

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

Judicial District 9



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I. INTRODUCTION¹

A. Acknowledgements

Smith, Gambrell & Russell, LLP, and Morris, Manning & Martin, LLP, acknowledge and thank all of the individuals who were interviewed for this project. These individuals candidly discussed their experiences with as well as their recommendations regarding improving the juvenile justice system in Georgia.

B. Statement By Reporting Law Firm

This report will summarize information, ideas and opinions concerning the current juvenile justice system in Georgia that were elicited – in interviews conducted by attorneys at Smith, Gambrell & Russell, LLP (“SGR”) and Morris, Manning & Martin, LLP (“MMM”) – from various stakeholders who live and work in the state’s Ninth Judicial District (the “District”). Between June 2007 and March 2008, SGR and MMM attorneys conducted interviews with stakeholders in the District, including juvenile court judges, prosecutors, district attorneys, defense attorneys, Special Assistant Attorneys General (“SAAGs”), attorneys representing parents and Guardians ad litem (“GALs”), officials of the Georgia Department of Juvenile Justice (“DJJ”), volunteers of Court Appointed Special Advocates (“CASA”) organization, juvenile court clerks and police intake officers.²

C. Overview of JUSTGeorgia Project

This report is one of ten judicial district reports prepared to help guide a much-needed effort to replace Georgia’s outdated Juvenile Code with new legislation that will better serve the public safety and child welfare goals of this State. Judges, lawyers, and others who must turn to the Juvenile Code on a daily basis agree that it is unclear, outdated and difficult to apply. Responding to these views, JUSTGeorgia³ seeks passage of a new Juvenile Code that will better organize current state law regarding juvenile justice and child welfare, better reflect the impact of federal law throughout the Juvenile

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

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

Code, incorporate research-based scientific findings and best practices in the child development field and respond to the hard-earned wisdom of Georgians who work with or are impacted by the current Juvenile Code on a regular basis. Under the direction of JUSTGeorgia Partner Georgia Appleseed, teams of trained volunteers set out all across the state to ask stakeholders three simple but important questions about the current Juvenile Code that governs child neglect and abuse (deprivation), foster care, delinquency and the juvenile courts: What's working? What's not? And how would you, the stakeholder, make it better?

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

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

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

A. Basic Information about the District

The District is located in the northeastern part of Georgia as shown on the map below and covers 8% of the land area of the state. Sixteen percent of Georgia residents live in the District. The District is comprised of fifteen (15) counties⁴ and encompasses seven (7) of the state's judicial circuits.⁵

MAP OF THE NINTH DISTRICT



⁴ The District is comprised of the following counties: Cherokee, Dawson, Fannin, Forsyth, Gilmer, Gwinnett, Habersham, Hall, Lumpkin, Pickens, Rabun, Stephens, Towns, Union and White.

⁵ The District encompasses the following judicial circuits: Appalachian, Blue Ridge, Mountain, Bell-Forsyth, Enotah, Northeastern and Gwinnett.

Based on 2006 estimates by the United States Census Bureau, the population of the District is approximately 1,541,418. Twenty-six percent of the District's residents are under the age of 18. The District is estimated to be approximately 80% white, 13% black and 14% Hispanic.⁶

The proximity of the city of Atlanta to the southern counties in the District, such as Cherokee, Forsythe, Gwinnett and Hall, has led to suburban development and increased populations. Based on 2006 estimates, the population of those four counties is 1,276,655, or roughly 83% of the total population of the District. Gwinnett, which is urban, has an estimated population of 757,104, or roughly 49% of the population of the District. Cherokee, Forsythe and Hall are suburban and have an average population of 173,183 each. The remaining counties in the District are rural having an average population of 24,069.

The District is slightly wealthier than the rest of Georgia. The median household income, as of 2004, was approximately \$44,086, ranging from a low of \$31,638 in Stephens County to a high of \$74,379 in Forsyth County. The median household income for the state is \$42,679. As of 2004, approximately 9% of persons in the District were considered to live below the poverty line, which is below the 13.7% poverty figure that applies to the whole state.⁷

B. The Juvenile Court System in the District

The juvenile court system in the District operates with modest personnel and resources. There are approximately 17 juvenile court judges in the District. (*See www.georgiacourts.org/councils/cjcj*). Gwinnett County has 5 dedicated judges, three of whom are full time, Forsyth County has 2 dedicated judges, and Cherokee County has 2 dedicated judges, both of whom are full time. The Mountain Circuit (Habersham, Rabun and Stephens counties) has 1 judge. The Enotah Circuit (Lumpkin, Towns, Union and White Counties) has 2 judges, 1 assigned to Towns and Union counties, another assigned to Lumpkin and White counties. The Appalachian Circuit (Fannin, Gilmer and Pickens counties) has 2 judges and the Northeastern Circuit (Dawson and Hall counties) has 3 judges.

