

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

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## Judicial District 7



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## INTRODUCTION<sup>1</sup>

### A. Acknowledgements

Jones Day acknowledges and thanks the attorneys and staff who contributed their time and talent to this project.

### B. Statement of Reporting Law Firm

This report summarizes the information, ideas, opinions, suggestions, and concerns regarding the current juvenile justice system in Georgia that were provided in interviews conducted by Jones Day attorneys from various stakeholders who live and work in Georgia's Seventh Judicial District (the "District"). Between June of 2007 and April of 2008, Jones Day attorneys<sup>2</sup> conducted interviews with a total of thirty-eight (38) subjects in the District, including current and former juvenile court judges, special assistant attorney generals ("SAAGs"), officials with the Court Appointed Special Advocates ("CASA") programs, district attorneys, a public defender, a juvenile court administrator, and others who have had involvement of one kind or another with the juvenile justice system.<sup>3</sup> Jones Day attorneys also reviewed comments from participants at a town hall meeting on juvenile justice reform sponsored by the JUSTGeorgia Project in Rome, Georgia on October 30, 2007.<sup>4</sup>

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<sup>2</sup>The following attorneys conducted interviews: Robert A. Schmoll (Associate Trial Practice); Kate A. Furfari (Associate Products Liability & Tort); Jeffrey L. Glaser (Associate Labor & Employment); John H. Grady (Of Counsel Government Regulation); Gregory R. Hanthorn (Partner Trial Practice); Arthur G. Kent (Counsel Tax); Olivia E. Marbutt (Associate Intellectual Property); Christine M. Morgan (Associate Government Regulation); Deborah Sudbury (Partner Labor & Employment); Douglas Towns (Partner Labor & Employment); Brooke Werner McEckron (Associate Trial Practice); Johanna Wise (Associate Labor & Employment); Trammell Newton (Counsel Government Regulation); Michael Wolak (Associate Trial Practice); Rachel Harkavy (Associate New Lawyers Group); Marla Nicholson (Associate New Lawyers Group); J'Lene Ancell (Associate Intellectual Property); Lynn Thesing (Former Of Counsel). This Report was also made possible by the research assistance of librarian Rhonda Gold and intern Shaunicie Fielder.

<sup>3</sup> Jones Day also attempted to conduct interviews of the following stakeholder categories: a parent of a child who has been alleged or adjudicated delinquent, a young adult who "aged out" of the foster care system, that is, reached the age at which a young person is no longer eligible for placement in a foster home, a young adult who was alleged delinquent while a juvenile, an employee of a Regional Youth Detention Center, an employee of a counseling center for children, high school and middle school principals, a school board member, and an employee for a child advocacy program.

<sup>4</sup> Please note that all views expressed herein are solely those of the subjects interviewed. The views reported are opinions and perceptions of the stakeholders 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.

Jones Day thanks all of the stakeholders, who gave freely of their time and shared candidly their thoughts about the juvenile justice system in the District and in the State generally. Respecting the confidential nature of the interview process, no attributions are made to specific individuals in this Report, even where certain comments are presented as quotations. Where a stakeholder's specific connection to the juvenile justice system or the District might augment the context of a comment, the connection is referred to generically.

Jones Day has a long history of pro bono service and a commitment to giving back to the communities in which we practice. In addition to other areas of pro bono service, the Atlanta office of Jones Day focuses on issues unique to children including special education advocacy, truancy intervention, and legislative initiatives such as the JUSTGeorgia Project.

### **C. Overview of Just Georgia Project**

This report is one of ten judicial district reports prepared to help guide a much-needed effort to replace Georgia's outdated juvenile code with new legislation that will better serve the public safety and child welfare goals of this State. Judges, lawyers, and others who must turn to the juvenile code on a daily basis agree that it is unclear, outdated and difficult to apply. Responding to these views, JUSTGeorgia<sup>5</sup> seeks passage of a new juvenile code that will better organize current state law regarding juvenile justice and child welfare, better reflect the impact of federal law throughout the juvenile code, incorporate research-based scientific findings and best practices in the child development field and respond to the hard-earned wisdom of Georgians who work with or are impacted by the current juvenile code on a regular basis. Under the direction of JUSTGeorgia Partner Georgia Appleseed, teams of trained volunteers set out all across the state to ask stakeholders three simple but important questions about the current juvenile code that governs child neglect and abuse (deprivation), foster care, delinquency and the juvenile courts: What's working? What's not? And how would you, the stakeholder, make it better?

Throughout the State's ten judicial districts, JUSTGeorgia volunteers, mainly lawyers, conducted face-to-face interviews with hundreds of individuals who have a stake in the Juvenile Court system: juvenile court judges, law enforcement officers, child advocates, public defenders, prosecutors, legislators, educators, child welfare experts, school social workers, parents, children, and other community members. Every effort was made to be as inclusive as possible so that members of every demographic and geographic component of the State would have an opportunity to provide input.

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(continued...)

<sup>5</sup> JUSTGeorgia is a joint project partnered by Voices for Georgia's Children, Georgia Appleseed, and the Barton Child Law & Policy Clinic at the Emory School of Law. Formed in 2006, JUSTGeorgia is working to build a statewide coalition that will advocate, monitor, and report on the conditions, laws, and policies that affect Georgia's youth.

