the child was late to school too many times. In her opinion, education should not be grounds for removal of the child from the home.

(ii) Use of Temporary Protective Orders

According to several stakeholders, funding for DFCS-provided programs and services either is insufficient or unavailable absent a finding of deprivation by the juvenile court. This situation results in unsafe or inappropriate outcomes for children.

For example, one SAAG acknowledged refusing to file some petitions because of his/her determination that there was insufficient evidence of deprivation to go forward, but still being uncomfortable about the child remaining in the home without the family being provided any services. A juvenile court judge also gave examples of the opposite outcome: DFCS sometimes would seek adjudication of deprivation simply to obtain funding for services. A common example is a teenager not getting along with his or her parents. If a conflict erupts in the home and the police are called out, DFCS may remove the child simply because of volatility in the home. If neither the parents nor the child objects, the court often will proceed to find deprivation based on the parents’ unwillingness to provide proper parental care, control or supervision. In those instances, deprivation is used as the vehicle to obtain programs and services that otherwise would not be available to families. The judge estimated that he has heard at least half a dozen cases like this.

One solution would be to permit DFCS to seek a temporary protective order (“TPO”) that compels parents to work a case plan and allows the child to remain in the home with in-home services without a finding of deprivation. According to several stakeholders, however, the law currently requires a finding of deprivation by clear and convincing evidence before a TPO may be entered by a juvenile court. These stakeholders agree that DFCS should have the authority under the Code to intervene and seek a TPO, either by consent of the parents or by petitioning the court and demonstrating

certain elements of deprivation only by preponderance of the evidence and without a finding of deprivation.

(iii) Private Deprivation Petitions

Two stakeholders pointed out that the Code does not clearly distinguish between deprivation petitions filed by DFCS and those filed by private individuals, creating unnecessary confusion in some cases. For instance, some courts have improperly imposed requirements that are only appropriate for DFCS, on private, non-governmental petitioners, including obliging the petitioner to make reasonable efforts to reunify the family, reporting and hearing requirements, as well as, case plan and panel review requirements. According to these stakeholders, the Code should be clearer with respect to a private individual's right to petition for deprivation and the requirements to do so.

(iv) Extension Of DFCS Custody

The Code requires that DFCS file a motion to extend custody annually and that a new deprivation hearing be held every two years if the child is not in a permanent home. O.C.G.A. § 15-11-58.1. However, the Code is silent as to the department's burden of proof to extend custody, according to one stakeholder. In addition, another stakeholder found it "absurd" to require DFCS to prove a "fictitious deprivation" every two years when the child has not been living with his or her parents and has been in DFCS custody and, therefore, obviously could not be deprived.

(v) Issues When Custody Of A Child Is Granted To A Relative Or Non-Relative

Several stakeholders raised issues regarding cases in which a juvenile court judge grants custody to a child's relative or another third party, instead of DFCS, including:

► Concern that the Code does not clearly permit a juvenile court judge, who grants custody of a child to a relative or non-relative, to order DFCS to continue to provide services to the child's parents. Two stakeholders, who a number of years ago became the guardians of their niece after her mother transferred custody to the stakeholders through a private guardianship petition in probate court ("private guardians") complained about a lack of resources for non-traditional foster parents/guardians. Their niece, for example, recently has been diagnosed with Reactive Attachment Disorder ("RAD"), a disorder that these stakeholders claim is seen in a large percentage of foster children. The guardians contend that they inquired about financial support, but DFCS was unable to help because the guardians were not traditional foster parents and DFCS did not have custody of the child. These stakeholders say that private foster parents/guardians should be treated equally and receive the same resources as traditional foster parents, instead of being told that their situation is a "private matter" and having "the door [shut] in [their] face[s]."

► Concern that DFCS performs only a "bare bones" evaluation when ordered by the court to complete a home study of a relative or non-relative to whom the

court has granted custody. One stakeholder suggested that the study required by the Code to determine whether a particular relative or nonrelative is “qualified to receive and care for the child,” O.C.G.A. § 15-11-55(a)(2)(A), 15-11-58(i), should be clarified and augmented to require that DFCS do a more thorough evaluation that includes a complete home evaluation, including a criminal background check on all adults residing in the home, information on household income, drug screens, and inspection of the physical premises where the child will be located, as well as references.

► Concern that DFCS policies do not allow financial support to be paid to relative custodians unless the child is first placed in stranger foster care before being placed with the relative.

