

Southern Juvenile Defender Center

of Emory University

Ensuring excellence in juvenile defense and promoting justice for all youth

REPRESENTING THE WHOLE CHILD: A JUVENILE DEFENDER TRAINING MANUAL

AUTHORS

Amy Howell, Staff Attorney, Equal Justice Works Fellow, Southern Juvenile Defender Center

Brooke Silverthorn, Contract Attorney, Southern Juvenile Defender Center

EDITORS

Karen Worthington, Director, Southern Juvenile Defender Center

Judge Bryant Culpepper, Superior Court Judge, Macon Judicial Circuit

Lisa Lott, Juvenile Public Defender, University of Georgia Legal Aid Clinic

Mark Nathan, Attorney at Law, Savannah, Georgia

Linda Pace, Senior Juvenile Public Defender, Office of the Public Defender DeKalb County

ACKNOWLEDGEMENTS

This training manual was generously supported through a grant from the Governor's Children and Youth Coordinating Council. This manual would not have been possible without Pete Colbenson and Suzanne Luker. The writers are grateful to CYCC for their support.

The writers would like to thank Judge Bryant Culpepper, Lisa Lott, Mark Nathan and Linda Pace for serving as editors to the manual. We would also like to thank, Nova Harb, Jody Marksamer, and Kristin Neilson for their excellent work and contributions to the manual.

The writers would like to specially thank the following people for the long hours of assisting in the creation, development, and editing of this manual: Beth Locker, Soledad McGrath, Michele Papotto, Beth Reimels, and Karen Worthington. Their expertise and hard work contributed greatly to the final product.

The writers would also like to thank the authors of existing juvenile defense trial manuals that lent inspiration to this manual. We would like to express our deference to their innovation, willingness to share their work, and overall efforts to enhance juvenile defense in other jurisdictions.

TABLE OF CONTENTS

ACKNOWLEDGEMENTS	
TABLE OF CONTENTS	
I. INTRODUCTION	1
II. HISTORY OF THE JUVENILE COURT	3
III. "JUVENILE DEFENSE TOP TEN"	7
IV. BASICS OF JUVENILE DEFENSE	11
A. DEFINITION OF A YOUTH	11
B. COMMONLY HEARD TERMS IN JUVENILE COURT	11
C. THE ROLE OF A JUVENILE DEFENSE ATTORNEY	15
D. CASE FLOW MAP	17
E. SUMMARY OF THE GEORGIA JUVENILE COURT PROCESS	18
F. ETHICS	21
V. ATTORNEY-CLIENT RELATIONSHIP	25
A. ATTORNEY CLIENT CONFERENCE	25
1. <i>Building Rapport with the Client</i>	25
2. <i>Process</i>	25
3. <i>Communication</i>	26
B. PREPARING THE CLIENT FOR COURT	26
VI. PREPARING YOUR CASE	29
A. DISCOVERY	29
B. INVESTIGATION	30
C. WITNESSES	30
D. CONFESSIONS	30
E. CHARGE/PLEA/DISPOSITION BARGAINING	30
1. <i>Types of Pleas</i>	30
2. <i>Plea Bargaining</i>	31
VII. WHO IS THE CLIENT AND WHAT DOES HE/SHE NEED?	33
A. MENTAL ILLNESS, MENTAL RETARDATION, AND DEVELOPMENTAL DISABILITIES	33
1. <i>Common Mental Illnesses Found in Juvenile Court</i>	33
B. COMPETENCY	35
1. <i>Motion for a Competency Evaluation</i>	35
C. RACE/ETHNICITY AND CULTURE	37
D. GENDER	37
E. LESBIAN, GAY, BI-SEXUAL, TRANSGENDER, INTERSEX OR QUESTIONING "LGBTIQ" YOUTH	38
1. <i>Charges and LGBTIQ Youth</i>	38
2. <i>Dispositional Planning and LGBTIQ Youth</i>	38
3. <i>How to Address LGBTIQ with the Client</i>	39

F. IMMIGRATION	39
G. OTHER AREAS OF CLIENT ADVOCACY	40
1. Educational Needs	41
2. Common Disabilities	43
3. School Discipline	44
4. Housing	45
5. Medicaid/ Medical Care/Public Benefits	46
6. Employment	49
7. Domestic Violence/Abuse/Neglect	50
8. Reproductive Rights	51
9. Substance Abuse	51
VIII. TRANSFER	53
A. SENATE BILL 440 / AUTOMATIC TRANSFER STATUTE	53
B. TRANSFER HEARING	53
C. THE EIGHT DETERMINATIVE FACTORS FOR TRANSFER – KENT V. U.S.	54
IX. HEARINGS	57
A. ADJUDICATION	57
1. Motions	57
2. Informal Adjustment	57
3. Opening Statement	57
4. Presenting Juvenile Witnesses	57
5. Closing Statement	58
B. DISPOSITION	58
1. Disposition Advocacy	58
2. Mental Health Issues and Psychological Reports	59
3. Disposition Powers of the Court	59
4. Elements of a Disposition Plan	60
X. DETENTION	65
A. DETENTION HEARINGS	65
1. Adjudicatory Hearings	65
2. Disposition Hearings	65
3. Unruliness	65
B. DETENTION PROCEDURES	65
C. DJJ’S ALTERNATIVES TO DETENTION	66
XI. DEPARTMENT OF JUVENILE JUSTICE POLICIES & PROCEDURES	67
A. DJJ POLICIES AND PROCEDURES	67
1. Health and Medical Services	67
2. Behavioral Health Services	67
3. Education	67
4. Community Corrections	68
5. Rights of Youth	68
XII. POST DISPOSITION APPEAL ISSUES	71
A. APPEALS	71

B. MODIFICATION OF DISPOSITION	71
C. MOTIONS TO TERMINATE UNDER O.C.G.A. §15-11-70	71
XIII. SEALING JUVENILE COURT RECORDS	73
XIV. APPENDIX	75
A. GLOSSARY	75
B. USEFUL WEBSITES	82
C. TOOLS & FORMS	85
1. <i>Suggested Reading</i>	85
2. <i>Case Preparation Tools</i>	86
D. RESOURCES	91
1. <i>Juvenile Justice</i>	91
2. <i>Immigration Resources</i>	91
3. <i>Housing Resources</i>	92
4. <i>Medicaid Resources</i>	93
5. <i>Substance Abuse Resources</i>	93
ENDNOTES	95

I. INTRODUCTION

Juvenile Defense is a specialty within the legal field. The ability to provide competent and zealous advocacy is enhanced by specialized knowledge of juvenile law, adolescent development, and the unique legal considerations of juvenile clients. Juvenile clients should be given the same respect and autonomy as their adult counterparts.

Although the juvenile justice system has many of the same procedural protections as the adult criminal system, it was originally created to ensure the care, treatment, and rehabilitation of juveniles. Despite a trend toward stricter penalties for delinquent behavior, the purpose of the Georgia juvenile code remains unchanged: to assist, protect, and restore the well-being of youth involved with the juvenile justice system.¹ Further, youth* coming within the jurisdiction of the court shall receive, *preferably in their own home*, the care, guidance, and control that is in their welfare and the state's best interest.² With this in mind, attorneys who are assigned or accept a juvenile case need to be equipped with an understanding of the law, court procedure, alternatives to detention, and the special needs of the client, to ensure that the purpose of the juvenile code is carried out.

The 2001 Georgia Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings documented the need for quality legal representation for youth in Georgia.³ Among the many comments on the juvenile court system, the report made note of the lack of training and professional development for juvenile defense attorneys.⁴ The report also noted the absence of minimum performance standards in many counties or the establishment of best practices.⁵ One of the recommendations of the report was to develop and support comprehensive training opportunities for juvenile defense attorneys.⁶

This manual was created to provide juvenile defense attorneys with a general guide to appropriate and zealous advocacy on behalf of youth in juvenile court delinquency or unruly proceedings. It is the intention of the authors to equip juvenile defense attorneys with the knowledge and resources to ensure youth receive zealous advocacy in all arenas. The manual takes a holistic approach to juvenile defense, evaluating all the factors that may have contributed to delinquent behavior to assist with proper representation and handling through the system. It is the goal of the authors to assist juvenile defense attorneys with recognizing a youth's many areas of need to ensure zealous advocacy and the provision of appropriate disposition options.

This manual is an introduction to juvenile defense but not a complete reference. The authors have referenced and listed additional tools and guides that attorneys should seek for further information. It was the authors' intent to make this manual as widely applicable throughout the state as possible. However, the authors recognize that Georgia has 159 counties and many different local practices and procedures. Local practices and procedures may differ from what is described in the manual. Take the time to talk with court clerks, probation officers, and other defense attorneys to discover local approaches.

* For the purposes of this manual the term youth will be used to describe both children and youth who may or have come within the jurisdiction of the juvenile court with allegations of delinquent or unruly behavior.

II. HISTORY OF THE JUVENILE COURT

The first juvenile court was created by the Illinois legislature in 1899.⁷ The court was developed under a belief of a community responsibility to care for society's children.⁸ Based upon the theory that youth were malleable beings, the court was created to support proper adolescent development and was described as benign, non-punitive, and therapeutic.⁹ Further, the court's ideology recognized the limited responsibility of youth and the need for treatment rather than punishment.¹⁰ The state adopted the legal doctrine of *parens patrie*, the state as parent, to authorize state intervention where parents had lost control of or were unable to provide adequately for their youth. The state would informally adopt these youth and act as their guardians to consider their best interest.¹¹

The courts were created to remove the punitive formalities of the criminal courts to which youth had previously been subject. As a result, the structure and proceedings were informal and were used to identify the cause of delinquency and address it through treatment and rehabilitative alternatives to punishment.¹² Lawyers were rarely involved in the proceedings. The court's handling of deprivation matters created an umbrella characterization over all the court's proceedings as civil.¹³ Juveniles involved in these civil proceedings did not have the same procedural safeguards that due process required in adult cases, even in instances where a loss of liberty was at stake.¹⁴ The court's temporary custody of the youth was not considered as a loss of a constitutionally protected right to liberty, but rather as being in their best interest.¹⁵

The passage of time has greatly altered juvenile court proceedings. In In re Gault, the Supreme Court recognized due process as an indispensable fundamental of individual freedom.¹⁶ In re Gault provided juveniles in delinquency proceedings certain procedural rights.¹⁷ These rights include the notice of charges, right to counsel, right to confrontation and cross-examination, privilege against self-incrimination, right to a transcript of proceedings, and right to appellate review.¹⁸ The Court held that the hearing must measure up to the essentials of due process and fair treatment.¹⁹

The Supreme Court recognized that the lack of constitutional protections didn't further the courts' objectives but rather hindered them.²⁰ The Court went further, stating that a lack of fairness in any of the court's procedures would prevent the thorough administration of the juvenile court's purpose; if a youth views the process as unfairly applied he/she may reject both the treatment and rehabilitation.²¹ Therefore, the court has an obligation to look to whether the right is fundamental, and whether granting the right runs contrary to the distinct purposes of juvenile proceedings.²²

Juvenile courts are not required to provide all the same procedural safeguards as adult courts. For example, while some states allow juveniles the right to a jury trial, the Supreme Court does not require this.²³ Georgia does not statutorily provide youth in juvenile court with the right to a jury trial.