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

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

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

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 SEVENTH JUDICIAL DISTRICT**

### **A. Basic Information About the Seventh Judicial District**

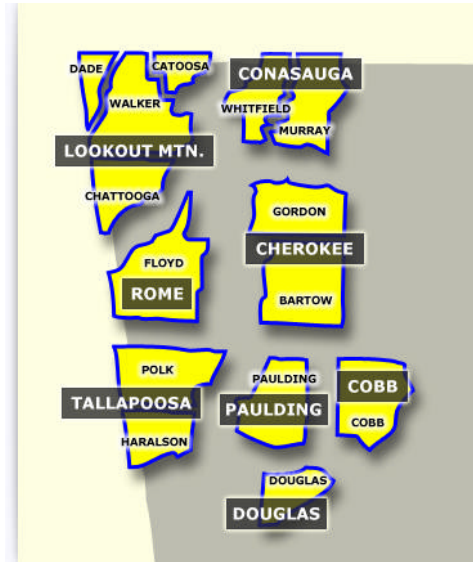
The District is located in the northwest corner of Georgia, roughly south of Tennessee, east of Alabama, north of Carrollton, and west of Canton. It covers only 7.8% of the land area of the State, and 16.3% of Georgia residents live in the District. The District is comprised of

fourteen counties<sup>6</sup> and encompasses eight of the state's judicial circuits.<sup>7</sup> (Available at <http://www.7jad.com>.)

Seventh Judicial District



7<sup>th</sup> Judicial District's Eight Judicial Circuits



Map of Seventh District Court of the Administrative Office of the Courts, available at

Based on 2006 estimates by the United States Census Bureau, the population of the District is approximately 1,521,820. Roughly 18% of the population is under the age of 18. (See Census 2000 Demographic Profile Highlights, available at U.S. Census Bureau, <http://factfinder.census.gov/>.) The District is approximately 87.7% white, 9.0% black and 7.7% Hispanic.

The median household income, as of 2004, was approximately \$41,400, ranging from a low of \$31,284 in Chattooga County to a high of \$58,801 in Paulding County. Also as of 2004, approximately 12.4% of persons in the District lived poverty line, slightly below the 13.7% poverty figure that applies to the State of Georgia.

## B. The Juvenile Court System in the District

There are twelve juvenile courts in the District with twenty-six juvenile court judges. The judges in these courts hear both deprivation and delinquency matters. In some instances, the

<sup>6</sup> The District is comprised of the following counties: Bartow, Catoosa, Chattooga, Cobb, Dade, Douglas, Floyd, Gordon, Haralson, Murray, Paulding, Polk, Walker, and Whitfield.

<sup>7</sup> The District encompasses the following judicial circuits: Cherokee, Cobb, Conasauga, Douglas, Lookout Mountain, Paulding, Rome, and Tallapoosa.

courts have other types of cases on their dockets. For example, Dade, Gordon, and Walker counties handle traffic cases. Both Haralson and Polk counties handle some guardian cases from probate courts. Additionally, some juvenile court judges have caseloads in other courts. For example, Cobb County’s juvenile court judges regularly fill in at Cobb Superior Court. Likewise, Paulding County’s juvenile court judges occasionally fill in that county’s superior court.

The size of the staff for each juvenile court in the District varies widely as does the caseload for each. For example, Cobb County has ninety-two staff members to assist with a caseload of 16,631 cases in 2007, while Dade County handles approximately 500 cases per year with two staff members to provide assistance to the court.

There are four regional youth detention centers (“RYDCs”) in the District, located in Rome (Floyd County), Dalton (Whitfield County), Marietta (Cobb County), and Dallas (Paulding County).

In 2007, the counties encompassing the District served 11,123 youth in delinquency matters alone.

The total offenses committed by juveniles in the District during 2007 are summarized below:

County	Drugs	Property	Public Order	Non Violent Sex	Status	Violent	Violent Sex	Weapons	Traffic	Unknown
Bartow	83	187	97	5	227	120	23	13	13	150
Catoosa	71	145	98	4	189	103	14	18	166	139
Chattooga	16	52	26	0	27	18	5	3	40	22
Cobb	192	265	155	5	579	247	35	46	14	155
Dade	27	36	23	1	29	22	9	2	42	35
Douglas	183	385	436	21	516	322	50	61	51	255
Floyd	9	44	49	2	149	58	11	3	2	61
Gordon	11	14	14	0	10	14	5	0	0	10
Haralson	31	47	59	1	107	51	9	9	50	88
Murray	38	74	89	2	89	44	5	18	16	27

County	Drugs	Property	Public Order	Non Violent Sex	Status	Violent	Violent Sex	Weapons	Traffic	Unknown
Paulding	178	320	340	10	215	267	35	32	89	204
Polk	58	83	105	4	80	76	4	3	80	28
Walker	84	174	89	0	175	122	11	13	154	117
Whitfield	29	61	71	2	98	43	3	7	7	59
TOTAL	1010	1887	1651	57	2490	1507	219	228	724	1350

Status offenses account for the largest number of juvenile crimes committed in the District during 2007. Property and violent crimes were also significant during this period.

### C. Particular Challenges

The Seventh District is confronted with many of the challenges that face areas spanning both metropolitan and rural areas. Throughout the District, stakeholders expressed concerns about the increased availability and use of methamphetamine among youth, an increase in fairly unorganized “gangs,” and a perception that youth believe the juvenile system to be “toothless.”