There are two regional youth detention centers in the Ninth District: the Gainesville Regional Youth Detention Center located in Gainesville in Hall County and the Gwinnett Regional Youth Detention Center located in Lawrenceville in Gwinnett County.⁸ The Gainesville facility holds 64 youth (48 males/16 females), and the Gwinnett facility holds 49 youth (38 males/11 females).

⁶ These numbers do not total 100% because those who are counted as Hispanic, which is an ethnic, not a racial, designation, may self-identify as white, black or another race.

⁷ The poorest county in the District, Stephens County, has a 15.9% poverty rate.

⁸ *See www.djj.state.ga.us/FacilitiesPrograms/RYDCMain.shtml*.

According to statistics from the Georgia Department of Juvenile Justice (“DJJ”), a total of 4,863 individual children in the District were involved in the juvenile justice system in some fashion in fiscal year 2006, in delinquency cases alone. Below is a summary of the breakdown of juvenile court filings from 2005 by county with a breakdown of the offense alleged:⁹

*Juvenile Court Caseload for the Ninth Judicial District
(filings only)
Calendar Year 2006*

<u>County</u>	<u>Delinquent</u>	<u>Unruly</u>	<u>Termination of Parental Rights</u>	<u>Deprived</u>	<u>Traffic</u>	<u>Special Proceedings</u>	<u>Total Filings</u>
Cherokee	780	365	29	443	474	21	2,112
Dawson	114	31	1	47	67	5	265
Fannin	54	43	0	72	47	82	298
Forsyth	366	205	16	96	373	1	1,057
Gilmer	142	70	3	62	28	7	312
Gwinnett	5,903	1,575	90	2,260	1,364	254	11,446
Habersham	257	59	7	54	15	0	392
Hall	880	205	23	358	425	10	1,901
Lumpkin	107	95	5	101	33	67	408
Pickens	181	96	6	141	76	28	528
Rabun	58	28	4	123	18	0	231
Stephens	274	70	10	122	12	0	488
Towns	11	4	6	20	14	4	59
Union	N/R	N/R	N/R	N/R	N/R	N/R	152
White	127	76	1	99	44	18	365
District Totals	9,254	2,922	201	3,998	2,990	497	20,014
State-Wide Totals	74,002	21,615	1,554	32,439	16,961	5,147	151,718
% of State Filings	12.5%	13.5%	12.9%	12.3%	17.6%	9.7%	13.2%

C. Challenges Confronting the District

The counties in the District vary widely in population, wealth and ethnic and racial diversity. The urban and suburban counties of as Gwinnett, Cherokee, Forsyth and Hall are experiencing rapid population growth. As noted above, those four counties

⁹ Adapted from data and information provided in the 2007 Annual Report: *Georgia Courts, July 1, 2006 – June 30, 2007, Supplemental Caseload Report*, available at www.georgiacourts.org/aoc/publications.php, published by the Judicial Council of Georgia Administrative Office of the Courts.

represent approximately 83% of the population of the District. In these counties the large population and heavy caseloads magnify some of the procedural problems with the Juvenile Code, described herein, such as the unrealistic time requirements. As a result, populated counties, particularly Gwinnett, employ procedural “work-arounds” more regularly.

There has been an influx of immigrants, primarily Latinos, in the District. For example, in Gwinnett and Hall counties, the percentages of Hispanics as a portion of the total county populations are estimated (2006) to be 17.1% and 25.5%, respectively. As a result, there is a high demand for Spanish-speaking translators in juvenile court proceedings. A juvenile court judge has pointed to the scarcity of needed translators as contributing to additional costs, expense and delay in processing juvenile cases.