The history and progression of the juvenile court after In re Gault demonstrates a modern trend that has shifted away from rehabilitation and treatment toward stricter penalties and punishments. The greater the collateral consequences of juvenile court involvement, the greater the need to ensure and protect a youth's constitutional rights. The potential for loss of liberty for a juvenile court involved youth should be taken seriously and every effort should be made to prevent this from occurring. The creators of the juvenile court recognized the unique potential for rehabilitation within youth. Despite modern trends, juvenile defense should

embody the original doctrine of the juvenile court with belief in the developing adolescent mind and person. The main opportunity for a youth to grow and become a productive citizen beyond a delinquent or unruly offense will be facilitated by zealous and appropriate defense advocacy.

IMPORTANT SUPREME COURT DECISIONS ON JUVENILE JUSTICE²⁴

- **Kent v. United States, 383 U.S. 541 (1966)**

Held that there is a statutory right to a judicial hearing before transfer of jurisdiction to criminal court.

- **In re Gault, 387 U.S. 1 (1967)**

Held that youth are guaranteed Fifth and Sixth Amendment rights in juvenile delinquency proceedings, including the right to counsel, the right to adequate and timely notice of the charges against them, the right to confront and cross-examine witnesses, and the right against self-incrimination.

- **In re Winship, 397 U.S. 358 (1970)**

Held that the “beyond a reasonable doubt” standard of proof applies to adjudication in delinquency cases.

- **McKeiver v. Pennsylvania, 403 U.S. 528 (1971)**

Held that youth in the juvenile justice system are *not* entitled to the federal right of trial by jury.

- **Breed v. Jones, 421 U.S. 519 (1975)**

Held that the Double Jeopardy Clause of the Fifth Amendment prevents trial in criminal court of a youth who was previously subjected to a delinquency proceeding concerning the same acts.

- **Schall v. Martin, 467 U.S. 253 (1984)**

Held that the preventive detention of youth accused of delinquent acts pending trial is constitutional.

Table 1

JUVENILE DEFENSE TOP TEN

- 1. Maintain your ethical obligations as an attorney.**
- 2. Do not cloud defense strategies with personal judgments about the client.**
- 3. The client is the youth, not the parent(s).**
- 4. Communicate with and listen to the client.**
- 5. Get to know the client behind the offense.**
- 6. Advocate zealously for the client at disposition.**
- 7. Advocate for the least restrictive environment.**
- 8. Remember what it was like to be young.**
- 9. Be a persistent and patient advocate.**
- 10. Celebrate every victory and accomplishment.**

Table 2

1. Maintain your ethical obligations as an attorney.

A client accused of a delinquent or unruly offense has the same civil liberties at risk as a person accused of a criminal offense. Although the consequences of delinquent or unruly offenses may appear less significant or detrimental than criminal offenses, the effect of detention on a youth can be extremely damaging. An attorney’s ethical duties are applicable to juvenile clients and the responsibility of juvenile defense must be taken very seriously.

2. Do not cloud defense strategies with personal judgments about the client.

Avoid the impulse to impose personal judgments regarding what is best for the client. The judge is the ultimate decision maker as to what is in the best interest for the youth and the public. It is the defense attorney’s responsibility to present the facts and arguments on behalf of the client in a light most favorable to the client. If there are concerns of conflicts, request that the court appoint a guardian ad litem. As an attorney, the duty is to the client and to protect the objectives and interests of the client. It is the judge who determines what is in the best interest of the client.

3. The client is the youth not the parent(s).

The defense attorney should make it clear to the client and the parent(s) that he/she will be advocating on behalf of the youth, not the parent(s). It is useful to clarify this relationship in front of the client. Be mindful that this can create tension between the attorney and the parent, but it can also create an atmosphere of trust with the client.

4. Communicate with and listen to the client.

Communicating with the client is an ethical obligation of attorneys. It is also essential to listen to what your client has to say. Speak with the client without the parents present. Make sure to have spoken with the client and identified the client’s interests and objectives for the case. It is critical to speak with the client before speaking on his/her behalf in open court. Make sure to explain the process to the client and ascertain whether he/she understands the court process and possible outcomes for his/her case. Assure the client that if at any time there is any confusion he/she can ask questions. Be sure to explain the rules of confidentiality. Make it clear to the client that the defense attorney advocates on his/her behalf, not for the court, and that every effort will be made to get the desired outcome. Communicate with the client before and after appearances in court to ensure clarity of the client’s interests and the client’s understanding of the process and outcomes.

5. Know the client behind the offense.

Establish rapport with the client. This can be done in many ways, including talking about hobbies or interests or, visiting the client outside of a court or office atmosphere.

Demonstrate to the client that, as his/her attorney, you care about his/her opinions and concerns. Be clear about the client's concerns and interests in the outcome of his/her case. Be aware of the client's needs, strengths and weaknesses; make every effort to present the court with the person behind the charges. Understanding the client's interests, strengths, and challenges will be critical in the development of a sound dispositional plan.

6. Advocate zealously for the client at disposition.

Does the client need treatment and/or rehabilitation? This is a crucial question for a critical stage in the advocacy by a juvenile defense attorney. If the client is only in need of supervision, argue for dismissal of the charges. Otherwise, make the court aware of every positive aspect of the client. Create a dispositional plan that includes the client's strengths and helps to address his/her challenges in a way that the client can achieve success, not further court involvement. Present the court with a picture of the youth and his/her life beyond the offense. Schedule disposition at a later date to provide time to establish the best arguments for the client.

7. Advocate for the least restrictive environment.

Work to prevent the detention of the client. Most judges use detention out of frustration and/or absence of argument for other community based alternatives. Speak with court personnel to discover programs or alternatives that are available and suitable for the client's needs. Suggest support for the family in addition to the client. Work with the family to create a system for in-home supervision, reporting, and community services. Be clear that detention can irreparably harm the client; it is the responsibility of a defense attorney to avoid this to the best of his/her ability.

8. Remember what it was like to be young.

Try to place yourself in the client's shoes and remember what it was like to relate with adults when you were a young person. Attain an understanding of adolescent brain and social development. Remember that the client is probably very scared, despite whatever tough exterior he/she may display. Keep in mind that the client is a youth in the midst of growing up and has made mistakes, but needs an opportunity to make better choices in the future. It is also important to keep in mind that the client may be growing up in an environment with challenges distinct from what the attorney has experienced or is familiar with. Do your best to relate with the client but also accept the differences between yourself and the client.

9. Be a persistent and patient advocate.

Do not give up on the client. The client may not always immediately acknowledge the benefits of your advocacy and efforts. There may be a need to try different approaches to aid the client towards success in life. Be persistent in attempting to achieve positive outcomes. Be diligent in attempting to locate the client. Do not give up if there is not an immediate connection with the client. Be patient with the client. Understand that

the lessons learned during adolescence may not immediately integrate into a youth's decision-making and actions.

10. Celebrate every victory and accomplishment.

There will be many moments where a defense attorney may have feelings of not achieving overall success. It is important to remember to create manageable and attainable measures of success and celebrate when they are achieved. The client may not have felt much success in his/her life. Ensure that he/she is aware that even minor accomplishments are big. Remember that an attorney's efforts today will have the potential for lasting impact on the life and future of the client. Share a client's successes with others in the juvenile field that will be able to appreciate the significance of those accomplishments.

IV. BASICS OF JUVENILE DEFENSE

A. Definition of a Youth

The legal age of majority in Georgia is 18 years of age.²⁶ A youth is, as defined by the Georgia Juvenile Code, any individual who is:

Under the age of 17 years;²⁷

Under the age of 21 years, who committed a delinquent act before the age of 17 and was placed under court supervision or probation; or²⁸

Under the age of 18 if alleged to be deprived or a status offender.²⁹

The minimum age for criminal responsibility for an act, omission or negligence is 13.³⁰ The juvenile court has concurrent jurisdiction with superior court over a youth who commits an act that would be a crime that could be punishable by death or life imprisonment.³¹ There is no statutory minimum age for delinquency or unruly actions.

B. Commonly Heard Terms in Juvenile Court

The following is a list of terms commonly heard in the juvenile court. This is not a complete list. Please refer to the glossary for a more complete list of terms and definitions.

ADJUDICATION

A fact-finding hearing, similar to a “trial” in adult court. The main differences are that adjudicatory hearings are heard by a judge, not a jury, and the child is found “delinquent,” not “guilty.” To find that a child is *delinquent*, the judge must find that the child committed the act *beyond a reasonable doubt*, the same “burden of proof” that applies in adult criminal trials. The formal rules of evidence apply.

COMMITMENT

A juvenile court disposition that places a youth in the custody of the Department of Juvenile Justice for supervision, treatment, and rehabilitation for up to two years.

DELINQUENT ACT

An act that would be a crime by state, federal or local ordinance if committed by an adult, or disobeying the terms of court supervision.

DIVISION OF FAMILY AND CHILDREN SERVICES (DFCS or DFACS)

The Division of Family and Children Services is the division of DHR that investigates child abuse; finds foster homes for abused and neglected children; helps low income, out-of-work parents get back on their feet; assists with childcare costs for low income parents who are working or in job training; and provides numerous support services and innovative programs to help troubled families.

DEPARTMENT OF JUVENILE JUSTICE (DJJ)

The Department of Juvenile Justice provides supervision, detention, and a wide range of treatment and educational services for youth referred to the Department by the juvenile courts. The DJJ also provides assistance or delinquency prevention services for at-risk youth through collaborative efforts with other public and private entities.