► Concern of one juvenile court judge that DFCS may attempt to divest itself of custody of a child, as ordered by the court, by encouraging a relative of the child to seek voluntary guardianship in probate court. Although the probate court may (but is not required to) transfer the guardianship petition to the juvenile court for consideration, O.C.G.A. § 29-2-6(f), the judge believes the Code is unclear as to the juvenile court’s authority and the burden of proof in determining whether to grant the guardianship petition.

(vi) Custody of Runaways

A few stakeholders, including a juvenile court judge, commented on DFCS’ policy of petitioning the juvenile court to divest the department of custody of a child who has runaway from his or her placement. One stakeholder described the policy as an attempt on the department’s part to avoid legal liability if, for example, the runaway child commits a delinquent act or becomes pregnant while unsupervised. Another stakeholder, a SAAG, agreed that it would be appropriate for the department to retain custody during the runaway period to ensure that the child, when found, would have an immediate placement upon his or her return. However, another SAAG strongly disagreed, arguing that DFCS should not be prevented from requesting relief in these instances because case workers already are overworked and should not be forced to spend valuable time and resources searching for runaway children when other children on that caseworker’s caseload desperately need that caseworker’s time and attention.

(vii) Interstate Compact On the Placement Of Children (“ICPC”)

Every stakeholder who addressed the ICPC agrees that it needs to be reformed. The predominant complaint among stakeholders is that a home study on a potential placement for a child in a foreign state typically takes far too long to be completed – often several months and sometimes even longer -- because of the alleged “bureaucratic

nightmare” created by the statute.¹² Prior to passage of the ICPC, DFCS would call a caseworker in the foreign state directly and request a home study, which normally would be completed in a few weeks or months, according to several stakeholders. Under the ICPC, however, information first must be filtered through the Georgia Department of Human Resources at the state level, then to the “appropriate public authorities” in the foreign state, and finally to the local child welfare office in the foreign state. O.C.G.A. § 39-4-1 et. seq. This can result in delays of generally six to eight months and, in extreme cases, even up to two years, according to these stakeholders. One commonly-reported fact pattern occurs when an unknown relative steps forward and requests placement near the time of or at final disposition; the resulting delay due to the time it takes for an ICPC evaluation to be performed on that relative then becomes a significant obstacle to finalizing permanency for the child in a timely way.

A common example of an ICPC delay was related by one of the child advocate stakeholders. In that case, parents of a child were arrested for drug trafficking while driving through Georgia on their way back to their home state; the child was removed from their care and placed immediately in the temporary custody of the local DFCS pending the first hearing. At the 72-hour hearing, the child’s grandparents appeared and sought to take their grandchild home. The grandparents, however, were not Georgia residents. Because of the ICPC requirements, their request to take their grandchild back to the family’s home state was denied pending the completion of a home study with the understanding that such a home study could not possibly be completed for many months and that the child would have to stay in foster care in the meantime.

Stakeholders addressing the ICPC issue unanimously asked for changes in the way that home studies are secured. They suggested that the Code be revised if possible to grant authority to the DFCS case worker in Georgia to work directly with his or her counterpart in the foreign state to conduct the needed home evaluation without having first to filter the request through the foreign state ICPC agency. In a case where a home study needs to be performed in another Georgia county, one stakeholder recommended that the Code grant the DFCS case worker the authority to cross county lines to conduct the home study without having to ask a counterpart in that county to conduct the home study.

(viii) Visitation

Two juvenile court judges indicated that the Code ought to, but does not currently, specify meaningful minimum standards for visitation schedules for children

¹² The Interstate Compact on the Placement of Children, O.C.G.A. Sections 39-4-1, et. seq., (ICPC), was designed to resolve a number of related issues, including the question of which state will be financially responsible for the child, the sending state or the receiving state, in the event the placement disrupts. Unfortunately, in resolving this financial issue, the child in the case must wait too long, according to stakeholders, to be placed with willing out-of-state relatives and has to linger, instead, in foster care while the ICPC process plays out according to current law. Interestingly, the part of the current juvenile code that addresses out of state placement, Code Sections 15-11-87, et. seq., is ignored because it is outdated.

who have been removed from their homes. The Code requires only that the department’s case plan provide for a “reasonable visitation schedule, which allows the parents to maintain meaningful contact with their children.” O.C.G.A. § 15-11-58(c)(6). One judge explained that that DFCS interprets “meaningful” to mean only two times per month regardless of the child’s age or need for more frequent contact with the parent. Another judge commented that DFCS has a conflict of interest in setting the visitation schedule: it has to weigh its budgetary concerns against the needs of the child for frequent visitation. A third judge recommended that the Code set forth an appropriate, mandatory visitation schedule based on the age of the child and other relevant factors.