Other challenges are directly connected to the lack of a strong economic base in parts of the District. With the exception of Dawson and Pickens counties, the rural counties in the District are relatively poor and, therefore, lack sufficient resources to provide needed alternatives to detention. After school programming for older youth, substance abuse treatment, and mental health and behavioral health interventions are not widely available or affordable. Wages in the rural counties are relatively low, which means that families are often unable to afford needed interventions, even when available, to help their children who may be showing signs of difficulty at school or in the home. Some families may seek the intervention of the juvenile court as a last resort, but even the juvenile courts do not have access to enough treatment and intervention options to meet the need.

III. STATUS OF THE DISTRICT’S JUVENILE SYSTEM

The stakeholders noted a number of diverse opinions and suggestions for improving the juvenile justice system. Despite these different views, a number of central themes emerged.

A. General Perceptions of the Juvenile Justice System¹⁰

Most stakeholders agreed that the Juvenile Code and the juvenile justice system are flawed. Many are dissatisfied with the Code itself, because of its confusing organization and unrealistic procedural timetables, though some stakeholders appreciated the short timetables. Everyone agrees that the Code is poorly drafted and not user-friendly. Ambiguities within the Code abound and have resulted in conflicting case law. A clear delineation between deprivation and delinquency provisions is needed, as are definitions for terms of art, such as “permanent custody.” According to stakeholders, the Code also ignores key areas. For instance, the legal obligations of DFCS are largely undefined and the current Code fails to provide guidance for sibling placement.

¹⁰ Stakeholders typically use the phrase “juvenile justice system” to mean all the cases that flow through the juvenile courts – both delinquency and deprivation – and are not intending the phrase to single out the Department of Juvenile Justice (DJJ).

Stakeholders consistently agreed the Code should afford judges broader discretion in sentencing certain offenses.

Judges complained that poor communication exists among the different counties of the District, which contributes to inefficiencies and missed opportunities for problem solving.

DFCS employees noted tension between DFCS and DJJ, particularly as to which agency should deal with children who are placed in the custody of both agencies or are in the custody of DFCS but are also before the juvenile court for delinquent behavior. For example, certain children may have been adjudicated delinquent on relatively minor charges, but their behavior may be too out of control for them to be placed in a foster home with other deprived children, yet these delinquent youth also should not be incarcerated. These stakeholders believe that some intermediate level of care, less than incarceration, but not in the DFCS system of foster and group homes, would be beneficial for these youth who need a more monitored placement than a regular foster parent can provide. DFCS employees also advised that harsher penalties and more therapy would benefit deprived children who have also broken the law and have been adjudicated delinquent.

Nearly all stakeholders agreed that there is inadequate funding and insufficient legal training and indigent representation to meet the needs of the District. Some stakeholders asserted that parents and children are often misinformed about their options and are denied a roadmap of what to expect when navigating the system. Parents and children are also confused and overwhelmed by the various personnel and dates with different agencies, ranging from CASA to the citizen's review panel.

It is important to note, however, that not all stakeholders believe that the many problems attributed to the juvenile justice system and the Juvenile Code can be resolved with a new Code. Indeed, some stakeholders believe that the system is not truly broken and oppose revolutionary change to the Code. One such stakeholder believes that the real source of the problems experienced in the District is found, not in the Code, but in the people responsible for its implementation: some of the people involved in juvenile justice system in the District need to improve their own knowledge of the law and the policies and procedures of the different agencies - when that happens, according to this stakeholder, many of the identified problems will resolve themselves.

B. What Works?

Carrying on the theme of “qualified staff and lawyers are the key to success” in the juvenile justice system in the District, stakeholders who work primarily in Cherokee County praised it as being a bright spot in the District because of the quality of people who are associated with the juvenile court in that county. Gwinnett County juvenile court stakeholders also noted with pride its experienced intake staff. SAAGs and public defenders also acknowledged the Family Treatment Court and the DJJ placement

expeditors of Hall County as helpful and effective. While stakeholders who work in each of the 15 counties of the Ninth Judicial District were not interviewed for this report, each county that did have a stakeholder representative garnered praise because of the individual excellence of some of its participants. Presumably each county has its share of excellent juvenile justice system workers at the court, at DJJ and at DFCS, which accounts, at least in part, for “what works” in the District.