DEPARTMENT OF HUMAN RESOURCES (DHR)

The Georgia Department of Human Resources provides about 80 programs that ensure the health and welfare of Georgians. These include programs that control the spread of disease, enable older people to live at home longer, prevent children from developing lifelong disabilities, train single parents to find and hold jobs, and help people with mental or physical disabilities live and work in their communities. The DHR divisions include: Mental Health, Developmental Disabilities and Addictive Diseases (MHDDAD), Aging Services, Public Health, and Family and Children Services (DFCS).

DESIGNATED FELONY (DF)

The list of designated felony offenses by a youth who is 13 or older also includes:

- A second offense of weapon possession by youth 13 to 17 years of age;³²
- Kidnapping;³³
- First or second degree arson;³⁴
- Aggravated battery;³⁵
- Robbery and armed robbery not involving a firearm;³⁶
- Battery upon a teacher or other school personnel;³⁷
- Attempted murder or attempted kidnapping;³⁸
- Carjacking;³⁹
- Manufacturing, transporting, distributing, possessing with intent to distribute, and offering to distribute an explosive device;⁴⁰
- Any act that would be a felony if done by an adult, if the youth has committed felony offenses on three prior occasions;⁴¹
- Any violation of code section 16-13-31 in relation to trafficking in illegal drugs;⁴²
- Any violation of code section 16-14-4 in relation to racketeering;⁴³
- Any violation of code section 16-10-52 relating to escape of a youth previously adjudicated as a designated felon;⁴⁴
- Any violation of code section 16-15-4 relating to street gangs.⁴⁵
- Constitutes an offense within the exclusive jurisdiction of the superior court that is transferred to the juvenile court for adjudication.⁴⁶

The juvenile court judge determines whether or not a youth should be detained for a period not less than 12 months and not more than 60 months. If detained, a youth must be placed in a Youth Development Campus facility. Commitment orders are valid for 5 years or until a youth is 21 years old.

DETENTION

The temporary custody of juveniles who are accused of a delinquent offense and require a restricted or secure environment for their own or the community's protection while awaiting a final court disposition. States may also use detention as a sanction for probation violations or as a disposition option.

DISPOSITION

The phase of a delinquency proceeding similar to the "sentencing" phase of adult trial. The judge must consider alternative, innovative, and individualized sentences rather than imposing standard sentences.

DIVERSION

An alternative to trial, decided upon at intake, to refer the child to counseling or other social services. Diversion officially stops a case prior to court adjudication and refers the child to a community education, treatment, or work program instead of adjudication of the charges or detention. Successful completion of a diversion program results in the dismissal or withdrawal of the original formal charges. Youth who do not follow the diversion conditions are subject to formal prosecution of their charges.

GUARDIAN AD LITEM (GAL)

Phrase literally meaning “guardian for the proceeding.” The GAL is an adult, sometimes an attorney, who is appointed to look after the welfare and represent the legal interests of the child before the court.

INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA)

A Federal law that ensures “free and appropriate public education” for all children with disabilities.

INDIVIDUALIZED EDUCATIONAL PROGRAM (IEP)

A written plan required by federal and state law for every child who is receiving special education and related services. The IEP must describe all services needed by the child and the services to be provided for appropriate education in the least restrictive environment.

INFORMAL ADJUSTMENT

Prior to a petition being filed, or on the court’s withdrawal of a petition, the case may be informally adjusted if certain prerequisites are met. If conditions favor an informal adjustment, an Informal Adjustment Agreement is prepared which is valid up to three months and may be extended by court order for an additional three-month period. Informal adjustment alternatives include counseling and adjustment, counseling and advisement, referral to counseling and individualized agreements that may include mediation.

INTAKE

The process used to determine whether the interests of the public or the juvenile require the filing of a petition with the juvenile court. Generally, a Juvenile Probation Parole Specialist receives, reviews, and processes complaints, recommends detention or release where necessary, and provides services for juveniles and their families, including diversion and referral to other community agencies. If a case is handled formally, a petition, complaint, or other legal instrument will be filed with the juvenile court and a hearing will be scheduled. If the case is handled informally, the probation department may supervise the juvenile for a period of time or the case may be diverted to some alternative tribunal, such as a teen court or community panel.

MULTI AGENCY TEAM FOR CHILDREN (MATCH)

A process within DHR that arranges care for children with severe behavioral disturbances who need mental health treatment in residential settings.

NINETY-DAY (90-DAY) SHORT TERM PROGRAM (STP)

A 90-day STP is a dispositional option in which there is judicial discretion to order a child to serve up to a maximum of 90 days in a youth development center or in another treatment program. STP was formerly referred to as boot camp.

PROBATION

A period of time, not to exceed two years, in which an adjudicated delinquent is released back into society while being supervised as to his/her conformity to certain conditions. Probation orders impose a wide variety of conditions. Unlike adults, juveniles cannot reject probation and request incarceration.

REGIONAL YOUTH DETENTION CENTER (RYDC)

Regional Youth Detention Centers are facilities that provide temporary, secure care and supervision of youth who are charged with offenses or who have been found delinquent and are awaiting disposition of their cases by the court. Committed youth are often held in a RYDC while awaiting placement in one of the department's treatment programs or facilities.

SENATE BILL 440 (SB440)

Commonly used name for the Georgia Juvenile Code Article entitled "School Safety and Juvenile Justice Reform Act of 1994." This legislation provides the superior court with exclusive jurisdiction over children ages 13-17 who are alleged to have committed one of the following offenses (commonly referred to as the "Seven Deadly Sins"): aggravated child molestation, aggravated sexual battery, aggravated sodomy, murder, rape, voluntary manslaughter, or armed robbery with a firearm. Prior to indictment, the district attorney may elect to send the case to juvenile court.

YOUTH DEVELOPMENT CAMPUS (YDC)

Department of Juvenile Justice long-term secure detention facilities for committed youth. YDC's house committed youth, youth with 90-day sentences, or SB440 youth.

For a more complete list of terms and definitions see the glossary at the end of the manual.

WHO IS A JUVENILE DEFENSE ATTORNEY AND WHAT DOES HE/SHE DO?

- Zealous advocate
- Advisor
- Considers other factors in a client's life
- Provides independent professional judgment
- Provides candid advice
- Respects and follows the client's objectives

Table 3

C. The Role of a Juvenile Defense Attorney

The role of a juvenile defense attorney is not unlike the role of a criminal defense attorney. Whether it is a criminal or delinquent/unruly client, the need for zealous advocacy remains the same. The juvenile defense attorney is a youth's counselor and navigator through the legal system. Under the Rules of Professional Conduct adopted by the Supreme Court of Georgia, a lawyer should exercise independent professional judgment and provide candid advice.⁴⁷ However, the client's expressed interests are paramount even when they may lead to adverse legal consequences.⁴⁸

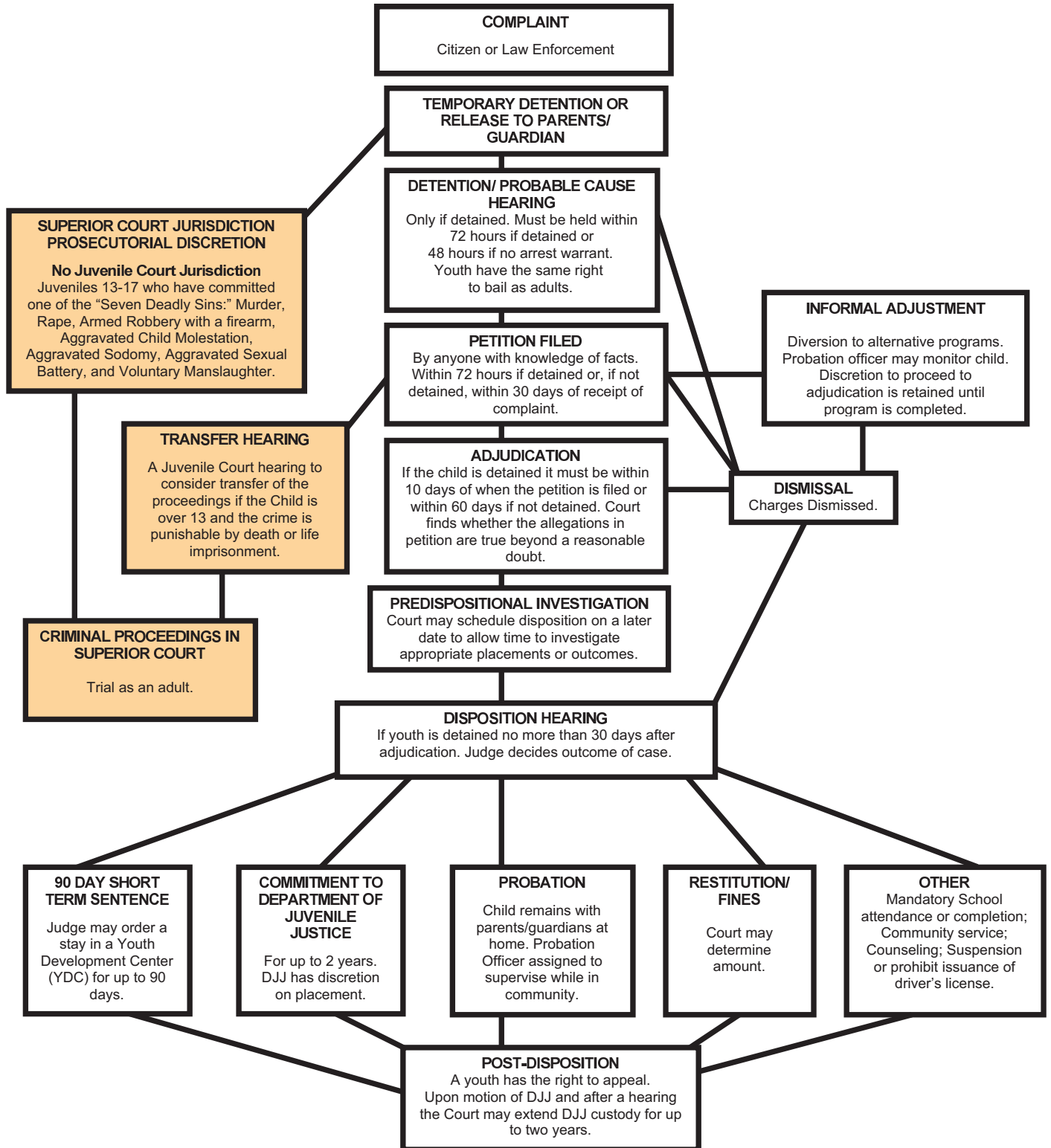
In general, identifying a client's interest in a proceeding is the responsibility of a capable client, after full consultation with the attorney.⁴⁹ Evaluations should be ordered to determine if a client is competent to stand trial. If a youth is too young to understand the nature of the proceedings, a guardian ad litem should be appointed.⁵⁰ In delinquency or unruly proceedings, the decision as to whether there will be an admission or denial of the charges is ultimately with the client.⁵¹ However, the defense attorney should appraise the client of the probable success or consequences of that decision.⁵² When counseling a client about his/her options and the possible outcomes of the case be conscious of the client's susceptibility to influence, as well as his/her need for mature advice based on experience. Assess whether the client is making a measured and conscious decision or simply doing what he/she perceives he/she is being told to do by an adult authority figure.