One officer in a rural county expressed a desire that any new Juvenile Code focus on the needs of the majority of the state and not only on the needs of metropolitan Atlanta. As an example, this officer explained that a delinquency such as shoplifting can be a “serious juvenile offense” in a more rural area even though it might not be perceived as a “serious juvenile offense” in the city of Atlanta. Any rewrite of the juvenile code needs to take into account the way offenses are viewed throughout the state and not just in Atlanta.

## III. STATUS OF THE JUVENILE SYSTEM

While the thirty-eight (38) stakeholders interviewed expressed a broad range of thoughts and opinions, there emerged certain trends and consensus about areas in which improvement is needed.

### A. General Perceptions of the Juvenile System

#### 1. Delinquency

The most consistent opinion expressed by the pool of stakeholders was that the juvenile justice system within the Seventh District has some aspects worth saving but, in general, is in need of improvement.

In particular, stakeholders are concerned about how the juvenile justice system interacts and integrates with the adult system; funding problems, particularly in connection with providing

youth detention centers with sufficient capacity; interactions between DJJ and law enforcement officers; and perceptions, held by both youth and adults, that the Code lacks clearly defined consequences, which in turn sends mixed and unhelpful messages to youth that they can violate the law and probably avoid swift and predictable punishment the first few times they are brought into court.

Public school officials, public defenders, and law enforcement officials agreed that an informal process for status offenses<sup>8</sup> should be developed, which would take children who commit minor offenses out of the juvenile court system. As noted above, status offenses accounted for most of the violations of the law committed by children and youth in the District during 2007.

Law enforcement and other stakeholders agreed that Georgia should continue its efforts to rehabilitate young offenders. Law enforcement officers we interviewed believe, however, that the DJJ is overly focused on rehabilitation; these stakeholders want rehabilitation to be balanced with deterrence by putting some “teeth” or consequences into the system. They believe that deterrence should remain a part of any revision to the current juvenile code, particularly as a way to lower recidivism rates.

Some stakeholders expressed frustration around the use of graduated sanctions, which require the court to follow unspecified guidelines before imposing more serious consequences for a child’s repeated delinquent behavior. Law enforcement professionals believe that the current code should be revised to allow juvenile court district attorneys and judges to use their discretion to bypass “graduated sanctions” when repeat offenders are brought before the court.

Police officers in more rural parts of the Seventh Judicial District are concerned that any effort to repeal SB440<sup>9</sup> may make the system worse. Stakeholders sharing this view believe that the adult consequences that attach to SB 440 offenses need to remain a consequence for youth when they are found to have committed a serious and violent felony. The consequences for youth, age 13 through 16, who are convicted in the adult court upon the SB 440 charges can include a jail term with a minimum of 10 or 25 years, depending upon the offense, up to the possibility of imprisonment for life.

Police officers were asked about SB440, which became law more than 14 years ago, and the results of brain development research that was not available until after the statute took effect. These stakeholders noted that knowing that the youthful perpetrator’s brain was not fully developed at the time the crime was committed does not mitigate the impact of the crime upon the victim. Further, these stakeholders explain, research shows that the most effective forms of discipline rely upon swift, predictable consequences. These stakeholders assert that the adult court offers direct and more consistently predictable consequences than the juvenile courts

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<sup>8</sup> Status offenses are those acts that are violations of the law only because of the child’s status as a minor. Truancy, curfew violations, runaway and being beyond the control of one’s parents are examples of status offenses.

<sup>9</sup> O.C.G.A. Section 15-11-28(b)(2)(A), commonly known as SB 440 after the Senate Bill passed in 1994, requires that cases of children age 13 and older who are alleged to have committed one of the so-called “seven deadly sins” be automatically handled in the adult court rather than in the juvenile court.

because the juvenile courts have to go through too many hoops, known as graduated sanctions, before the child experiences the logical consequences of his actions. As a result, these stakeholders believe, the juvenile court's approach to discipline is more harmful to the child than the more direct consequences of the adult court.

## 2. Deprivation

### a. Sibling Placements

Court Appointed Special Advocate ("CASA") personnel across the counties in the District expressed differing perceptions on the extent to which the system effectively keeps siblings together after they have been found to be deprived and are removed from their home. In those counties where there is a problem, stakeholders requested that keeping siblings together in foster care be made a priority when the Department of Family and Children Services ("DFCS") makes its placement decisions. In counties that had a better track record of keeping siblings together, stakeholders still wanted more to be done to facilitate sibling visitation if the siblings could not be placed together in one family.

### b. Termination of Parental Rights

One guardian ad litem ("GAL") is of the opinion that the current deprivation system is focused solely on reunification of parents and children, even when termination of the parent-child relationship is appropriate. The same GAL also noted that the system is too focused on grandparents in private deprivations cases, even when the grandparent is not an appropriate placement because of the grandparent's own shortcomings. On the other hand, an attorney who represents parents in deprivation proceedings believes DFCS terminates parental rights "too quickly."

### c. Preventing Court Involvement

DFCS and the courts need to do a better job of letting the public know about the resources that are available to them to help their families function better, according to some stakeholders. Some CASA personnel noted that the system could be spared the resource strain of running particular cases through the courts, and children could be spared the trauma of being in the deprivation system, if parents were more aware of resources that are available to them. This observation is closely tied to a belief that the different child and family serving agencies, including the juvenile courts, need to collaborate more effectively.