(ix) Fast Track For Terminating Parental Rights

A number of CASA volunteers and DFCS supervisors expressed frustration over the many delays associated with the process of terminating parental rights and advocated for a type of “fast track” for the process. Some cases are so straightforward, say these stakeholders, that termination ought to be a viable option shortly after the child is removed from the home. For example, when a mother, whose parental rights have already been terminated to all her previous children, gives birth to yet another child, some stakeholders wondered at the need to go through the formal process, with its attendant delays, to terminate the mother’s rights to the newborn.¹³ Several DFCS supervisors also bemoaned the fact, as they see it, that juvenile court judges will look for any reason not to terminate parental rights. The prospect of placing a child in a secure, stable and permanent home, say these stakeholders, dwindles each time the child is cycled back through foster care after the court’s denial of the department’s petition to terminate parental rights. Moreover, the Code currently requires that the permanency of a child’s placement be achieved within 12 to 15 months of removal from the home. According to stakeholders, this period is not tolled during an appeal of the court’s decision not to grant the petition to terminate parental rights, placing compliance with the statutory provision at risk.

6. Problems With Code Provisions Addressing Delinquency Proceedings

a. Limitations On Judicial Authority

Stakeholders frequently referred to the lack of sufficient discretion the Code affords juvenile court judges to handle delinquency cases. Numerous stakeholders indicated that the Code should provide enhanced sentencing discretion to judges, establish juvenile court judges as gatekeepers to the adult criminal system, and expand the use of protective orders by judges to ensure compliance by the child and the child’s parents of court directives.

¹³ The Code currently provides for relatively immediate termination of parental rights with certain findings. See, e.g., O.C.G.A. § 15-11-94(b)(1)-(3), (5).

(i) Enhanced Sentencing Discretion

Juvenile court judges and other stakeholders, including a state legislator, maintain that judges should be conferred greater discretion in sentencing juvenile delinquents. For delinquent acts that are not “designated felonies,” the Code provides that a judge, among other services for treatment or rehabilitation, may commit the child to DJJ custody for a two-year period, which may be extended for an additional two-year period. O.C.G.A. § 15-11-66(a)(4). However, the Code authorizes the DJJ to discharge the child sooner than expiration of the two-year period even without the court’s consent. O.C.G.A. § 15-11-70(a). Once a child is committed to the DJJ, explained one stakeholder, the judge has no further control over how long the child remains incarcerated or what kind of services the child receives. This often results in children being released from incarceration much earlier than they should be. As one judge explained, because children are committed to DJJ usually as a last resort after community resources have been exhausted; therefore, it is difficult to understand why DJJ would discharge a child after only a few months. Stakeholders stated that judges might attempt to avoid commitment to DJJ because they believe DJJ is too lenient, but that they do so by inappropriately construing delinquent acts as “designated felonies.” The juvenile court judge, not DJJ, retains control over the decision, if any, to release the child before he completes his full sentence if the case is a designated felony case. One stakeholder claimed, for instance, that children are rarely committed to DJJ anymore in his home county, presumably because, according to the stakeholder, DJJ reportedly took the position that all prior orders in a child’s case are superseded, including restitution to victims, upon commitment to DJJ. Indeed, most stakeholders who commented on sentencing issues recommended greater discretion for judges, or at least a provision in the Code requiring a judge’s order before any child can be discharged from DJJ commitment. On the other hand, two stakeholders (notably, juvenile defense counsel) asserted that DJJ internal procedures are generally better than judicial treatment.

Stakeholders also would like to see greater judicial discretion in sentencing juvenile delinquents found to have committed a designated felony. O.C.G.A. § 15-11-63(a)(2). Currently, the Code mandates a maximum five-year commitment to DJJ, with a minimum one-year period of confinement in a YDC, followed by a minimum one-year period of intensive supervision by DJJ. O.C.G.A. § 15-11-63(e). Judges and one state legislator who were interviewed would like to eliminate or at least reduce the minimum initial period of commitment to DJJ, confinement to a YDC, and intensive supervision, and give judges more flexibility and discretion in sentencing. However, a few other stakeholders somewhat paradoxically advocated for a shift in the balance of power between judges and DJJ, such that DJJ could release a child found to have committed a designated felony *earlier* than the period to which the judge has sentenced the child for confinement or intensive supervision if the child is doing well.