When giving advice, the juvenile defense attorney should consider not only the law but also other relevant factors in the client's life.⁵³ A good juvenile defense attorney will look at the youth's life as a whole and inquire into the home life, family, socio-economic situation, academic, educational and vocational needs, and medical or psychological needs, as well as the youth's own expressed interest.⁵⁴

The proper representation of a youth will often involve inter-disciplinary approaches and support.⁵⁵ By design, the juvenile court in delinquency and unruly matters evaluates a

youth's needs from a social work perspective. Juvenile defense attorneys must have a special understanding of the client's development or maturity, psychological make-up and parent-child relationship, as well as specialized communication skills needed for younger clients in order to adequately represent a juvenile.⁵⁶ It is important to consult with any social service provider who is involved in your client's life, as well as to investigate whether their involvement would benefit your client. A multi-faceted approach is usually needed for the disposition phase; it may become necessary to subpoena all persons involved in your client's life: DJJ workers, DFCS workers, psychologists, teachers, coaches, mental health providers, clergy, etc.

D. Case Flow Map



E. Summary of the Georgia Juvenile Court Process

This section describes the series of events occurring within the juvenile justice system.

Complaint/Charge

A complaint or charge begins the process through which the youth may be adjudicated “delinquent,” “unruly,” or prosecuted as an adult. Youth may be referred to the court through complaints or charges from law enforcement, school resource officers, parents and/or other citizens. Youth must be advised of their Miranda rights prior to questioning if they are in custody and being interrogated.⁵⁷ However, many youth do not fully understand the meaning of the Miranda rights and often believe that if he/she is cooperative with authorities he/she will be released and not prosecuted.⁵⁸ Further, the youth may respond to questions even after acknowledging an understanding of his/her rights.

Intake/Temporary Detention

Youth can be brought into detention once the complaint or charge has been issued.⁵⁹ A youth may be detained if it is necessary to protect the youth or public, or prevent the youth from running away, or if the child is without proper supervision.⁶⁰

The court receives the complaint and either the court, clerk or probation officer considers if there is probable cause and validity to the complaint/charge and whether to commence a case in juvenile court.⁶¹ The probation officer may decide to handle the case informally and file an Informal Adjustment Agreement with the clerk of the juvenile court.⁶² If the case is informally adjusted, the youth will not appear before the judge and must comply with the terms of the agreement, which is basically informal probation. If the youth fails to comply with the agreement, he/she will be brought before the judge for adjudication.

If a case is referred to the court and the youth is not detained, he or she must then participate in an intake conference or in a probable cause hearing. Prior to beginning the initial conference between a youth and an officer of the court, the youth must be advised of his/her rights.⁶³ Remember that the client may be confused about Miranda rights and the role of the intake officer. Incriminating statements made during intake are not admissible during adjudication, however they may be used at disposition. The court or intake officers may also make the determination whether a youth should be detained until his/her probable cause hearing. A juvenile may be detained if detention or care is required to protect the person or property of others or of the youth.⁶⁴ A youth may also request that he/she be detained to protect him/herself from imminent bodily harm.⁶⁵

Indictment under SB440

Youth 13 years of age or older who have committed one of Georgia’s “seven deadly sins” (murder, rape, armed robbery with a firearm, aggravated child molestation, aggravated sodomy, aggravated sexual battery and voluntary manslaughter) fall under the jurisdiction of the superior court with prosecution decisions being made by the District Attorney.⁶⁶ If convicted in superior court, the youth is committed to the Department of Corrections. However, he/she must be housed in a special youth confinement unit until reaching the age of 17.⁶⁷

Probable Cause/Detention Hearing

If a youth is detained, an informal detention hearing, like a probable cause hearing, must occur within 72 hours.⁶⁸ If the 72 hour period falls on a Saturday, Sunday or legal holiday, then the hearing should be held on the next day that is not a Saturday, Sunday or legal holiday.⁶⁹ The court determines whether there is adequate evidence, which would justify allowing the case to proceed and a petition to be filed.⁷⁰ Youth have a right to counsel during this hearing and should be notified of their right to remain silent prior to commencing the hearing.⁷¹ Hearsay is admissible.⁷² The court also makes a decision as to whether the youth should stay in detention until the adjudicatory hearing.

Petition Filed

The petition is the formal charging document alleging that a youth is delinquent or unruly. A delinquent act is defined as:

- An act which is a crime as defined by the laws of Georgia or another state if the crime occurred there;
- Violations of federal law and local ordinance;⁷³
- Disobeying the terms of probation or the court's supervision;
- Failing to appear as required by a citation issued for violation of O.C.G.A. § 3-3-23 (Underage possession of alcohol).⁷⁴

An unruly youth is a youth who:

- Is subject to the compulsory school attendance law and habitually truant from school;
- Habitually disobeys his or her parents/guardians and is ungovernable;
- Has committed a status offense, an offense applicable only to a youth;
- Runs away from home without just cause and consent;
- Wanders or loiters about the streets of any city, or in or about any highway or any public place, between the hours of 12:00 Midnight and 5:00 A.M.;
- Disobeys the terms of supervision contained in a court order which has been directed to such youth who has been adjudicated unruly;
- Has committed a delinquent act and is in need of supervision, but not of treatment or rehabilitation; or
- Patronizes any bar where alcoholic beverages are being sold, unaccompanied by such youth's parents, guardian, or custodian, or possesses alcoholic beverages; and
- In any of the foregoing, is in need of supervision, treatment, or rehabilitation.⁷⁵

The petition must be filed within 72 hours of the probable cause/detention hearing if the youth continues to be detained⁷⁶ or within 30 days if the youth is released at the probable cause/detention hearing.⁷⁷ This period may be extended if the court makes a finding of fact explaining the delay. The petition is often filed at the probable cause/detention hearing. The petition may only be filed if the court or someone authorized by the court has determined that there is probable cause and that doing so is in the best interests of the youth.⁷⁸ If a youth is never detained the petition must be filed within 30 days of the filing of the complaint.⁷⁹

Discretion to Transfer to Superior Court

At any stage after the petition has been filed, the state's attorney may request a juvenile court judge to hold a hearing to determine whether to transfer to superior court cases where the youth is at least 13 and has committed a crime punishable by death or life imprisonment if committed by an adult or has committed a crime causing serious bodily

injury to a victim.⁸⁰ The court may, on the state's motion, transfer a case involving a juvenile who is at least 15 with an allegation of a delinquent act.⁸¹ These transfers terminate the jurisdiction of the juvenile court over the youth with respect to adjudication for the delinquent act.⁸² Statements made by youth at juvenile court hearings are not admissible in superior court over objection.⁸³

Adjudicatory Hearing

During the adjudicatory hearing the court hears evidence on the petition against the youth and formally determines whether acts alleged were committed by the youth and whether the youth is delinquent or unruly, depending on the nature of the petition. The hearing for detained youth must occur within 10 days of the petition being filed, or within 60 days if the youth is not being detained.⁸⁴ The state has the burden to prove the case beyond a reasonable doubt.⁸⁵ If the youth does not admit to the charge, and the judge determines that the state has not proven the case beyond a reasonable doubt, the youth's case is dismissed and no further hearings are required.

Disposition Hearing

The disposition hearing may occur immediately after adjudication, and must be held within 30 days of adjudication if the youth is detained.⁸⁶ If a youth is not detained, disposition should occur within a reasonable amount of time following adjudication.⁸⁷ The court must determine whether the youth is in need of treatment, rehabilitation, or supervision.⁸⁸ The youth has the burden of proof to show by clear and convincing evidence that he/she is not in need of treatment, rehabilitation, or supervision if found to have committed a delinquent or unruly act.⁸⁹ If the court finds the youth does not need treatment, rehabilitation, or supervision, the court may dismiss the proceedings and release a youth from detention and further court involvement.⁹⁰

If the youth is not detained, a defense attorney should take advantage of the opportunity to schedule disposition at a later date to allow time to determine an appropriate disposition plan with the client. Further, a good defense strategy is to urge the client to take steps on his/her own, such as self imposed community service, or restitution. Self-initiative and expressions of remorse may persuade the court against creating a delinquent record for the youth at adjudication. The court can change or modify its order if the changed circumstances would require such in the best interests of the youth.⁹¹

If a youth is adjudicated delinquent and found in need of treatment, rehabilitation, or supervision, the court may order:⁹²

- Any disposition authorized for a deprived youth under O.C.G.A. § 15-11-55;
- Probation under conditions the court prescribes, even if the term extends beyond the youth's 18th birthday;⁹³
- Commitment to the Department of Juvenile Justice for up to two years;
- Restitution to the victim of the offense;
- Community service;
- Fines;
- Suspension or prohibition of the issuance of the youth's driver's license;
- Completion of high school or obtaining a GED;
- Detention in a Youth Development Center for up to 90 days;
- Participation of the youth's parent(s)/guardian in counseling.⁹⁴

If a youth is adjudicated unruly, the court may order any or all of the above conditions. However, a youth may not be committed to the Department of Juvenile Justice unless the court expressly finds that the youth is not amenable to treatment or rehabilitation.⁹⁵

If a youth is adjudicated delinquent for a designated felony, the court may order restrictive custody for a period of not less than 12 months and not more than 60 months in a YDC.⁹⁶ The youth will remain on intensive supervision for a year following the order for a designated felony.⁹⁷ In addition, for any youth adjudicated for a felony, the youth's school is given a copy of the court's findings⁹⁸ and the youth is subject to fingerprinting and photographing requirements as if he/she were an adult.⁹⁹

Post Disposition

Disposition does not necessarily conclude the court process; additional proceedings may occur after disposition. First, a youth has the right to appeal in the same manner as a criminal defendant.¹⁰⁰ Second, when the order of custody with DJJ nears expiration, DJJ may motion for an extension of DJJ custody.¹⁰¹ Third, a motion to modify a disposition order may be made by a party. Finally, a motion to terminate an order of disposition prior to its expiration may be made if it appears the purposes of the order have been accomplished.¹⁰²

F. Ethics

A lawyer shall provide competent representation through legal knowledge, skill, thoroughness and preparation, to a client.¹⁰³

Georgia Rules of Professional Conduct 1.1

A lawyer in juvenile court matters is bound to know, and is subject to, the standards of professional conduct set forth in statutes, rules, decisions of the courts and codes, cannons, or other standards of professional conduct.¹⁰⁴

IJA-ABA Juvenile Justice Standard 1.2

Lawyers in juvenile court are bound by the same ethical rules that govern practice in other settings. The writers of this manual consider the obligation and impact of juvenile defense to heighten the ethical and moral responsibility of juvenile court attorneys. The choice to examine this manual is a good faith effort to become competent in juvenile law and the specialty of juvenile defense. As competence is a part of an attorney's ethical duty, it will also be necessary to become familiar with, and eventually an expert of, the juvenile code and practice rules.