Other observations in response to the question about “what works” in the District:

- A juvenile court administrator explained that, under appropriate circumstances, child detention serves the primary interest of the juvenile justice system by rehabilitating the child while simultaneously protecting the community, and that, moreover, decisions regarding detention are best made when decided by an experienced staff receiving parental input.
- A DFCS employee appreciated the short timetables, and felt that the system worked efficiently, despite frequent continuances. The DFCS employee also appreciated DFCS’s ability to place a child in permanent foster care more quickly than in the past, which is possible because parental rights may be terminated as soon as 12 months from the date the child is removed from the home. Reunification cases, where the parent successfully completes a case plan so that the child can return home, can also be completed more quickly than in the past. Defense attorneys and judges agreed that the short timetables generally work well and facilitate speedy resolutions. One attorney noted that this is particularly true in deprivation proceedings.
- Some stakeholders believe that short-term placements (up to 60 days secure detention in a Youth Development Campus (YDC)) and “alternatives to detention” are effective ways to impose punishment and hold youth accountable.
- Judges and SAAGs find CASA effective and helpful when volunteers are well trained, experienced, and appropriately involved in the case without becoming so emotionally invested as to lose needed perspective.
- A CASA stakeholder believes that the current Code provides for the appropriate amount of collaboration among the involved parties, and the 72-hour and 10-day hearing requirements provide an appropriate amount of time for investigation.
- Finally, some stakeholders believe that the current appointment process for selecting juvenile court judges is better than making the juvenile court judges run for election as most other judges do.

C. What Doesn't Work?

Most stakeholders were eager to describe the numerous issues affecting the juvenile system and the Code, and nearly everyone agreed that the Code should be rewritten to be more streamlined and user-friendly. There was consensus among most of the stakeholders interviewed that, by and large, the current juvenile justice system and Code are not advancing the public interests of protecting children and community as well as they should.

1. Problems with the Juvenile Code

a. Disorganization

Judges and attorneys complained that the Code is disorganized and outdated. The Code is structurally confusing in that its provisions, seemingly at random, alternate between sections applicable to deprivation and delinquency. Deprivation cases and delinquency cases are very different – in the former, the child is the victim of child abuse or neglect and, in the latter, the child is the alleged perpetrator whose actions have broken the law. The two types of cases use different terminology, have different objectives and involve different systems. Using a single statute to cover these two types of cases, which is often the case in the current Code, can contribute to unnecessary conflict and confusion among the participants trying to implement the Code in juvenile court proceedings.

Stakeholders further note that Code sections are neither centrally located nor logically organized. According to stakeholders, piecemeal amendments, re-numbered code sections, and frequent cross-references make the Code difficult to follow and time consuming to apply. Published judicial opinions can be difficult to reconcile with the Code and with each other due, in part, to the structural problems described.

b. Outdated

Stakeholders believe the language of the Code should be updated, refined, shortened and sharpened. For example, the Code refers to state agencies that no longer exist and mentions programs that are unavailable in many parts of the state. Some also suggest that a Code written in “plain English” would be helpful.

c. Ambiguities

i. Lack of clear definitions

Judges and attorneys agreed that the Code should be revised to make some of the current definitions more clear. For instance, the Code does not clearly define DFCS's legal obligations. These same stakeholders also want any revision to the Code to include definitions of important terms that are used in the current Code but are undefined or are not well defined. For example, there is no satisfactory definition of what it means to achieve “permanency” for a child in a deprivation case given that the current definition seems to include temporary arrangements.

Stakeholders noted that the Code lacks specific provisions relating to sibling placement in deprivation cases, and that it lacks clear guidance as to whether a judge must appoint counsel in deprivation cases since such cases involve the parents, “even though [deprivation cases are] not styled that way.”

d. Unrealistic Procedural Timetables

Judges complained that many of the strict timetables, while well intentioned, are unrealistic and lead to “gaming the system” and ad hoc procedures adopted informally to circumvent unrealistic deadlines. Some unrealistic timetables include the 48-72-hour period for a probable cause hearing for detention and delinquency cases as well as the requirement for a trial in a delinquency hearing within 10 days of the petition being filed. Considering these tight restraints, parties routinely waive these deadlines or take steps to postpone deadlines. For example, the delinquency adjudication deadlines are measured from filing a petition. Parties get take advantage of those deadlines by delaying the filing of a petition while other casework on the case moves forward. According to the stakeholders, a more sensible approach would be for deadlines to run from the date a complaint is filed and to make the deadlines realistic. According to several stakeholders, deadlines are meaningless if they are frequently waived or circumvented. Other stakeholders, however, appreciate short deadlines, and believe they serve a valuable purpose and should be preserved.