(ii) Gate keeping Function Regarding Criminal Jurisdiction

Under current law, juvenile courts have exclusive, original jurisdiction over children alleged to be delinquent. O.C.G.A. § 15-11-28(a)(1). However, superior courts

have concurrent jurisdiction over a child alleged to have committed a delinquent act for which the adult penalty could be loss of life or imprisonment for life without the possibility of parole, unless the delinquent act is murder, voluntary manslaughter, rape, aggravated sodomy, aggravated child molestation, aggravated sexual battery, or armed robbery if committed with a firearm. O.C.G.A. § 15-11-28(b)(1). If the delinquent act is one of these so-called “seven deadly sins” and the child is over the age of 12, the superior courts have exclusive jurisdiction of the child’s case. O.C.G.A. § 15-11-28(b)(2).

Many stakeholders articulated the view that the exclusive jurisdiction of juvenile courts should be expanded so that juvenile court judges may determine, in the first instance, which court is most appropriate to hear a delinquency case, even one involving one of the so-called seven deadly sins. One juvenile defense attorney further recommended that, if the district attorney would like to try the child as an adult, that district attorney should have to file a motion in a juvenile court proceeding, in which the juvenile court judge would hear and consider evidence of aggravating and mitigating circumstances, victim impact statements, police officer testimony, and a thorough mental competency and psychological evaluation of the juvenile before ordering transfer of the case to adult court.

Stakeholders justified this proposal by arguing that it is inappropriate for the legislature simply to draw an arbitrary line to determine which court should hear the case based on a child’s biological age. As one juvenile court judge pointed out, delinquency is reaching younger and younger kids; therefore, setting an arbitrary age limit is futile. In addition, stakeholders generally agreed that juvenile court judges are the most qualified to decide issues regarding children because they are most familiar with juveniles and their mental capacity. If all delinquency cases were to begin in juvenile court, as these stakeholders propose, the court could review the child’s history and psychological evaluation in a transfer hearing and, only then, if the child found to be not amenable to rehabilitation, make the decision to grant a waiver permitting the child to be tried in the superior court.

In addition, children who are automatically sent to the superior court to be tried often “get lost” and languish in the adult system, say these stakeholders. They allegedly are detained sometimes for a year or more awaiting indictment and trial, receiving inadequate services and only a rudimentary education while in detention. Although DJJ assigns individuals to expedite these cases and the adult criminal procedure code now requires the district attorney to indict a child under the age of 17 within a specified period of time,¹⁴ these measures are not working as well as intended, according to one juvenile court judge. One alternate solution proposed by the judge would be to require by statute that the district attorney indict the child within 90 days and complete the trial within 6 months.

¹⁴ Recent changes in adult court procedure for these cases mean that the time that a child might wait in detention for indictment has been limited to six months, with the possibility of a three month extension, for a total of nine months, unless the child is a co-defendant of an adult facing the same charges and the state intends to seek the death penalty, at which point the time limits for indictment to be brought against the child no longer apply. O.C.G.A. Section 17-7-50.1.

Finally, the Code only requires that a child be *alleged* to have committed one of the seven deadly sins in order to for the exclusive jurisdiction of the adult court to attach. O.C.G.A. § 15-11-28(b)(2)(A). This loophole purportedly has created some unexpected, adverse effects, as illustrated by one defense attorney who recounted a case in which several juvenile co-defendants were charged with murder and tried as adults. The defense attorney’s 15-year old client was found “not guilty” of murder, but was found guilty of theft by taking, which was one of the lesser-included offenses. At the sentencing phase of the trial, the attorney moved to transfer his client’s case to the juvenile court, but his motion was rejected without a hearing. Thus, despite the fact that his client was found not guilty of the offense that brought the case to adult court, she was sentenced as an adult for the lesser crime of theft by taking. According to the defense attorney, the child was sentenced to 10 years imprisonment without the possibility of parole or early release for good behavior – a time equal to two-thirds of the child’s entire life -- for a delinquency that would have carried, at most, a two year term of secure incarceration had the case been heard in the juvenile system.

Two other stakeholders, both juvenile defense attorneys, also proposed that concurrent jurisdiction with the adult court even for delinquent acts that are not one of the seven deadly sins should be eliminated, so that all delinquency cases are heard exclusively in the juvenile courts.