Achieving competence in juvenile practice will pave the way to proper and thorough preparation. Thorough preparation is essential to proper adjudicatory defense and disposition advocacy. In order to create an appropriate disposition plan, the attorney must speak with the client and examine a client's history and needs well before the court date. In order to ensure the desired case outcome and the client's success the juvenile court attorney must uphold his/her ethical duties.

A Lawyer shall abide by a client's decisions concerning the objectives of representation and shall consult with the client as to the means by which they are pursued.¹⁰⁵

Georgia Rules of Professional Conduct 1.2

“The Lawyer’s principal duty is the representation of the client’s legitimate interests.”

IJA-ABA Juvenile Justice Standard 3.1

A lawyer’s duties to a young client are not different from his or her duties to any other adult client.¹⁰⁶ Although a youth may not have the same degree of wisdom and experience as an older person, this does not prevent him/her from contemplating and presenting an opinion on what he/she would prefer.¹⁰⁷ When a client’s ability to make adequately considered decisions is impaired, whether because of minority, mental disability, or for some other reason, the lawyer should, as far as possible, maintain a normal attorney-client relationship with the client.¹⁰⁸

Empowering the young client and ensuring his/her autonomy, is a fundamental concept in an adversarial system that is based upon the opportunity to defend or promote what happens to one’s person or property.¹⁰⁹ This demands that the lawyer prevent him/herself from substituting client’s expressed interests and objectives with his/her own beliefs of what is in the best interest of the client. This does not mean that the attorney for a young client may not counsel the client on what he/she believes is in the best interest of the client. However, after counseling the client, an attorney is ethically obligated to carry out the client’s objectives even if this may lead to adverse consequences.¹¹⁰ When counseling a young client, the attorney should be cautious of not imposing his/her own objectives upon an impressionable client.¹¹¹ Should an attorney feel that his/her client is incapable of considered judgment on his/her own behalf, the defense attorney should evaluate whether an objective representative of the court, such as a guardian ad litem (GAL), should recommend what is in the youth’s best interest and aid in the court’s ultimate decision, and then request that the court appoint a GAL.¹¹² Ultimately, the best interest decision-making should remain with the judge.

This manual promotes a model of legal defense advocacy for youth that ensures client autonomy, involvement in the process, and advocacy centered on the interests and wishes of the client.¹¹³ An attorney is ethically bound to zealously advocate for the wishes of the client, to provide advice and counsel regarding the client’s wishes, and to respect attorney-client confidentiality.¹¹⁴ To fully adhere to this model, a juvenile defense attorney must know all the rights to which the client is entitled under statutory law and case law.¹¹⁵

The lawyer shall keep the client informed about the status of the matter and promptly comply with reasonable requests for information.¹¹⁶

The lawyer shall explain a matter to the extent necessary to allow the client to make informed decisions regarding representation.¹¹⁷

Georgia Rules of Professional Conduct 1.4

As discussed above, communicating with the client is critical, although often difficult. Keeping the client apprised on the progress of his/her case is crucial.¹¹⁸ By providing the client with complete information about his/her situation, the client has the opportunity to fully participate in his/her legal defense and contribute to the outcome.¹¹⁹

A lawyer shall not reveal information relating to the representation of a client unless the client consents after consultation.¹²⁰

Georgia Rules of Professional Conduct 1.6

From the onset, the lawyer should seek to establish a relationship of trust and confidence with the client.

IJA-ABA Juvenile Justice Standard 3.3

As discussed above, the confidential nature of the attorney client relationship may be a difficult concept for the client and parent(s) to understand and/or accept. It is often difficult to get a client to believe that the attorney will not disclose information to others without his/her permission. It is equally difficult for the parent(s) to accept that there may be information about the youth that the parent(s) may not have knowledge of or access to.¹²¹ Despite the difficulty of this aspect of legal representation of a minor, this is one of the most crucial duties of a juvenile defense attorney.

V. ATTORNEY-CLIENT RELATIONSHIP

A. Attorney Client Conference

The initial client interview is the first and most crucial opportunity to build rapport with the client. It is important to initiate face-to-face contact with the client prior to the court date. This is important not only for case preparation but also as a means of establishing trust with the client. In large circuits or courts it is common for defenders to perform interviews just before entering court. Avoid this if possible, but if it cannot be avoided, try to learn as much as possible about the client under the circumstances. If a face-to-face interview is not possible try to conduct a phone interview with the client. Make it clear to the client that the more you know about him/her and his/her family the more helpful it can be in court. How the interview is conducted may have a tremendous impact on the ability to establish trust and rapport with the client.

1. Building Rapport with the Client

The best way to begin to build rapport with the client is to begin the interview by trying to make the client feel at ease with small talk. Do not immediately expect to connect with the client; it will take time to establish trust. However, your initial interview may begin this process. Over time, maintaining contact with and interest in the client will build his/her trust. Regular contact with the client will also keep him/her up to date on deadlines, responsibilities, and progress of the case. It also allows the attorney to monitor the progress of the client's post disposition supervision and to provide guidance or advocacy prior to further court involvement.

2. Process

Schedule the interview to allow for ample time to speak with the client. Early in the interview, explain to both the client and parent(s) the role of defense counsel and the court process generally. It is important to clarify that a juvenile defense attorney represents the legal interests of the youth and not the parent(s). Also, make sure to thoroughly explain confidentiality to both the client and parent(s). The youth may feel empowered by having this explained with the parent present. Explain that confidentiality is broken by the presence of another, making the interview alone with the client necessary.¹²² Make sure to clarify the exceptions for confidentiality for future crimes and misrepresentations to the court.¹²³

Explain that you will speak with the client about the case alone and that, afterward, you can speak with the parent if he/she has any concerns or anything additional he/she would like to add. Be prepared that the seeming exclusion of the parent may create feelings of resentment or mistrust on the part of the parent.¹²⁴ It is important to try not to completely alienate the parent because he/she may often be the only means to access the client.

In many cases the parent is the complainant and is still very hostile about the situation leading to the charges. Try to diffuse potential animus on the part of the parent(s) and explain the larger repercussions of detention or probation that may increase the likelihood of future charges and court involvement.

Before speaking with the client alone you should gather important background information that only the parent may know. However, as best as possible, direct these questions to the client and allow the client to answer.

3. Communication

Conducting a thorough interview with a juvenile can be challenging. The juvenile may have a limited understanding of the legal terms being utilized and may be too intimidated to ask questions. Have the juvenile describe the process in his/her own words; limit the use of legal terms and complex questions.¹²⁵ Keep language simple and concise. Juveniles will most likely describe the events that culminated in the charges like a child would; they will omit names, times, and other pertinent information. They often do not know the last names or telephone numbers of their friends or acquaintances that could be helpful witnesses. You will probably need to be creative in asking questions and interviewing other sources to get at the heart of your case.

In order to hear the client's account of the allegations ask him/her to describe what took place without interruption.¹²⁶ Once the client has finished talking then ask questions.¹²⁷ Once all of the questions are complete, go over the client's account detail by detail and make sure nothing has been omitted or misunderstood.

B. Preparing the Client for Court¹²⁸

The explanation of court procedure during the initial interview is a useful way to prepare the client for court. Explain the meaning of the terms admit and deny and the possible outcome for the client's case. Assist the client with developing realistic expectations about the court process, including possible options and outcomes. This may help lessen anxiety and make him/her more able to direct or assist in his/her defense.

Instruct the client on what to wear on the day of court. Make sure to explain what is and is not appropriate. For example, clarify that more material and less skin is better, meaning no shorts or small tops, and pants should not be baggy. Specify that shirts should be tucked in, hair should be combed, boys should not wear earrings, and no one should wear big jewelry.

Let the client know that he or she should stand when the judge is speaking to him/her and that he/she cannot answer with nods but must speak audibly. Tell the client to think about what he/she will say to the judge when asked about the charges. Perhaps, have the client consider writing a letter of remorse for disposition and taking some steps towards restorative justice on his/her own.

Make it very clear to the parent and client that they should not discuss the case with anyone else when you are not present.

Keep in mind that the client may say that he/she wants to admit to the charges, but has in fact been pressured by a parent/guardian to admit to charges and accept his/her punishment as the consequences for his/her actions.¹²⁹ Also, be aware that the parent in many cases is the complainant and may be pressuring the youth to accept responsibility.¹³⁰ Make the client aware of possible outcomes with either an admission or denial.

PREPARING THE CLIENT FOR COURT¹³¹

- Tell the client to stand when addressed by the judge.
- Review all questions the judge may ask before accepting a plea.
- Tell the client to practice what he/she will say to the judge.
- Bring family, friends, teachers, ministers, coaches.
- Conservative dress is preferred.
- Hair should be neatly styled.
- No big jewelry.
- Politeness counts.
- No gum chewing.
- No beepers or cell phones.

Table 4

Checklist for the Client Interview

- Introductions and building rapport.
- Explain the role of a defense attorney.
- Explain confidentiality and note taking.
- Explain what you will need from the client and his or her parent.
- Explain court procedure.
- Explain possible adjudication and disposition outcomes.
- Gather social background information.
- Explain appropriate dress/behavior in court.
- Get the release of information signed.
- Speak with client alone to discuss his/her account of the events.
- Discuss client's questions or interest in outcomes.
- Discuss questions and schedule next meeting or court date.
- Make sure the client has transportation and directions to court.
- Tell the client to arrive early on the day of court.
- Let the client know there may be a long wait on the day of court.