A practicing attorney was critical of the timelines for hearing pending appeals, noting that the discretionary appeals process takes too long and hinders resolution of ongoing disputes involving children.

e. More Discretion is Needed

Judges and attorneys agree that the lack of judicial discretion in sentencing and punishment is one of the major problems with the Code. Specifically, they believe juvenile court judges should have more discretion in cases involving the “Seven Deadly Sins,” which currently require automatic transfer to superior (adult) court, and in post-adjudication detention involving cases of youth committed to DJJ. Stakeholders believe that juvenile court judges need to be granted more flexibility in the Code to be creative in crafting sentencing and punishment. In particular, the juvenile court must have the ability to impose longer confinement that cannot be circumvented by DJJ because of DJJ policies and concerns about overcrowding. Judges complained that there are limited options available to them and DJJ regarding the placement of committed children.

A juvenile court administrator stressed the importance of allowing intake staff to retain discretion over detention decisions, rather than adopting a standardized, “one-size-fits-all” approach.

f. More Alternatives to Secure Detentions and Limited Short Term Programs

District attorneys stated that they need “more alternatives to secure detention – right now [the only two options] are [secure] detention or probation [which is typically not much more than regular reporting to a probation officer without significant treatment

programming].” A public defender complains that a “lack of [court-based] diversion programs is a problem; more cases should go to diversion and mediation without [using up limited court time by issuing] formal petitions.”

A defense attorney stated that Short-Term Programs (STPs) sound fine in theory but are not working well in practice because judges can only use them as a “last resort” under graduated sanctions have been imposed. Also, while STPs are intended to provide a child with “focused attention,” the children ordered to attend the STP often never get the benefit of the STP. The reason has to do with the limited STP beds and the way the system currently counts the days that children spend waiting in the local detention center for a bed to become available. Often, children remain in a detention center so long waiting for a STP bed that by the time a bed is available the children’s detention time is expired and the children are released. The children spent time locked up, but they did not benefit from any of the STP programming that might have improved their behavior going forward.

A probation officer supports any efforts by DJJ to fund more options for placement of committed children so that repeat nonviolent offenders are not routinely returned to poor environments.

g. Inadequate Resources

According to stakeholders, the District lacks services comparable to the metro areas. For instance, interviewees consistently noted the lack of mental health programs throughout the District, but said the problem was particularly acute in the more rural counties. Other stakeholders said that there are not enough group homes and those that were available are being closed. Judges have no alternative placements for runaway and other unruly, but not delinquent, children pending reunification with their families.

A juvenile court administrator highlighted budgetary demands imposed on DJJ to increase efficiency. According to this stakeholder, the DJJ’s focus on improving efficiency often conflicts with the juvenile court’s responsibility to the child and community.

DFCS is not faring much better in the Ninth District. Without a significant infusion of resources, according to a judge, the foster care program is at risk for several reasons: case manager turnover is unacceptably high; foster parents lack sufficient training and support; too few foster homes; and the inability of the court to monitor children who are placed by DFCS out of the county because of the lack of foster homes in the county.

Stakeholders also explained that DJJ has eliminated or reduced successful programs due to inadequate funding. In the end, funding, or lack thereof, is directly interfering with the Ninth District’s ability to respond effectively to the juvenile justice and child welfare demands imposed on the juvenile court by the community.

h. Role of Courts and DFCS

Many stakeholders had strong opinions regarding the relative roles of the courts and DFCS, and the opinions expressed varied considerably depending on the stakeholder's role within the system. A SAAG complained that judges "micromanage" DFCS, making it hard for DFCS to do its job. A judge, however, identified a need to revise the Code to reconcile the authority of the judicial branch with the authority of the executive branch as exercised by DFCS. For instance, according to the judge, if a deprived child is also found to have committed a delinquency and the judge issues an order to hold the child accountable for his actions, DFCS will not see to it that the order is carried out if it calls for action outside DFCS' "policy." This failure on DFCS' part constitutes an unwarranted interference with the court's exercise of authority over the child. Judges also wanted more discretion to override DFCS, especially around the issue of placement. Despite these conflicts between DFCS and the juvenile court, a DJJ probation officer stated that the working relationship between DFCS case managers and DJJ probation officers is appropriate.