(iii) Protective Orders

Several stakeholders stated that parents are not held sufficiently accountable for compliance with juvenile court orders and that the Code should expand the authority of the juvenile court judge to issue protective orders to ensure that parents, along with their children, abide by court orders. Two juvenile court probation officers opined that parents often abdicate their parenting responsibilities to the juvenile court rather than take responsibility for their own parenting obligations. Frequently, the child is unfairly blamed for the entire family’s dysfunction. Court orders, they believe, should put both the parent and the child under order to improve their individual capacities to function well as a family. One juvenile court official revealed that, with the exception of one instance in which a \$1,000 fine and weekend jail time was issued to parents who failed to abide by a court order to send their child to school, he has never heard of a juvenile court judge issuing a contempt order in his county to hold parents accountable for their failure to make their children follow the law.

b. Procedural Issues In Delinquency Cases

(i) Representation Of The State By the District Attorney

Current law provides that the district attorney shall represent the State “[i]n any delinquency proceeding in which a petition has been filed . . . if requested. . . .” O.C.G.A. § 15-11-64.1. One juvenile court judge suggested that the Code be revised to omit the phrase “in which a petition has been filed,” because the judge believes that the district attorney should determine whether a petition is filed in the first instance. In

Henry County, for instance, every accusation of delinquency, according to one stakeholder, comes to the District Attorney's ("DA") office for action and is reviewed against prior cases involving the same child for "consistency of treatment." The DA's office then decides whether to prepare and present a petition of delinquency to the juvenile court. This process works well, says the stakeholder, to ensure that the "decision is reasoned and deliberate, as opposed to . . . visceral." One juvenile court judge also advocated for mandatory assignment of assistant district attorneys to each juvenile court in the State, even those located in rural areas.

However, a parallel provision in the Code requires that, before a delinquency or unruly petition is filed, "the court or a person authorized by the court" endorse the petition by determining that filing it would be "in the best interest of the public and the child." O.C.G.A. § 15-11-37. Therefore, the district attorney currently does not have the authority to decide whether a petition is filed. While some prosecutors and a juvenile court judge state that they want prosecutors to have this authority, a state legislator strongly disagreed. According to the legislator, prosecutors do not understand the entire situation and the child's history, which might include a history of deprivation, and that juvenile court judges are better equipped to know which cases should go forward.

(ii) Venue

Under current law, a juvenile court that adjudicates as delinquent or unruly a child who does not reside in the county in which the court is located may retain jurisdiction over disposition proceedings or may transfer the case to the county of the child's residence for disposition. O.C.G.A. § 15-11-30. Several law enforcement officials criticized this venue provision because they claim the child likely will be sentenced more leniently by the court in the child's county of residence, especially if that court is busy and regularly deals with more serious delinquencies. According to these stakeholders, the result is ineffective deterrence to prevent juveniles from crossing over county lines to commit delinquent acts.

(iii) Procedures When Probation Is Violated

The Code provides that a child who is found to be unruly or to have committed a delinquent act may be placed on probation under the juvenile court's supervision. O.C.G.A. § 15-11-66(a)(2). There appears to be no Code provision that addresses the procedures to be used if the child violates the terms and conditions of probation. However, the Code defines a "delinquent act," in part, as "disobeying the terms of supervision contained in a court order which has been directed to a child who has been adjudged to have committed a delinquent act." O.C.G.A. § 15-11-2(6)(B). According to one juvenile court official, the court practice has been to require a new petition of delinquency to be filed each time a child violates a judge's probation order. This stakeholder recommends that the Code provide for a specific procedure to handle probation violations.

(iv) Sealing Records

One juvenile court official suggested that the Code provide more guidance regarding the process for sealing records and how long sealed records should be retained by the court pursuant to O.C.G.A. § 15-11-79.2.

c. Substantive Issues In Delinquency Cases

(i) Issues Regarding Detention Of Children

Several stakeholders complained about the reduction of short-term detention from 90 to 60 days and curtailment of “boot camp” programs, the detention assessment instrument (“DAI”) used by the DJJ to determine whether a child should be detained, as well as, overcrowding, distance and transportation to YDCs.

First, according to these stakeholders, a juvenile court judge may confine children who have committed certain delinquent acts only to a “short-term program” (STP) in a YDC for 60-days, a period of confinement that has been reduced from 90-days.¹⁵ A number of respondents criticized the reduction because they claim that the shorter period of detention diminishes judicial authority, undermines successful rehabilitation and treatment options for juvenile delinquents, and effectively curtails otherwise successful boot camp programs. One stakeholder also complained that community service opportunities for delinquent children are scarce in Georgia because such organizations generally require individuals to be over the age of 17 to participate; therefore, the only rehabilitative option available to the court is the STP, which is why it is so important to stakeholders that the STP be of sufficient length of detention to make a meaningful difference in a child’s behavior. These stakeholders, including stakeholders in the town hall meeting, would like the juvenile courts to have the option of sentencing juveniles to STP for 90 days. However, at least two stakeholders (juvenile defense counsel) suggested that a step-down provision should be included so that a child could be placed in a different environment if he or she is doing well.