### d. Placement Issues

Multiple stakeholders complained about a DFCS policy that encourages placement of children in foster homes that are in the same community as the children's family home. These stakeholders note that this policy creates obstacles when the child could benefit from a specialized foster placement that is not available in the child's home community.

Law enforcement officers recommend against granting DFCS authority to take children into custody without permission and involvement from a juvenile court judge or authorized court

personnel. These stakeholders believe in the checks and balances that court involvement offers to counter DFCS's unilateral actions that could result in unnecessary removals.

#### e. Open Proceedings

By and large stakeholders support the traditional confidentiality of juvenile court proceedings. Most point out that young people, by definition, make mistakes because of their immaturity and need to be shielded from having those mistakes made public, with the hope and expectation that they will benefit from their court ordered involvement in appropriate rehabilitation programs. One stakeholder believes the movement to open such proceedings would lead to the politicizing of the juvenile justice system. One CASA advocate, on the other hand, recommended that deprivation proceedings become open to the public. This advocate noted that such cases are open in other states and that opening such hearings to the public would have the effect of holding DFCS, the attorneys and the parents to a greater degree of accountability.

### **B. What is Working?**

Stakeholders in the District provided positive feedback concerning the following:

- The CASA program is providing effective and efficient volunteer assistance within the juvenile justice system.
- CASA personnel across multiple counties indicated that, once a court is involved, systems work reasonably well.
- GAL expressed grave concern regarding a proposal to mandate a GAL's attendance at all meetings because it creates an impossible standard, especially in the fast-paced juvenile courts. According to one GAL, GALs should be able to utilize staff and volunteers to attend meetings involving a child.
- Some stakeholders believe the "seven deadly sins" of SB440 are providing real (and perceived) consequences for the particular, listed crimes, although some stakeholders (including judges) would prefer some mechanism for transferring a limited number of cases back to the juvenile court system when "special circumstances" (such as severe problems with mental development) are present. Some judges and one district attorney suggested amendments to SB440 to allow transfer to juvenile court when special or mitigating circumstances are present.
- Adult court is better at handling the SB 440 cases because its sentences are carried out. A prosecutor noted that DJJ tends to release committed youth from secure detention before the full commitment has been served, a tendency that makes a prosecutor even less likely to return a case to the juvenile court.
- Law enforcement officers noted that the juvenile courts handled misdemeanor and minor felony charges well.

- Multiple stakeholders favor the 72-hour and 10-day rules with respect to hearings in delinquency cases. Several judges agreed that the timelines established in the Code are working well, particularly the requirement for a preliminary hearing within 72 hours when a child is detained and a formal hearing within 10 days of the filing of the delinquency petition in most straight-forward delinquency cases. The difficulty with the short time frames, however, as noted by stakeholders, arises when the cases are more complicated. For example, if a child's competency is in question and a psychological examination is needed for the formal hearing, it is almost impossible to have a completed psychological examination within the 10-day time frame for formal hearings. In such cases, a continuance of the proceedings is almost always sought and is usually granted. Some stakeholders would like the current Code to be revised to make it clear that granting a timely filed continuance within the 10 day period for good cause is permissible under the law, arguably contrary case law notwithstanding, and that such a continuance would be consistent with the general purpose of the Code to handle juvenile cases more quickly than adult cases. Adding explicit guidance on the permissible number of days that a formal hearing can be continued for good cause would also be an improvement in the current Code according to stakeholders.
- Some stakeholders identified the "90-day relative search," requiring that DFCS make a reasonably diligent search for relatives in the first 90 days that a child is in foster care, as a positive development.
- A probation officer in an independent court in the District indicated that the juvenile probation system is working well because of the personal attention that officers provide to the children and their families and because of the cooperation between the court and the school systems. According to a court administrator, maintaining a low ratio of children to staff is important. Other areas in the District do not have enough officers to serve the needs of the area. One high school principal suggested that the District employ retirees as probation officers. This stakeholder also suggested that each county assign a probation officer to a segment of each county so that the officer could become familiar with a particular school.
- One county implemented an after-school tutoring program for students on probation and students who are considered at-risk of future delinquency. Probation officers are present at the bi-weekly tutoring sessions. The grade point averages of the students who attend this after-school program have increased dramatically.
- A court administrator noted that "independent courts," those that do not use DJJ workers as their probation staff, seems to work better than the "dependent courts" that must rely upon DJJ for probation services. These stakeholders suggest that the independent courts work relatively better because of the relative autonomy and flexibility they enjoy. In contrast, dependent court systems are limited by DJJ

policies and, as a result, are less effective, according to stakeholders commenting on this issue.

- Keeping children out of the courtroom during contentious deprivation hearings is a practice that stakeholders want to preserve. Testimony about the details of the abuse or neglect that the child suffered is difficult for adults in the courtroom to hear, let alone for the child who actually endured the suffering.

### C. **What is Not Working?**

One juvenile court prosecutor notes that the current system of juvenile justice is “a patchwork” and “horribly broken.” This prosecutor noted that the system does not have sufficient punishments and clear consequences to deal with serious crimes that are being committed with increasing frequency.