Both a district attorney and a DFCS employee reported tension between DJJ and DFCS, on a policy level, however, as to which agency can or should exercise jurisdiction over certain children. The district attorney felt that DFCS short-sightedly refrains from dealing with deprived children who have been adjudicated delinquent. This stakeholder sees the direct connection between deprivation and the conditions that promote delinquent behavior and thinks that DFCS is in the best position to deal with children who are both deprived and have broken the law.

A DFCS employee acknowledged high turnover in the department and said that frustration with the legal process was a growing contributor to the turnover problem. For example, caseworkers are far too overburdened with large caseloads to waste time waiting, sometimes all day, in the waiting room for a court hearing to be called. This stakeholder did not understand why deprivation court hearings could not be scheduled by appointment to begin at a time certain.

D. How Can the Juvenile Code and the Juvenile Justice System be Improved?

Stakeholders provided the following specific suggestions for how to improve Georgia's juvenile justice system:

- * A defense attorney proposed that the Code should be revised to prohibit the same judge from trying a case upon a motion for new trial or appeal.
- * A district attorney explained that the Detention Assessment Instrument (DAI) system, used for making the decision to detain a child pending the probable cause hearing, is not working because it is too lenient on kids, i.e., application of the DAI leads to too many kids being released to their parents pending the first hearing. The stakeholder recommends limiting the influence of the DAI to advisory status only so that subjective factors, such as the intake officer's personal knowledge of the child and his

history, can play a more central role in the decision to detain or release a child pending the 48 or 72 hour hearing.

- * The “5/4/3” [graduated] sanction system creates too many obstacles in meting out the punishment that a child needs to change his behavior. According to a stakeholder who handles prosecutions, graduated sanctions allow children too many “bites at the apple” before they are held accountable in a meaningful way. Any revision to the Code should consider doing away with graduated sanctions as currently formulated.
- * Under the current juvenile code, a child who is 17 years old has to have his case handled in adult court if he is charged with committing a crime. A stakeholder who regularly defends young people in delinquency actions suggested that if the Code is not changed to bring the 17 year old into juvenile court for his violations of the law, then the adult criminal code should be changed to maintain juvenile court’s short time frames in the adult court proceeding so that the minor does not languish in jail waiting for resolution of his case.
- * A district attorney suggested eliminating prosecutorial discretion to try 13 year olds as adults when alleged to have committed a felony. The Code should be revised, according to this stakeholder, to increase the minimum age to 15.
- * A judge noted that the Code is designed to deal with “bad” children, but estimates that the vast majority of the children now caught up in the juvenile justice system are good children with “bad” parents. The Code should be revised to focus more on the impact parental decisions have on the behaviors of their children and require more accountability of the parents, themselves.
- * A defense attorney and judge stated that the juvenile court should be given concurrent jurisdiction with superior court in adoption cases that arise from the termination of parental rights cases handled in the juvenile court. Such adoptions should be streamlined to ease the financial burden on petitioners; keeping them in the juvenile court would be one way to accomplish that goal.
- * A DFCS employee suggested that foster parents should be given more rights, especially the right to address the court in person. The courts and SAAGs would benefit from listening more to the foster parents, as well as to the children themselves.
- * A DFCS employee stated that DFCS should have more discretion regarding approving parental visitation with children under a reunification plan. Because sometimes the courts may not be quick enough in granting visitation, it would be beneficial if the courts would approve parental

visitation “at the discretion of the Department” pending court approval of the plan.

- * A DFCS employee proposed that all case plans be approved and articulated to parents by DFCS within a few days of intake. Delay often results because some counties require that a judge approve case plans.
- * A practicing attorney believes that inter-county placement of children relative to transfer evaluations conducted by DFCS are not high priority for DFCS and therefore take too long to be completed. This delay only hurts the child. The stakeholder recommends that the Code be revised to provide for reasonably prompt time frames for home evaluations so that children can get settled more quickly.
- * A stakeholder wants judges, DJJ and DFCS to address truancy at an earlier age, perhaps even as young as elementary school where the failure of a child to attend school may be due more to parental neglect than a child’s willful failure to attend. Though the current Code has no age minimum for trancies, this stakeholder wants the court to use the tools available to it, such as the definition of education neglect¹¹ found in the current Code, to address this problem.