Second, several law enforcement officials expressed dissatisfaction with the Detention Assessment Instrument (“DAI”), a point system used by the DJJ in delinquency cases to determine whether a child is eligible for detention. According to these officials, instances arise in which a child perceived to be genuinely dangerous has not yet accumulated the sufficient amount of points on the DAI, and thus is not recommended for detention. One detective cited a recent example in which a juvenile allegedly stole a car at a convenience store. Because his record did not reflect a sufficient number of points to detain him, the authorities were forced to take him back to his

¹⁵ The juvenile court judge’s only other authority to confine a child, who has committed a delinquent act that is not considered a “designated felony” and is not one of the “seven deadly sins,” is through commitment to DJJ. O.C.G.A. § 15-11-66(a)(4). However, as noted earlier, DJJ unilaterally may discharge the child prior to the expiration of the term of commitment ordered by the court. O.C.G.A. § 15-11-70(a).

mother, even though she told them that she could not handle the child and begged the authorities to detain him.

Third, a few stakeholders expressed frustration with several aspects of juvenile confinement at YDCs. One stated that YDCs are like “jails” where, because of the lack of sufficient services and treatment, children simply graduate from juvenile to adult incarceration. Another stakeholder complained that YDCs are overcrowded and that the closest YDC with a vacancy was three hours away. Stakeholders in the Town Hall meeting likewise recommended that the DJJ redraw YDC boundaries. A juvenile court judge also stated that the Code should clearly delineate that the sheriff’s department has the obligation to transport kids to the YDC. According to one stakeholder, law enforcement officials in his county have refused to transport delinquent children to YDCs. For this reason, court intake officers, who do not have the proper training or weapons, are forced to provide the transportation instead.

(ii) The Designated Felony Act (“DFA”)

As noted earlier, the DFA requires juvenile court judges to place children, who have committed a designated felony and require restrictive custody, in the custody of DJJ for a maximum period of five years, with a minimum of one year confinement at an YDC, followed by a minimum one-year period of intensive supervision by DJJ. O.C.G.A. § 15-11-63(e). A number of stakeholders, including two juvenile court judges, criticized these provisions of the DFA either because the definition of a “designated felony” is too vague, the age limits set forth in the statute are inconsistent, or both.

With respect to the definition of a designated felony, stakeholders uniformly pointed to the language in O.C.G.A. § 15-11-63(a)(2)(B)(vii) as troublesome. In that provision, a designated felony is defined in part to be “any other act which, if done by an adult, would be a felony, if the child committing the act has three times previously been adjudicated delinquent for acts which, if done by an adult, would have been felonies.” Id. According to one judge, juvenile court judges cannot agree on what “three times previously” means and, in particular, whether three separate petitions of delinquency are required. Another judge stated that a “patchwork system” has developed, so that a child who commits two auto thefts is a designated felon, but a child who commits four burglaries is not. Two juvenile court officials remarked that the vague language in the statute leads to abuse of its provisions.

Some stakeholders also mentioned that the age limits in the statute are inconsistent, such that a seven-year old conceivably could be convicted of a designated felony for bringing a sling-shot to school, but a 12-year old charged with attempted murder could not. Finally, stakeholders in the Town Hall meeting stated that the Code should include a step-down provision so that a child could be eligible for probation or early release for good behavior without a court order.

(iii) Specific Offenses

Several stakeholders commented on specific juvenile offenses they felt were problematic, including:

► Disruption of school law. Stakeholders, including a parent of a child found delinquent under this law, remarked that legislative reforms should permit school officials to use discretion and exercise “common sense,” prosecutors should handle the cases fairly and in a non-discriminatory manner, and judges should be able to take into account the child’s school performance and record of good behavior. Stakeholders uniformly opined that school systems are not permitted to use enough discretion and, in fact, misuse the statute as a way to supplement discipline in the classroom by using the juvenile detention center as its “out of school suspension” option. A few stakeholders suggested that the definition of a “weapon” be revised to preclude prosecution for objects that were not intended to be weapons, such as special instruments used by many young ladies to shape their eyebrows. In addition, one juvenile defense attorney would like to see the Code set forth specific procedural rules for school tribunal hearings, require that the child be provided with some sort of advocate during the hearing, and/or provide the child with an entitlement to adjudication by a jury of his or her peers.