The stakeholders’ criticism focused upon areas where the current Code is seen as a “patchwork” and where better coordination is required. Some of the areas of confusion include the multiple ages at which, for various purposes, children cease being “juveniles” (or are subject to varying procedures), interactions with the adult criminal justice system and availability of information concerning juveniles; problems caused by a lack of capacity or not having enough Regional Youth Detention Centers (“RYDCs”) and Youth Development Campuses (“YDCs”), and a lack of communication between DJJ and law enforcement officers on the scene concerning specific reasons why a juvenile may not be eligible for detention at the RYDC under the “points” system.<sup>10</sup>

Some of these problems will be discussed in turn.

#### 1. Structure and Organization of the Code

##### a. Structure

Multiple stakeholders cited the “patchwork” nature of the Code as problematic, meaning that amendments to the Code often were patched into the overall juvenile code without consideration of the impact that the amendment might have on other parts of the Code, thereby creating internal inconsistencies in the Code that many stakeholders complain make the Code difficult to apply consistently across the state. In particular, some judges and prosecutors suggested that the jurisdictional and similar provisions of the Code be moved from the middle of Chapter 11 of Title 15<sup>11</sup> to the front. One juvenile court judge recommended the Code contain a three tier structure: (i) provisions dealing with deprivation, (ii) provisions dealing with delinquency, and (iii) procedural matters dealing with both deprivation and delinquency.

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<sup>10</sup> The “points” system is a reference to the Detention Assessment Instrument (“DAI”) used by DJJ and independent courts to determine if a child’s alleged offense and background warrant detention in a secure facility pending the preliminary hearing or if the allegations are such that the child should be released to his parent or guardian pending the first hearing.

<sup>11</sup> Chapter 11 of Title 15 of the Official Code of Georgia is what is commonly called “the juvenile code.”

## b. Definitions

- The definition of “child” could be clarified throughout the Code. Stakeholders noted that a “child” is defined differently based on different ages throughout the Code, which can be confusing. A court administrator, however, does not favor uniformly changing the definition of a “child” to include minors up to age 18 because such a change would (1) increase caseloads in the juvenile courts and (2) overcrowd detention centers.
- One district attorney who previously had handled juvenile prosecution noted that O.C.G.A. §15-11-1 (Construction and Purpose [of the juvenile code]) does not speak to delinquency or identify appropriate levels of discipline. Currently, this introductory statute seems to focus only on the deprived child.

## 2. Limitations on the Juvenile Courts.

- Multiple stakeholders expressed concerns that juvenile court judges do not have sufficient discretion to take appropriate action. In particular, some stakeholders believe that young people know that the juvenile court’s hands are tied and therefore do not take seriously having to go to juvenile court.
- Some stakeholders indicated that a lack of funding for boot camps and other alternatives to secure detention in YDCs continues to be a problem.
- Some law enforcement officers suggested that probation is not effective for juveniles and will not lead to changed and improved behavior because there are no serious consequences for violation of probation in the juvenile court.
- One police officer was not persuaded by the studies suggesting that a juvenile’s brain may not become fully developed until the early 20s.<sup>12</sup> This stakeholder explained that nationwide statistics released a few years ago indicated that the average gang member was between the ages of 9 and 20, but the average “shooter” was only between the ages of 9 and 12. The officer contended that the older gang members tell the younger juveniles that they can get away with the shooting because of their age and because of the presumption that they do not know any better. In other words, this stakeholder believes that the older gang members are sophisticated enough to use the brain development research to their advantage.

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<sup>12</sup> Within the last several years, researchers have concluded that the frontal lobe of the brain is usually the last part of the brain to develop and that full maturity of brain function is not achieved until the early to mid 20s. The frontal lobe is associated with higher levels of brain function including consequential thinking (being able to identify and understand the consequences of one’s actions) and is responsible for impulse inhibition (a less developed frontal lobe is less able to control impulsivity explaining why a younger person would be more likely than a person in his late 20s or older to rush into a situation without first considering the possible consequences of that action).

- Some law enforcement officers report an increase in sexual molestation offenses committed by children as young as 8 and 11. The same officers note, however, that they are not in favor of lowering the age for criminal responsibility, but of monitoring and providing care more aggressively.
- Multiple law enforcement officers suggested that parents should be held more accountable for their own decisions and actions that impact their children. One stakeholder recounted an incident where parents incomprehensibly continued to drop off children at a mall in the midst of a dramatic show of force involving eight police cars, ten to fifteen police officers, and two visible canine units responding to a call at the mall's movie theater. The situation obviously was precarious, yet these parents appeared to be clueless or careless about the possible dangers to which their children might be exposed.
- One juvenile prosecutor disapproved of the practice of the court using non-lawyers to screen delinquency cases for the district attorneys.
- Multiple stakeholders, including some special assistant attorneys general, dislike the current "conflict" system for court hearings because it puts all juvenile court cases last in any conflict with another court. As a compromise, one stakeholder recommended that TPR (termination of parental rights) cases in juvenile court be given higher priority than non-felony criminal matters in adult court.
- Judges and law enforcement officials expressed concern that DJJ's sanctions either have no teeth or are perceived as having no teeth.