Table 5

VI. PREPARING YOUR CASE

A. Discovery

The Georgia juvenile court discovery law went into effect on July 1, 2003 and, as a result, discovery varies according to local practice. Some courts require compliance with the formal legislative discovery procedures while others allow a variety of informal discovery practices. For example, in many courts, juvenile defense attorneys have access to court or district attorney's files in order to review and copy documents related to the case. It is good idea to identify the local practice prior to filing a formal request for discovery. Also, when responding to requests for discovery consider whether the materials requested are covered by privilege, the work product doctrine, or the Fifth Amendment.

Under the Georgia Juvenile Code, the discovery process involves an exchange of written requests between the prosecution and defense. The court does not have to be involved in the process unless a request is denied. However, the court on its own motion may release whatever information it finds appropriate to defense counsel.¹³² Under the code, a youth charged with a delinquent act may, through counsel, present a written request to the prosecution to have full access of their file for inspection, copying, or photographing of the following documents:

- A copy of the complaint;
- A copy of the petition;
- The names, addresses, and telephone numbers of each witness to the occurrence that forms a basis for the charge;
- Any written statement by the youth or any witness that relates to testimony the prosecution intends to solicit;
- Transcriptions, recordings, and summaries of any oral statement of the youth or any witness;
- Any scientific or other report relating to physical evidence that is intended to be introduced;
- Any photographs or physical evidence that are intended to be introduced; and
- Copies of the police incident report and supplemental reports.¹³³

If a defense request for discovery is complied with, there is a duty to make reciprocal discovery available to the district attorney.¹³⁴ A prosecuting attorney may also submit a written request for discovery related to the intent to offer the defense of alibi.¹³⁵

All requests for discovery must be responded to promptly, but no later than 48 hours prior to adjudication.¹³⁶ If additional information is secured by the district attorney following a request for discovery, it should be promptly presented to defense counsel.¹³⁷

If a request for discovery is refused, an attorney may apply for an order granting discovery.¹³⁸ The motion must certify that the request for discovery was made and refused.¹³⁹ The court has discretion to deny the motion. Failure to comply with a court order for discovery may lead to a continuance, the exclusion of undiscovered evidence, or other appropriate measures.¹⁴⁰ Defense counsel has a mutual obligation to provide information to the state.

B. Investigation

It is essential to investigate your case beyond the materials supplied by the prosecution. The theory of the defense case will guide the investigation and what facts need support. Begin investigating as soon as possible and try to do the investigation yourself. Also, make sure to record any statements by witnesses. Have the witnesses review their statements and initial them or secure affidavits.

C. Witnesses

Try to speak with witnesses as soon as possible. It is important to prepare the witnesses for testimony. Remember to review your questions and potential questions the district attorney will ask the witness before he/she reaches the stand.

D. Confessions

Out of court confessions by juveniles are insufficient to support an adjudication of delinquency without corroborating evidence.¹⁴¹ Statutory safeguards for adults are the same for juveniles.¹⁴² All confessions by juveniles should be reviewed with care.¹⁴³

E. Charge/Plea/Disposition Bargaining

- (a) Counsel may conclude, after full investigation and preparation, that under the evidence and the law, the charges involving the client will probably be sustained. Counsel should so advise the client and, if negotiated pleas are allowed under prevailing law, may seek the client's consent to engage in plea discussions with the prosecuting agency. Where the client denies guilt, the lawyer cannot properly participate in submitting a plea of involvement where the prevailing law requires that such a plea be supported by an admission of responsibility in fact.
- (b) The lawyer should keep the client advised of all developments during plea discussions with the prosecuting agency and should communicate to the client all proposals made by the prosecuting agency. Where it appears that the client's participation in a psychiatric, medical, social or other diagnostic or treatment regime would be significant in obtaining a desired result, the lawyer should so advise the client and, when circumstances warrant, seek the client's consent to participation in such a program.¹⁴⁴

IJA-ABA Juvenile Justice Standards, Standards Relating to Counsel for Private Parties,
Standard 7.1

1. Types of Pleas

In civil cases such as juvenile court adjudications, 'pleas' are generally referred to as admissions.¹⁴⁵ When the client is interested in entering an admission, it is important to ascertain whether the client has a clear understanding of the meaning of the plea and his/her right to go to trial. At the beginning of adjudication, the court or district attorney will inquire as to whether the client will enter an admission to the charges or a denial of the charges. If a youth enters an admission, the judge may hear information related to the specifics of the admission and decide whether the admission is accepted.¹⁴⁶ If a youth denies the allegations of the petition, the court will then proceed with the adjudicatory hearing.

a. Special Circumstances

There are some situations that require special consideration before a plea is entered. One is when the client is not a United States citizen. Sometimes the juvenile may not understand English very well, and there will be a need to motion the court for an interpreter or ask for court funds to hire an interpreter for him/her or for the parent(s). Also, make sure to investigate any possible immigration ramifications that could arise from an admission or an adjudication of delinquency.

Second, always be sure to ascertain whether the client is sufficiently mature or competent to understand and appreciate the nature of the charges, the consequences of his/her decisions and whether he/she can help in the preparation of his/her defense. If there is a question of his/her abilities, there may be a need to motion the court for a competency evaluation.

2. Plea Bargaining

Plea-bargaining is overused in the resolution of cases in juvenile courts.¹⁴⁷ Before entering a plea for the client, exhaust all other advocacy opportunities and critically evaluate the potential success in trial after full investigation and thorough preparation. However, when appropriate, plea negotiation can ultimately assist the client with reduced charges and disposition outcomes with which the client is willing to agree.

Prior to proceeding forward with a plea, consider the following:¹⁴⁸

- Have you completed a full investigation?
- Have you exhausted all possible defenses?
- Have you done thorough legal research on the case?
- Can you potentially prevent the introduction of damaging evidence?
- Have you interviewed all the witnesses?
- Have you reviewed the strength of the prosecution's case?
- Is this the best available option for the client?

If after thorough contemplation of these questions the attorney is led to the conclusion that plea negotiation is the most viable option for the client, consult with the client about his/her interest in pursuing a plea.

The plea bargaining process can be viewed as a contract negotiation process. It is useful to maintain written records of the negotiating process or a written document relaying the details of the agreement. To initiate the negotiation process, contact the district attorney prior to the trial date.

It is essential to consult with the client prior to initiating plea-bargaining discussions. Ensure that the client enters the plea with full understanding.¹⁴⁹ It is useful to review the plea colloquy with the client prior to entering a plea before the court.

Discussing whether a client wants to admit the charges can be tricky because many juveniles just want to "get it over with." Take the time to explain what a plea bargain would involve; be sure to illustrate that an admission should only be used when it has a basis in fact. Although every juvenile court handles pleas differently, listed below are some common questions to review with the client:

PLEA COLLOQUY¹⁵⁰

- What is your name?
- How old are you?
- What grade are you in at school?
- The judge may read the charges from the petition.
- The judge may explain the charges and ask the client if he/she understands them.
- Have you discussed the charges with your attorney?
- Do you understand that you have the right to deny these charges?
- Do you understand that you have a right to go to trial?
- Do you understand that the prosecution must produce witnesses against you in court and that you have the right to confront and cross-examine these witnesses?
- Do you understand that you have the right to subpoena witnesses to testify on your behalf in court?
- Have you been made any promises in exchange for a plea?
- Are you entering an admission because of an agreement between you and the district attorney? The agreement should be read into the record.
- Do you understand that I can refuse to accept this agreement and impose any sentence that I think is appropriate, including confinement?
- Except for the agreement between your attorney and the district attorney, has any other person made any promises or threats to you or to any of your family or friends in order to force you to plead guilty?
- Are you entering an admission freely and voluntarily because you committed the acts charged in the petition?
- Explain in your own words what happened.

Table 6

VII. WHO IS THE CLIENT AND WHAT DOES HE/SHE NEED?

A. Mental Illness, Mental Retardation, and Developmental Disabilities

Many youth involved with the juvenile justice system have mental illnesses or developmental disabilities.¹⁵¹ According to the DJJ, in 2003 nearly 60% of their population had one diagnosable disorder.¹⁵² These numbers and research indicate that there is a higher prevalence of mental illness in juvenile court involved youth than in the general population.¹⁵³ Although a common perception of juvenile justice youth is that they are in need of punishment, for many the behavior is linked to their unmet health needs and they are truly in need of treatment.¹⁵⁴ Therefore, it is important for defense attorneys to be aware of the common diagnoses and characteristics of mental illnesses or disorders to aid in a full understanding of the client and his/her needs. Early detection and identification is critical for appropriate disposition planning and ensuring the success of the client. In addition, knowledge of the following information may help in the identification of an incompetent client or a client who has not previously received services for these needs.

It is important to recognize that youth with unmet mental health needs exhibit behavior or conduct that is symptomatic of their disorders.¹⁵⁵ It is worthwhile to learn more about mental illness and share this knowledge with the court through psychiatric evaluations and expert witnesses.

Similar to the prevalence of mental disorders in the system there are anecdotal accounts of the prevalence of developmental delays among court-involved youth. Youth with low intellectual functioning may well be considered incompetent to stand trial. If competent, these youth may be better served in the community or in a therapeutic treatment setting.