E. Specific Code Changes and Comments

Most consistently, interviewees explained that the Code should be better organized. Definitions should be provided, and ambiguities and procedural vagueness should be eliminated. Substantive recommendations were also provided. Those comments include the following:

Organization

- * Consolidate relevant Code sections to a centralized place and logically organize them. In particular, consolidate Code sections regarding a judge’s authority.
- * Leave an ample supply of reserved sections for amendments or future enactments to reduce necessity of removing or re-numbering existing sections.
- * Reduce cross-referencing statutes.
- * Delineate civil and criminal procedures.
- * Resolve the imperfect distinction between delinquency and deprivation proceedings.

¹¹ Section 15-11-2(8)(A).

Definitions and Ambiguities

- * Clarify whether a right to counsel exists in abuse and neglect cases.
- * Clarify the “permanent custody” definition. There is currently insufficient guidance as to what that term means. For example, when children are placed with a relative, the relative is given “permanent custody.” Yet, in reality, the custody is not permanent.
- * Designate the rules of discovery that apply in juvenile court.
- * Clearly define the definition of “child” vs. “adult” for the purposes of sexual behavior.
- * Provisions regarding changes in child custody should be clarified to explicitly delineate guidelines for who makes custody decisions and how those decisions are to be made.
- * Clarify certain “procedures,” such as what standard of evidence applies under O.C.G.A. § 15-11-40.
- * Clarify “reasonable notice” under O.C.G.A. §§ 15-11-49(b) and 15-11-58(n) and “proper notice” under O.C.G.A. § 15-11-58(e).
- * Clarify language in the “Seven Deadly Sins” statute, O.C.G.A. § 15-11-28, Current language leads to potential jurisdictional issues between superior court and juvenile court. The statute should be revised to make it clear which crimes fall within the auspices of superior or juvenile court.
- * Better articulate procedures for transfer from superior to juvenile court.
- * Clarify when due process rights apply to certain proceedings.
- * Clarify when the Georgia Civil Practice Act applies to certain proceedings.
- * Clarify whether the court may make a disposition under the Designated Felony statute absent the State’s request.

Substantive Issues

- * Nearly everyone recommended giving judges more discretion and an incentive to engage in a case-by-case approach, including the ability to impose longer confinement. It is also felt that similar discretion should be given to intake staff.

- * Impose realistic deadlines that will not be routinely waived or circumvented. For instance, the intake staff of the juvenile court currently has 72 hours, including weekends and holidays, to draft its petition under the Code. That time period is insufficient, particularly where felonies are involved. One remedy suggested by a stakeholder is to require that a petition involving misdemeanors be filed within 72 hours, but to allow 30 days when felonies are involved.
- * Establish the burden of proof required in emergency hearings.
- * Confidentiality under O.C.G.A. § 17-4-20.1(d) prohibits DFCS from accessing family violence reports. There should be a limited exception for DFCS to access those reports in appropriate cases.
- * An attorney noted that the scope and obligations of DFCS should be clearly defined by the Code to make DFCS policies and procedures more accessible, understandable and consistent. That attorney also explained that sometimes DFCS' policy blocks a judge's effort to finalize placement for a child. For instance, before a child can be placed in another county, that county's DFCS must exercise its authority to receive custody. Unfortunately, the receiving county's DFCS office has little incentive to give the request priority over all its other pending placement cases. As a result, the judge may be blocked from moving the case forward and the child remains in limbo awaiting approval of the placement out of county. The Code should allow for judicial authority to require DFCS to make a decision on a particular file even across county lines.
- * The current time frames regarding a written plan for reunification from DFCS are unrealistic. The Code requires a case plan to be submitted to the court within 30 days of a child's placement in foster care, but the Code does not require a hearing to determine whether to keep the child in foster care within 30 days. If the judge does not order continuation of foster care at the hearing, the work that went into creating the case plan is wasted.
- * Reconsider whether the Detention Assessment Instrument ("DAI") should be required. Judges feel that the decision whether to detain a child should be within the court's discretion based upon a judge's experience, common sense and judgment and not dictated by the DAI.¹²
- * Re-evaluate the "third-year deprivation petition" issue. Under the Code, in deprivation cases, DFCS must begin a whole new case at the end of the second year following a deprivation determination if the child must stay in the custody of the Department and cannot return to the family or be put in

¹² Even though the DAI conceptually allows for judicial overrides, it has not worked out that way in practice.

another permanent placement. A judge suggested that it would be better to allow an extension within the pending case to avoid having to establish deprivation when in fact the child has been out of the deprived home for the previous two years.