### 3. Systems Integration

- Stakeholders observed that DJJ has not effectively communicated to local law enforcement how the Detention Assessment Instrument (DAI) is supposed to work. As a result, the police officer does not know if a child she takes into custody on a delinquency will be detained or not. It is a mystery to the police officer how DJJ makes its decisions based on "the points." While law enforcement officials interviewed are aware that DJJ has strict standards and a checklist with a point system, in general, the point system (DAI) has not been explained to law enforcement officers. From the perspective of law enforcement officers, DJJ generally does not choose to detain juveniles, for reasons about which law enforcement can only speculate due to the lack of sufficient training on the DAI. The officer returns the child to the parent or guardian when DJJ says there are not enough points to detain, but is left believing that the system is not working properly, which is frustrating for the police officer who would not have taken the child into custody in the first place if she did not think that the child's behavior warranted detention pending a court hearing.
- One law enforcement officer with more than fifteen years' experience suggested that a statewide database be developed for information regarding deprived children that can be accessed by DFCS and law enforcement, containing

information similar to that maintained by the Georgia Crime Information Center. Without a statewide database, law enforcement officers may receive only redacted information from DFCS when referrals are made across county lines. A computer database would also allow for after-hours access to DFCS's records.

- According to some senior law enforcement officials, children with minor delinquency issues should not be referred to DJJ. Currently, juveniles arrested for what are deemed “minor offenses,” such as alcohol and curfew violations, are placed with juveniles alleged to have committed aggravated assault and battery for example. Detaining children with mild behavior problems with youth with more serious behavior problems is not appropriate, according to these stakeholders.
  - One law enforcement officer in a metropolitan county recommends that the warrant process for juveniles be revised to approximate the adult process. Presently, when an adult is held in this county the police are given 4 hours to secure an arrest warrant.
  - One law enforcement officer urged that the definition of “criminal street gang” in O.C.G.A. §16-15-3(2) remain the same. Prior to §16-15-3(2), the law had required a “pattern” of crimes in furtherance of gang objectives or activities. Presently, the existence of a gang may be established by, among other items, evidence of a common name or identifying signs, symbols, tattoos, graffiti, or attire or other distinguishing characteristics.
  - A public defender stakeholder favors removing “association” type crimes from the designated felonies list.
  - One district attorney noted that the rules are fairly clear regarding when a court has jurisdiction over a juvenile, but that instances of concurrent jurisdiction between juvenile and superior can cause transfers back and forth between the two courts, resulting in confusion.
  - One district attorney noted that in cases involving juvenile and adult co-defendants, delays in the adult trial could result in the juvenile system resolving cases more quickly, but without any input from the district attorney. Better coordination among district attorneys' offices and juvenile court personnel should be encouraged.
4. Concerns with Foster Care and Termination of Parental Rights
- Stakeholders generally viewed favorably the system's foster care system. Children are properly removed from deprived situations and placed in stable foster families. However, stakeholders urged that more training and follow-through is necessary for the children's families after children are removed from the home.

- A number of stakeholders, particularly those involved with the Court Appointed Special Advocates (CASA) program described a number of issues with the foster care system, some of which vary from county to county. For example, one volunteer noted that the foster care system had difficulties keeping siblings together while another praised the efforts of the system to keep siblings together, though noting that when three or more siblings are involved this becomes more difficult. This volunteer suggested that visitation among siblings be encouraged and facilitated.
- Some stakeholders urge a greater focus on concurrent case plans, especially for very young children. For example, with younger children, Plan A should be reunification with the family, but a Plan B of termination, adoption, or some other permanent placement should be developed and implemented concurrently with Plan A. This will avoid delays in achieving permanency if the reunification plan breaks down.
- Some stakeholders recommend that parents be given “summary” case plans to follow because the actual case plan for reunification might be more than 40 pages long and contains much information that is not connected to the parents’ own required actions steps. Other interview subjects disagree with this idea, however, citing a concern about more paperwork
- One juvenile court judge noted issues concerning service of process, including (i) whether service of TPR papers when parents are in custody could be delegated to correctional facilities, and (ii) whether notice must still be published to serve a missing parent in a child’s delinquency case even though the other parent can be personally served.
- A GAL believes the requirement that parents have clean screens for six-months is too short for cases where the parent was found to have been using methamphetamines, one of the most addictive drugs now available on the streets and one that is notoriously difficult to stop using. This GAL believes children should not be returned to their parents after such a short period even if the screens are clean.
- An attorney who represents parents in deprivation proceedings noted that the court “sets parents up to fail” by ordering in-patient drug treatment as a requirement to getting their children back when there are only out-patient drug abuse treatment facilities. This is especially true concerning methamphetamine, which cannot be treated on an out-patient basis. Georgia lacks the funding for in-patient care that is needed. Lack of in-patient care makes it difficult, if not impossible, for parents to successfully complete their case plans, which means that they will almost certainly fail to get their children back.

## 5. Communication and Education.

Stakeholders made the following suggestions with respect to educational issues affecting children in the juvenile system:

- Because some children in foster care change schools frequently, schools and DFCS must work together better to be sure that each foster child's files are transferred to the new schools in a more timely fashion.
- Law enforcement officials expressed concern about a possible conflict of interest when school resource (police) officers are required to report to the school board. In particular, stakeholders said that school resource officers could feel pressure to under-report or under-emphasize delinquent activities on school campuses due to school systems' reporting requirements under federal school safety laws.
- Multiple stakeholders cited the need for families to know how to access resources without first having to get a court order. Parents, educators and social workers must be informed about available resources and how to access them to avoid having small problems grow into big problems that require court intervention.
- A probation officer acknowledged that lack of after-school programs for children is a serious problem in the District. This stakeholder knows that the most critical time for children is the time between the end of the school day and the time a parent or guardian returns home from work. Lack of supervision during those afternoon hours can lead to negative outcomes for children. Sadly, some come to the juvenile court to seek court ordered after school supervision when it would be much better for the child and the family if the child could participate in an after school program without first having to be put under court order. Job-training programs during the afternoon hours would be an ideal resource according to one stakeholder.
- One stakeholder believes the tribunal system used by schools is a "farce" and has no evidentiary thresholds. According this stakeholder, school systems are abusing this process in order to eliminate non-performers and raise test scores for the purpose of making a better showing under federal reporting requirements and to achieve the AYP<sup>13</sup> designation.