If at any time the evidence indicates that a youth may be suffering from a mental illness or is developmentally disabled, the court may order an evaluation of the youth to determine his/her condition.¹⁵⁶ In addition, the court has the authority to order the youth and/or his/her parents to attend and participate in counseling to deter future delinquent/unruly acts or other conduct that is harmful to the youth or society.¹⁵⁷

1. Common Mental Illnesses Found in Juvenile Court

Below is a list of common mental health disorders found among juveniles involved with the juvenile court.¹⁵⁸

Attention-Deficit/Hyperactivity Disorder (ADHD)

ADHD is characterized by a persistent pattern of inattention, hyperactivity and impulsive behavior.¹⁵⁹ ADHD interferes with developmentally appropriate social and academic functioning.¹⁶⁰ Individuals with ADHD often have difficulty sustaining attention in tasks or play activities and find it difficult to follow tasks through to completion.¹⁶¹ ADHD youth often appear to not be listening or paying attention.¹⁶² Although most youth with ADHD have normal or above-normal intelligence, 40 to 60 percent have serious learning difficulties.¹⁶³ On a social level, youth with ADHD often have trouble developing meaningful relationships with peers and family members.¹⁶⁴

Bipolar Disorder

Bipolar disorder, also known as manic depression, involves one or more episodes of serious mania and depression.¹⁶⁵ “The illness causes a person’s mood to swing from excessively ‘high’ and/or irritable to sad and hopeless, with periods of a normal mood in between.”¹⁶⁶

These rapid mood shifts can produce irritability with periods of wellness between episodes or the young person may feel both extremes at the same time.¹⁶⁷ Youth with the disorder are often described as unpredictable, alternating between aggressive or silly and withdrawn. “Bipolar disorder typically begins in adolescence or early adulthood and continues throughout life.”¹⁶⁸

Conduct Disorder

Conduct disorder is a repetitive and persistent pattern of behavior in children and adolescents in which the rights of others or basic social rules are violated.¹⁶⁹ The behaviors fall in four categories: aggressive conduct that threatens or causes physical harm to animals or people; actions that cause property damage or loss; deceitfulness or theft; and serious violations of rules.¹⁷⁰ These behaviors cause significant impairment in social and academic functioning.¹⁷¹

Depression

To receive a diagnosis of depression, youth must experience several specific symptoms.¹⁷² Those symptoms include: depressed or irritable mood, loss of interest or pleasure, appetite and/or sleep disturbances, fatigue, feelings of worthlessness, and suicidal thoughts or behavior.¹⁷³ The symptoms must cause significant distress or impairment in the youth’s functioning.¹⁷⁴ The onset of depression may be attributed to family history, traumatic or stressful life events such as losing a parent or friend, divorce, discrimination, and other physical or psychological problems.¹⁷⁵ Experiences with abuse, neglect, or other trauma, or chronic illness may increase the likelihood of depression.¹⁷⁶ Depression in youth often co-occurs with other mental health problems such as anxiety, bipolar, or disruptive behavior disorders.¹⁷⁷ “Adolescents who become clinically depressed are also at a higher risk for substance abuse problems.”¹⁷⁸ Depression in youth is also associated with an increased risk for suicide.¹⁷⁹

Learning Disorders (LD)

A learning disability is a disorder in youth of average or above average intelligence that affects one or more of the basic psychological processes involved in understanding or using language and manifests itself as difficulties in listening, thinking, speaking, reading, writing, spelling, or the ability to do math.¹⁸⁰

Mental Retardation

Mental retardation is characterized by significantly sub-average intellectual functioning with an IQ of 70 or below.¹⁸¹ Mental retardation is a disability resulting from the interaction between the limitations in capacity (intelligence and adaptive skills) and the demands of the environment.¹⁸² Georgia statutes define a mentally retarded person as “having significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and originating in the developmental period.”¹⁸³

Mental retardation can be defined as mild, moderate, severe or profound.¹⁸⁴

Mild Mental Retardation: IQ level 50-55 to 55-70

Moderate Retardation: IQ level 35-40 to 50-55

Severe Retardation: IQ level 20-25 to 35-40

Profound Retardation: IQ level below 20-25

Post-traumatic Stress Disorder (PTSD)

Post-traumatic stress disorder (PTSD) is an extremely debilitating condition that can occur after exposure to a terrifying event or ordeal in which grave physical harm occurred or was threatened. Traumatic events that can trigger PTSD include violent personal assaults such as rape or mugging, natural or human-caused disasters, accidents, or military combat. People who have been abused as children or who have had other previous traumatic experiences are more likely to develop the disorder.

B. Competency

The purpose of the juvenile competency article in the juvenile code is to provide the court with a mechanism to provide treatment, rehabilitation, support, and supervision for youth who are adjudicated dependents of the court because of their inability to participate in their adjudication.¹⁸⁵ The goal is the restoration of mental competency that will enable participation in the process of adjudication.¹⁸⁶

THE DEFINITION OF MENTAL COMPETENCE
Having sufficient present ability to: <ul style="list-style-type: none">• Understand the nature and objectives of the proceedings;• Comprehend his/her own situation in relation to the proceedings; and• Render assistance to the defense attorney in the preparation and presentation of the case.¹⁸⁷

Table 7

1. Motion for a Competency Evaluation

If at any time after talking with the client, his/her behavior or mental ability provides any indication that the youth may not be competent, the court may on its own motion, or the motion of any party, stay all proceedings and order an evaluation of the youth's competence to stand trial.¹⁸⁸ During the evaluation period, the time limits of the case are tolled.¹⁸⁹ If there are any concerns about the client's ability to assist in his/her own defense, it is prudent to err on the side of caution and seek an evaluation rather than to allow the case to proceed.

No statements made by the youth or information obtained in the course of the evaluation, hearing, or other proceeding related to the determination of competence shall be admitted into evidence against the youth in a future proceeding.¹⁹⁰

The youth must be evaluated by a qualified examiner¹⁹¹ who will submit a written report to the court within thirty days of the order for evaluation.¹⁹² The report will contain: the reason for evaluation, procedures used, available background information, and results of the mental status exam including diagnosis of any psychiatric symptoms, cognitive deficiency, or both.¹⁹³ The evaluation will describe the abilities and deficits of the youth under the standard of competence defined above.¹⁹⁴ The evaluation will state an opinion regarding the potential

significance of the youth's mental competency, strengths, and weaknesses.¹⁹⁵ Finally, the report will contain an opinion on whether the youth should be found competent.¹⁹⁶

The district attorney, defense counsel and the court will receive copies of the report within five working days of the court's receipt of the evaluation from the examiner.¹⁹⁷

If the examiner considers the youth to be incompetent, the report should include a projection of the probability that competence will be achieved in the foreseeable future.¹⁹⁸ The report should also contain recommendations for the level and type of remediation necessary and/or modification of court procedures to compensate for the client's needs.¹⁹⁹ Upon showing of good cause by a party or the court's own motion, the court may order additional examinations by other qualified examiners.²⁰⁰

The mental competency hearing will be held within sixty days of the initial order for evaluation.²⁰¹ At least ten days prior to the hearing, notice must be provided to the: client, parent/guardian, guardian ad litem, defense counsel, and the district attorney.²⁰² Those same parties will be provided notice of the court's order within ten days of the hearing.²⁰³

The burden of proving mental incompetence is on the youth.²⁰⁴ The standard of proof is by a preponderance of the evidence.²⁰⁵ At the hearing, defense counsel has the opportunity to present evidence, call, examine, and cross-examine witnesses.²⁰⁶ The court's findings are based upon any evaluations by court appointed examiners or independent evaluators hired by defense counsel or third parties.²⁰⁷ The qualified examiner is considered the court's witness.²⁰⁸

If the client is found incompetent, the youth may be adjudicated a dependent of the court.²⁰⁹ If not previously appointed, a guardian ad litem *will* be appointed when the youth is adjudicated a dependent.²¹⁰ If the client is accused of an act that would be a misdemeanor, the court can dismiss the petition without prejudice.²¹¹

Upon adjudication of dependency, the court will appoint a plan manager to construct a plan to treat the youth.²¹² The plan manager can be the guardian ad litem or any other person who is under the supervision of the court.²¹³ The competency plan must be submitted within thirty days of the adjudication of dependency and is developed in a meeting convened by the plan manager. The meeting is attended by the parent or guardian, youth's attorney, state's attorney, guardian ad litem, mental health/retardation representatives,²¹⁴ and the probation officer.²¹⁵ The plan manager may also request other relevant persons attend the meeting, including but not limited to: a representative from the division of public health, a youth protective services worker, persons from public or private resources to be utilized in the plan, and any interested family member. The plan manager is also responsible for collecting any previous histories, evaluations, or records from the persons at the meeting.²¹⁶

The plan should include the specific deficits to be addressed.²¹⁷ The plan will also include specific information about how the child will be supervised to protect the community and the child.²¹⁸ An outline of a plan to provide treatment, rehabilitation, support or supervision services possible within the current resources will also be included.²¹⁹ Additionally, the plan will identify all parties including the youth, agency representatives, and other persons responsible for each element of the plan.²²⁰

A hearing for approval of the plan must be held within thirty days of its submission to the court.²²¹ The plan manager will identify any persons required to be notified of the hearing at least ten days prior to the hearing.²²² The victim will also be provided notice and given the opportunity to be heard and present a victim impact statement to the court.²²³ The judge will

make a determination about sequestration of witnesses in order to protect privileges and confidentiality rights of the client.²²⁴

At the disposition hearing, the court may enter an order incorporating the competency plan.²²⁵ The court will review the plan every six months.²²⁶ The court can also review the plan at any time by the motion of any party if there is a change in circumstances regarding the youth.²²⁷

At the disposition and every review hearing, the court will consider whether the petition should be withdrawn, maintained, or dismissed upon grounds other than competence.²²⁸ If dismissed without prejudice, the state may seek to re-file if the youth later regains competence.²²⁹

If the court determines that the alleged act would be a felony if committed by an adult, the court may retain jurisdiction for up to two years.²³⁰ This may be extended for additional two-year periods.²³¹ If the act is a misdemeanor if committed by an adult, the court may retain jurisdiction for up to 120 days and this may not be extended.²³²

The district attorney may seek civil commitment pursuant to Georgia Code Chapters 3 and 4 of Title 37.²³³ If the youth meets the criteria for commitment the court may commit the youth to the appropriate agency.²³⁴ The need for inpatient treatment is present if there is a substantial risk of imminent harm to his/herself or others.²³⁵ The risk can be manifested in recent overt acts or expressed threats of violence that have a probability of injury.²³⁶ Inpatient treatment would be involuntary or court ordered.²³⁷

C. Race/Ethnicity and Culture

Cultural competence is a necessary and important element to juvenile defense work in a global society. A culturally competent juvenile defense attorney is able to recognize and respect the characteristics that may make the client unique. Being culturally competent means being sensitive to the race, ethnicity, and cultural differences of your clients and being respectful of those differences. Being culturally competent requires that personal biases do not effect or taint the degree of zealous advocacy on behalf of the client. Try to withhold your personal assumptions and generalizations about certain groups or classes of persons and attempt to learn about the individual client.²³⁸

If there is a language barrier, ensure that there is an interpreter present when you meet with your client and in court.