- * Re-evaluate the Graduated Sanctions guidelines because current implementation of the graduated sanctions program typically means that a child can violate conditions of probation repeatedly without coming into court to receive a meaningful consequence from the judge.
- * The Code has no provision regarding sibling placement. The Code should require the court to consider the existence of siblings when addressing child placement issues. If possible, siblings should be placed together. DFCS is currently allowed to split up children based on convenience as opposed to the best interest of the child.
- * Consider granting the juvenile court jurisdiction to award permanent custody to a parent who brings a legitimization action in juvenile court, as opposed to superior court. This issue arises when a father brings the legitimization action in the juvenile court in which a deprivation action is pending.
- * Consider granting the juvenile court jurisdiction over adoption matters where there has been a termination of parental rights in juvenile court because the court already has familiarity with the parties and the situation.
- * Relax DAI guidelines so as to permit immediate detention of a child pending the preliminary hearing when the child has a history of previous delinquencies.
- * A CASA stakeholder suggested that deprivation proceedings be open to the public, as proposed by Senate Bill 415. This stakeholder believes that public hearings would showcase the positive impact that DFCS makes as well as create more accountability for all the parties involved. A practicing attorney, however, approves of the Code's current confidentiality provisions.
- * A CASA stakeholder feels that parental rights should be subject to termination if the parent is incarcerated. In cases where parents are repeatedly in and out of jail when a child is young, upon release, the child has bonded with someone else, making returning the child to the parent potentially harmful.
- * A CASA stakeholder proposed that court appointed attorneys be required to meet with the child they represent before appearing in court on the child's behalf.

- * Establish better notice requirements for court proceedings. A CASA stakeholder noted that scheduling court proceedings on short notice, and without adequate notice, often makes it difficult for all interested parties to attend.

F. Changes to the Current Juvenile Justice System

Aside from rewriting the Code, interviewees noted a range of other changes that would benefit the juvenile justice system overall, which include:

- * Increase resources, including funding, training, and information materials for participants. According to some interviewees, the Legislature appears to be out of touch with the realities faced by the court to pay for attorneys on behalf of parties who are indigent. A CASA stakeholder estimated that the vast majority of parents whose children are taken into DFCS custody qualify for court-appointed attorneys, but adequate funds are often lacking. Also, increased training is needed for attorneys serving as guardians ad litem.
- * Ensure adequate funding for new requirements imposed by re-writing the Code.
- * Improve communication among counties by sharing access to electronic records and information.
- * Improve communication with parents and children involved in the system. A basic road map would be helpful because ignorance of the system can lead to unnecessarily negative outcomes. For instance, some children “age-out” of the foster care merely because they are not advised of their option to sign themselves back into care. As a result, those children lose access to vocational and educational programs that would otherwise be available. The Code could be amended to require disclosure of certain options to parents and children.
- * Improve interaction and coordination among state agencies. For example, if a suitable home for a child is identified in another state thereby invoking the Interstate Compact on the Placement of Children (“ICPC”), the process is slowed down considerably. As a result, children are sometimes in foster care longer 6–18 months longer than necessary.
- * Address issues regarding a growing immigrant population, which include the pressing need for more bilingual materials and translators.
- * Restrain use of the Detention Assessment Instrument (“DAI”) as a tool for determining whether a child should be detained, because the DAI is a formulaic test that uses a point system evaluating specific factors. The DAI is a poor substitute for the exercise of discretion by experienced intake staff. The DAI also focuses on a child’s prior conduct instead of

the current crime. One result is that children who have displayed violent behavior but lack a criminal history may be ineligible for detention pending the preliminary hearing.

- * Carefully maintain the discretion of the intake staff of the juvenile courts to make decisions on a case-by-case basis.