## 6. Mental Health Care

- Stakeholders expressed concern about the juvenile system's lack of resources and options for children and adolescents with mental health care needs. Typical hospitals, lacking a pediatric psychiatric ward, are ill equipped to address such concerns. One GAL relayed an instance in which a hospital discharged a child

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<sup>13</sup> AYP is Annual Yearly Progress, which is a designation under the No Child Left Behind Act that shows that the school is meeting the required benchmarks for all students.

who had been diagnosed with a psychotic disorder without providing any treatment.

## **D. What Can Be Done to Improve the System?**

### **Deprivation & Delinquency**

Stakeholders made a number of specific suggestions for improvement of the Juvenile Code and the juvenile justice system at large. Many of these suggestions are outlined below:

#### 1. Deprivation

- A Code rewrite should incorporate the provisions of Titles 15 (Chapter 11: the Juvenile Code) and 49 (the chapters dealing with DHR, DFCS and DJJ) into a single chapter in Title 15. The new juvenile code should distinguish clearly between procedures that relate only to deprivation, only to delinquency, and equally to both.
- In so-called “private deprivation cases” that do not involve DFCS, the juvenile court should order drug screening, background checks, and home evaluations before granting custody of a child to a private petitioner.
- The manner in which SAAGs are appointed should be changed. Currently, they are appointed by the State Attorney General, despite the fact that they rarely communicate with state level DHR staff and typically are focused on the needs of the local county DFCS office and its case managers.
- Juvenile court judgeships should become career positions rather than a “stepping stone to superior court.” Juvenile court judges should be appointed by the Governor and paid the same salary as superior court judges, according to a SAAG. Furthermore, O.C.G.A. § 15-11-18 should be revised to require juvenile court judges to have prior legal experience in a juvenile court before being appointed to serve as a juvenile court judge.
- The revised Code should clearly establish whether a child is a party in a deprivation case. A SAAG believes that a child should be a party and should be able to participate in deprivation proceedings.
- The Code should clearly define “legal mother” and “legal father,” particularly when the parents have never been married.
- The Code should be revised to grant a putative father the right to appeal. The current Code allows a court to place custody with a non-custodial father and provides a right to an attorney at deprivation hearings without the right to appeal the final decision.
- O.C.G.A. § 15-11-15 (Detainment of Child in Temporary Protective Custody of Physician) is “useless,” according to one SAAG. If retained in the new version of

the juvenile code, the law should be revised to mandate that a hospital or physician take a child into protective custody and also be responsible for filing the deprivation complaint in juvenile court.

- One stakeholder believes that police officers do not understand that they have authority to remove a child without intervention by the court or DFCS. The Code should make this authority more clear.
- A stakeholder who believes that the court should not have the authority to put a child in the legal custody of DFCS and then tell DFCS with whom the child should live, says that if the Code is revised to give juvenile court judges such placement authority, then the Code should also be revised to require the court to be responsible for any costs associated with that placement. In contrast, another stakeholder asserted that juvenile court judges need more authority to order placement. DFCS has the final authority under the current system and sometimes mishandles that authority in the opinion of the stakeholder.
- The court should monitor children who have been deprived even after DFCS “closes its own case.” This scenario can arise when a parent completes a case plan in less time than was expected. In such instances, DFCS gets a court order to return the child to the parent and both DFCS and the court typically close their cases. Instead, this stakeholder urges the court to retain jurisdiction and continue to monitor the reunification until the expiration of the original deprivation court order.
- DFCS should be required to develop an abbreviated case plan for a child within forty-eight hours of the child’s removal from the home according to one stakeholder.
- The Code should be revised to clearly forbid delinquent children and deprived children from being put together in the same foster home.
- Stakeholders say that the District needs more specialized treatment and placement options for delinquent children who have been found to have sexually molested other children.
- The current Code requires that juvenile courts make reasonable efforts to serve biological fathers of deprived children with notice of court hearings, yet this rarely happens, according to a stakeholder. By not locating the biological fathers and bringing them into the case, the court and the child miss out on a possible resource: the father and his side of the family (the child’s paternal relatives) can be possible placements for the deprived child if the father is a legal father. Another stakeholder noted that very few biological fathers know they can legitimate their relationship with their children as a part of the pending juvenile court action.