► Criminalization of consensual sex between teenagers. Two stakeholders were critical of the fact that the list of offenses in O.C.G.A. § 15-11-28(b) making a child eligible for prosecution as an adult includes “aggravated child molestation.” This provision places teenagers who have engaged in consensual sexual acts with other teens in jeopardy of being classified as child molesters, tried as adults, and subjected to extremely severe penalties, including lengthy terms in prison. For example, a 16-year old boy who has consensual sexual relations with a 14-year old girl can be charged with aggravated child molestation. One stakeholder also pointed out that the current blanket mandate requiring school counselors to report instances of sexual activity among minors is counterproductive in many cases because it inhibits children from seeking out help from their counselors if they know they will be reported to a state agency for their actions. Instead, school counselors should be given an opportunity to assess the situation within the framework of established guidelines, according to this stakeholder.

► Truancy. Some stakeholders would like to see the Code amended to clarify the juvenile court’s responsibility to enforce the truancy laws. One juvenile court clerk stated that she receives many telephone calls from school social workers who are confused about how to handle truant children who are over the age of 16. Another stakeholder complained about the limited availability of resources for dealing with truancy, referring to a time in the mid-1990s when, she says, truant kids were placed on electronic monitoring routinely.

(iv) Status Offenders

A few stakeholders mentioned that status offenders are treated differently under the Code. Because of this, services for status offenders are more difficult to obtain, according to the stakeholders. They advise revising the Code to make it easier for parents of ungovernable or truant children to be provided with needed services. Children with

the worst undiagnosed mental health needs are not receiving services in a timely manner, according to these stakeholders.

One stakeholder recommended that the status offender provisions be re-codified in the deprivation portion of the Code because, when parents file a status offender petition, there is often deprivation and DFCS, as a “helping agency,” should handle these cases.

(v) Mental Competency Provisions

Stakeholders in the Town Hall meeting recommended revisions to the Code provisions that address children who have been adjudicated as “dependent” on the court because they are incompetent to stand trial. According to these stakeholders, the Code should make needed services more readily available.

(vi) Miscellaneous Issues

Stakeholders also raised several other issues they feel should be addressed in Code amendments, including:

- ▶ Enhanced parental responsibility for delinquent acts committed by their children;

- ▶ As cited by the mother of an adult child charged with delinquency as a minor, emphasis on parental participation in delinquency proceedings because it is essential to helping children navigate through the juvenile justice system. Parents must be considered a party to these proceedings and/or be entitled to attend all proceedings involving their child;

- ▶ An age limit regarding the judicial bypass for abortions;

- ▶ Concern over the court’s inability to provide services to the undocumented immigrant population;

- ▶ Mandatory therapy for families after deprived children return to the home they were previously removed from;

- ▶ Revision to the child labor laws making it easier for children between the ages of 12 and 16 to become employed, since this allegedly is the optimal age range to learn about fiscal responsibility;

- ▶ Elimination of any Code provision that would require reports made to DFCS also to be filed with the local Sheriff’s office, purportedly to avoid harassment and “informal surveillance”;

- ▶ Expanding the scope of the Independent Living Program (“ILP”) for individuals over the age of 18 in foster care. Although the ILP may assist former foster

children by subsidizing their college education, there are certain eligibility factors, including a minimum amount of time the child previously has spent in foster care. One former foster child, who is able to attend college through the ILP's assistance, lamented the fact that one of her friends currently struggles to pay for her own college tuition because, having spent only three or four months in foster care, she allegedly was not eligible for ILP funding. This stakeholder believes that the eligibility criteria should be liberalized because "foster kids struggle enough";

▶ Selection of juvenile court judges and use of *pro tempore* judges. In most areas, the juvenile court judge is appointed by local superior court judges with whom he or she has a relationship. One juvenile court judge recommends that a committee at least screen out unqualified applicants. The judge does not believe, however, that juvenile court judges should be elected. In addition, one stakeholder pointed out that the Code should provide specific instances in which a *pro tempore* judge should recuse himself or herself from a case, such as when the judge is likely to represent parties in particular cases subsequent to the instant proceeding; and

▶ A number of SAAGs noted that the State should employ them on a full-time basis rather than using "free lance" SAAGs. The full-time SAAGs could be located in local DFCS offices and act as "in-house" counsel to address urgent issues. In addition, full-time status would weed out "the majority of SAAGs who don't know what they are doing" because they practice only part-time "on the side," according to these stakeholders. Also, one SAAG mentioned that the pay scale for SAAGS representing DFCS should be increased given that SAAGs representing other state agencies are paid at a much higher rate.