- Some stakeholders who are frustrated with the application of formal evidentiary rules in juvenile court recommended that juvenile court proceedings be treated less formally to reach common sense decisions rather than more formally to thwart the well-intended efforts to address the deprived child’s situation. For instance, such stakeholders recommended changes in court practice in deprivation proceedings to accommodate the schedules of persons who are witnesses by virtue of their work, such as physicians, educators, and psychologists. Such witnesses should be encouraged to testify via telephone and juvenile court courtrooms must be equipped with modern technology to make this possible. Also, hearsay that is allowed at the 72-hour hearing should also be allowed at the 10-day formal hearing as long as there is a way to show that the hearsay is reliable. For example, DFCS is currently permitted to interpret a physician’s position at 72-hour hearings, but not at 10-day hearings due to hearsay. DFCS should be able to interpret a physician’s position at both hearings and if there is any dispute then the physician can testify over the telephone. However, physicians should be required to be present for termination of parental rights hearings. Finally, frustrated stakeholders want the code to be revised to allow the admission of drug screen results upon hearsay testimony and without expert testimony.
- Another stakeholder believes that a provision should be added to the juvenile code to mandate that juvenile court judges notify the United States Department of Homeland Security whenever in all cases involving undocumented immigrant children.
- DFCS and juvenile court judges should be allowed to access the National Crime Information Center (“NCIC”) reports so that an adult, whose home might serve as a placement for a child, can be checked for his or her criminal history, especially any history that might suggest that the adult had ever been accused of sexually abusing other children, before the placement decision is made.
- According to some stakeholders, attorneys are appointed for parents much too late in the deprivation process. In some instances, attorneys do not come into the deprivation process until after the case is postured for termination. At this late stage in the case, there is nothing an attorney can do to help the parent other than “hold their hand” through the rest of the process. Parents should not be allowed to waive their right to an attorney. Often they make the decision to waive legal counsel because they think a judge will “do the right thing.” Attorneys should be compensated for their work in representing the parent in the creation of the reunification case plan and throughout the case, even at meetings with DFCS outside the court.

## 2. Delinquency

- Stakeholders urged that the Code be revised to give juvenile court judges greater sentencing discretion. For example, under the current Code, a judge has to

commit a child to DJJ if the judge thinks a child who has committed a delinquency should be detained longer than 60 days.<sup>14</sup> A court administrator recommended that the Code be revised to give judges authority to detain a child in a regular delinquency case longer than the 60 days currently permitted under the Code. Multiple stakeholders (including judges, law enforcement officers, and volunteers) had positive opinions about the former “boot camp” programs. One law enforcement professional recommended reinstating “boot camps” to punish, rehabilitate, and deter juvenile delinquencies. An education administrator recommended that the Code be revised to require juveniles to perform “hard labor,” in addition to having to attend academic classes at the detention center.

- Law enforcement stakeholders urged more investment in RYDCs to increase their capacity. Without adequate space in RYDCs to receive young people as they are taken into custody, officers can become frustrated with the amount of time it takes to handle a juvenile matter. This delay impacts community safety because it keeps law enforcement unnecessarily tied up with the processing of the child at the RYDC rather than back in the community enforcing the law. One stakeholder also suggested that it would be helpful to have shared facilities that could be staffed with intake officers who can accept juveniles by police in situations where a RYDC is either not available due to crowding issues or where a temporary holding space is required until the parent or guardian can be located could assist as well.
- One juvenile prosecutor suggested the need for a broader range of disposition options such as ankle monitoring systems, wilderness programs and increased access to mental health programs as alternatives to detention.
- A public defender suggested development of an informal process to respond to status offenses, which would utilize fewer resources and resolve cases more effectively. As noted above, this District had 2,490 status cases in 2007 alone. An educator believes the juvenile court should not be involved with truancy, which is one of the most prevalent of the status offenses. This stakeholder suggested that mediators be located at satellite police stations. Parents, truants, and mediators could meet together and address truancy without court intervention.
- According to one stakeholder, parents should not be permitted to waive the child’s right to counsel in delinquency matters. When they do, the child often ends up admitting to charges “they have no business pleading guilty to and get buried deep” in the system.

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<sup>14</sup> Under the current Code, the judge can order that a child be detained up to 5 years if the child is found to have committed a “Designated Felony.” Regular delinquencies, however, only warrant up to 60 days of detention unless the judge is willing to commit the child to the custody of DJJ. In that case, the length of the detention for all practical purposes is determined by DJJ, not the judge.

- One CASA advocate recommended revision of existing law relating to the confidentiality of DFCS reports in child abuse cases. (See O.C.G.A. Title 49, sections 49-5-40(b), 49-5-41, and 49-5-44). In the view of this advocate, a CASA volunteer should be allowed to disclose information developed by the volunteer in the course of his or her work to other CASA volunteers and to a GAL.
- The supervision fees provision (Section 15-11-71) is too limiting and needs to be expanded to permit expenditures for ancillary services as recommended by juvenile court judges. For example, under the current Code, supervision fees cannot pay for after-school programs for delinquent children. Additionally, probation officers cannot use supervision fees for translation services to reduce the communication barriers between the court and a juvenile's family members. A simple revision to the Code can expand the use of supervision fees in many appropriate ways.
- Delinquent children should be required to attend school until the age of majority. Currently, children may drop out at age 16. The current law that permits a child to drop out of school before graduation increases that child's risk of delinquency. Schools should also find other ways to discipline at-risk youth, rather than using out-of-school suspension and expulsion. Out of school suspension and expulsion contributes an increased risk of delinquency when at-risk children spend their days unsupervised.

#### **IV. CONCLUSION**

Stakeholders within the Seventh District definitely see the opportunity for an improvement of the Juvenile Code and in the way the juvenile justice system operates. While all of the deficiencies noted and concerns raised cannot be addressed through amending the Juvenile Code, the overwhelming majority of stakeholders are in favor of amendments that would seek to bring various provisions of the Code together to make consistent the overall approach to "juvenile justice."