III. CONCLUSIONS

Based on the foregoing, stakeholders in the District clearly perceive the juvenile justice system to be plagued with serious problems and badly in need of reform. While not all of the deficiencies noted above may be addressed by amending the Code, a revised Code could lead to specific improvements in a number of areas. Some of the stakeholders' recommendations to improve in these areas include the following:¹⁶

A. General Recommendations

- ▶ Reorganize and simplify the Code to make it more user-friendly;
- ▶ Overhaul DFCS by, among other things, increasing pay for and decreasing the case loads of case workers;

¹⁶ These recommendations are based on reasonable inferences drawn from a comprehensive analysis of the comments made by one or more stakeholders who participated in the interviews, and are provided in summary format only as a convenience to the reader. The recommendations by no means represent all of the comments made by every stakeholder or the important details of any particular comment. They also do not necessarily represent the opinion of the Firm.

- ▶ Decrease the number of case workers who interact with children in DFCS custody (*i.e.*, improve the continuity of care);
- ▶ Increase discretion of DFCS case workers in the application of internal policy to specific cases;
- ▶ Improve access to, the availability of, and funding for group homes and residential treatment centers, as well as specialized foster care and other services, for children with mental health concerns;
- ▶ Expand access to, the availability of, and funding for in-home services provided by DFCS to families prior to removal of a child;
- ▶ Reduce disparity in funding and services between urban and rural geographic areas;
- ▶ Promote collaboration, communication, and information-sharing among juvenile courts, government agencies, and private sector resources, as well as greater integration between state and local levels within government agencies;
- ▶ Clarify which government entity is required to pay various expenses associated with service of process and incarceration of delinquent children;
- ▶ Eliminate the discrepancy in the Code conferring jurisdiction to juvenile courts in various proceedings based on the age of the child; and
- ▶ Establish a minimum age for children subject to delinquency proceedings.

B. Recommendations For Deprivation Cases

- ▶ Increase judicial authority in directing placement of a child already in DFCS custody;
- ▶ Shorten the timetable for court proceedings and ensure stricter enforcement of court-imposed time limits, with an appropriately narrow provision for continuances where the circumstances genuinely warrant postponement;
- ▶ Address admissibility of drug screen results;
- ▶ Require attorneys who practice and non-attorneys who otherwise may appear before the court to participate in certain continuing legal education or other training programs;
- ▶ Clarify or revise legitimation procedures, standing requirements, and proper notice for putative fathers;

- ▶ Clarify certain Code definitions, including “best interests,” “reasonably diligent search,” and “reasonable efforts”;
- ▶ Expand the authority of DFCS to seek temporary protective orders, either by consent or through adjudication, in order to provide greater access to programs and services for families without having to remove a child from the home;
- ▶ Clarify requirements for private deprivation petitions;
- ▶ Address whether a juvenile court judge has authority to order DFCS to perform a comprehensive home study and/or provide services where the custody of a child is not awarded to DFCS;
- ▶ Ensure that juvenile court has jurisdiction over guardianship petitions filed in probate court in deprivation cases;
- ▶ Address whether DFCS may divest itself of custody of a runaway child and, if so, what factors the court must consider;
- ▶ Seek the revision of the Interstate Compact on the Placement of Children to reduce lag time in completing home studies of possible child placements in foreign states, perhaps by including time limits;
- ▶ Create an appropriate mandatory visitation schedule based on the age of the child and other relevant factors; and
- ▶ Augment provision of a statutory “fast track” to terminate parental rights in extreme cases.

C. Recommendations For Delinquency Cases

- ▶ Increase judicial authority in sentencing, including a provision (1) requiring the DJJ to obtain a court order prior to discharging a child before the court-imposed commitment period ends, (2) eliminating the mandatory minimum confinement and supervision period (or at least including the possibility of early release after some period of time) for children who commit designated felonies, and (3) permitting the judge to sentence a child to boot camp or a 90-day (vs. a 60-day) short-stay at a YDC, with or without the possibility of early release;
- ▶ Expand exclusive criminal jurisdiction of juvenile courts so that juvenile court judges, in a gate-keeping function, decide in which court a criminal proceeding involving a child should be heard;
- ▶ Enlarge or clarify court authority to issue protective orders to ensure that parents and children abide by court orders;

- ▶ Address statutory venue provision permitting transfer of delinquency case to the court in the child's county of residence for sentencing purposes;
- ▶ Provide a specific procedure for handling probation violations, other than filing a new delinquency petition with each violation;
- ▶ Provide guidance to juvenile court clerks on handling sealed records;
- ▶ Improve access to and overcrowding at YDCs and clarify which state agency is responsible for transporting children to YDCs; and
- ▶ Clarify the Code definition of a designated felony and resolve age inconsistencies in the designated felony provisions.