D. Gender

The juvenile justice system has struggled to identify best practices and model programs that would address the unique needs of boys and girls.²³⁹ Recently, the system has had to adapt to the increasing presence of girls. However, literature suggests that the system has yet to adequately respond to the programming and advocacy needs of girls.²⁴⁰

A great deal of research indicates that many girls involved with the system have a history of trauma and sexual abuse.²⁴¹ An estimated 70% of girls in the juvenile justice system have been sexually victimized.²⁴² As a result, many girls have unidentified and unmet mental health needs. Given the growing number of girls and the system's creation for boys, it is important to identify programs that are gender responsive to either the male or female client.

Although gender should have little impact on your trial advocacy, it is important, when creating a dispositional plan, to identify programs, mentors or resources that are responsive not only to gender but also to that individual client.

E. Lesbian, Gay, Bi-Sexual, Transgender, Intersex or Questioning “LGBTIQ” Youth

To date there is not a precise statistical picture of the numbers of LGBTIQ youth in the juvenile justice system either nationally or in Georgia. However, social scientists have conservatively estimated that in some juvenile justice systems LGBTIQ youth represent close to 10% of the overall population.²⁴³

A youth’s sexual orientation or gender identity (SO or GI) is rarely brought up when a young person is brought into the juvenile justice system. However, if the client is LGBTIQ, it may be an important element of the client’s legal needs. A young person’s sexual orientation or gender identity may be an underlying factor or directly related to the alleged delinquent behavior. A young person’s SO or GI will also be an important consideration during disposition planning and it may affect the client’s success or progress in a placement or program.

1. Charges and LGBTIQ Youth

In some instances, a charge against a LGBTIQ youth may be directly related to his/her sexual orientation or gender identity. A LGBTIQ youth may be charged with a sex offense for age-appropriate, consensual same sex activities after a parent discovers his/her child exploring his/her sexuality. A parent also may find a youth to be incorrigible based entirely on his/her LGBTIQ identity and bring forward a complaint. For some youth, strife at home due to sexual orientation or gender identity may lead to runaway charges or homelessness.²⁴⁴ Once on the streets, homelessness often leads to “survival crimes,” theft offenses, or other delinquent behavior.²⁴⁵

LGBTIQ youth often experience harassment and violence in school and at home. This treatment may be an underlying factor for delinquent behavior. A LGBTIQ youth with truancy charges may have been attempting to escape excessive bullying, harassment, or discrimination at school by peers or teachers rather than having a lack of interest in attending school or a desire to act out.²⁴⁶ Youth who are bullied because of being LGBTIQ may also fight back against assailants and end up with assault and battery charges.

Therefore, it is important to consider that the client’s alleged conduct could be related to his/her experiences as a LGBTIQ youth. Since harassment, rejection by family or homelessness may be an underlying factor that could serve to mitigate charges against LGBTIQ youth, it is important to have an understanding of whether the sexual orientation or gender identity of the client is at issue.

2. Dispositional Planning and LGBTIQ Youth

Because the delinquent behaviors of LGBTIQ youth may be a direct response to harassment or rejection that he/she is experiencing, the type of rehabilitative services the client may need should take into account the client’s LGBTIQ identity and provide a supportive environment where the client can express this identity. If available, look for programming or disposition plan elements that are responsive to these needs. Consider whether the potential placement will present a risk to the client’s physical safety and/or mental well-being. If there is limited availability of resources for LGBTIQ youth in the area, at least take steps to ensure the client’s sexual orientation or gender identity will not place him/her at risk in certain placements or programs. Placement in a detention facility may expose the client to further bullying by staff and peers. Also, when considering that LGBTIQ youth are at higher risk of suicide, placing a youth in such a facility could have tremendous implications. Finally, the dispositional plan

for the client's case should consider mitigating factors and provide for sentencing that is appropriate to the behavior considering these factors.

3. How to Address LGBTIQ with the Client

For all of these reasons, determining whether the SO or GI of your client is a factor in their case is imperative. And since any client could be LGBTIQ, it would be worthwhile to address issues of sexual orientation and/or identity in the usual course of the client interview and disposition planning.

Further resources are listed in the Appendix.

F. Immigration

Immigration law is a specialty area. However, become as familiar as possible with this specialized area of the law and some of the major provisions that relate specifically to juveniles. Due to the fact that this area of the law has so many nuances and changes so rapidly, it would be prudent to consult an attorney who specializes in immigration law if there are difficult immigration issues.

One of the first things to be aware of is that, according to the Board of Immigration Appeals, juvenile delinquency offense adjudications are not convictions under the Immigration and Nationality Act. Therefore, most juvenile dispositions do not, in and of themselves, result in immigration consequences. However, "bad acts" underlying some juvenile findings may result in immigration consequences. These include: engaging in prostitution, making false claims to U.S. citizenship, lying or using false documents for immigration benefits, illegally smuggling people across the border or "encouraging" them to cross, being or previously being a drug trafficker, drug addict, or drug "abuser," and being found in civil court to have violated a domestic temporary restraining order.²⁴⁷ Additionally, if a juvenile is tried and convicted as an adult, then the conviction will count for immigration purposes.²⁴⁸

If the client is in the custody of the U.S. Citizenship and Immigration Services ("USCIS," formerly known as the Immigration Naturalization Service), be aware of his/her due process rights. Advise him/her of his/her Fifth Amendment right to be silent. Furthermore, be aware of and enforce the "48 hour" hold rule.²⁴⁹ It is important to educate judges about the disastrous effects that deportation can have on the client and his/her family, including poverty, homelessness, emotional or physical violence, and/or separation from U.S. citizen relatives, if any.

Another immigration issue to be aware of is 'Special Immigrant Juvenile Status' (SIJS). In order to qualify for SIJS, a juvenile court in the U.S. must have declared the youth a court dependent, or have legally committed the youth to a state agency or department.²⁵⁰ If an undocumented immigrant youth is eligible for SIJS, then he/she may be permitted to obtain a green card.²⁵¹ If the juvenile applies for this status and is successful, he/she may remain in the U.S., work legally, qualify for in-state tuition at college, and in five years apply for U.S. citizenship.²⁵² However, if the application is denied, the youth might be deported so you need to weigh the benefits and risks. Although this relief is most often sought by youth in dependency proceedings, the door seems to be open to youth in delinquency proceedings, subject to certain requirements.²⁵³

THE DEFINITION OF A SPECIAL IMMIGRANT JUVENILE UNDER FEDERAL LAW

An immigrant who is present in the United States:

- Who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State and who has been deemed eligible by that court for long-term foster care due to abuse, neglect, or abandonment;
- For whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and
- In whose case the Attorney General expressly consents to the dependency order serving as a precondition to the grant of special immigrant juvenile status; except that,
- No juvenile court has jurisdiction to determine the custody status or placement of an alien in the actual or constructive custody of the Attorney General unless the Attorney General specifically consents to such jurisdiction; and
- No natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter.²⁵⁴

Table 8

Risks may be involved with applying for SIJS. For instance, the greatest risk is that if a youth's application is turned down, the youth is then exposed to the possibility of deportation by the USCIS.²⁵⁵ Because the delinquency or unruly petition is not confidential, the USCIS has the right to use any information in the petition to place the youth in removal proceedings. Removal proceedings are used by the USCIS to try to deport non-citizens the INS believes are not entitled to stay in the U.S. Removal proceedings take place in special immigration courts located in many states in the U.S. Removal proceedings are also known as "deportation proceedings" or "exclusion proceedings." Therefore, as the attorney, it is imperative to make sure that the youth is highly likely to win the SIJS status prior to submitting an application. Again, consult with an expert in the immigration field if necessary.

There is a list of further resources in the appendix.

G. Other Areas of Client Advocacy

During the course of representation, it may become apparent that the client has needs beyond the delinquent/unruly charges that led to the juvenile court. For the purposes of preparing a defense or disposition planning it may be worthwhile to consider the client's

mental health, education, living arrangements or other areas of need. For example, the client or his/her family may be homeless or otherwise in need of safe and secure housing or a client may have a learning disability that makes school a very frustrating experience. It is a good practice to maintain familiarity with the availability of various social/community resources in order to better serve the needs of the client and create a more comprehensive disposition plan that will ensure the client's success.

1. Educational Needs

a) Individuals with Disabilities Education Act (IDEA)

Various statutes have been created under federal law for the purpose of protecting the right to special education services. Special education is regulated by federal law known as the Individuals with Disabilities Education Act, or "IDEA."²⁵⁶ This law provides for free appropriate public education (FAPE) for disabled youths, including those involved in the criminal justice system.²⁵⁷

FREE APPROPRIATE PUBLIC EDUCATION UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

Free appropriate public education includes three components:

- The disabled youth is entitled to special education, which includes specially designed academic programs tailored to meet the unique needs of disabled youth.²⁵⁸
- Disabled youth are entitled to related services, including transportation and such developmental, corrective, and other supportive services as may be required to assist a youth with a disability in benefiting from special education.²⁵⁹
- Disabled youths have the right to transition services, which are a coordinated set of activities for a student that promote movement from school to post-school activities, including post-secondary education, vocational and trade schools, integrated employment, continuing and adult educational services, independent living, and community participation.²⁶⁰

Table 9

b) Section 504 of the Rehabilitation Act

Other federal acts also ensure that adequate assistance is available for disabled individuals. Section 504 of the Vocational Rehabilitation Act of 1973 (Section 504) prohibits discrimination against persons with disabilities by any program or activity that receives federal funds, including correctional facilities.²⁶¹ Section 504 applies to juvenile correctional facilities "to the extent that students with disabilities are excluded from school for misbehavior that may be related to the students' disability, or to the failure of the school program to meet the student's needs."²⁶² Under Section 504, a plan must be developed to outline accommodations that will allow the youth to participate in the general curriculum.²⁶³ Section 504 defines a person with

a handicap as a person having (1) a physical or mental impairment which substantially limits one or more major life activities, and (2) having a record of such impairment, or (3) being regarded as having such an impairment.²⁶⁴ One such identified life activity is learning.²⁶⁵

One important function of Section 504 is to provide protection to youth who are not covered under the IDEA. For instance, some youth who are diagnosed as having Attention Deficit Hyperactivity Disorder (ADHD) are not covered under the IDEA's "other health impairments" provision.²⁶⁶ These youth are eligible for services and accommodations of their disability under Section 504. This provision also covers youth who have purely physical disabilities that do not affect their ability to learn, and affords them the right to related services and accommodations such as transportation and special seating in classrooms.²⁶⁷ The IDEA does not apply to such individuals.

c) The Americans with Disabilities Act (ADA)

The Americans with Disabilities Act (ADA) also prohibits discrimination against persons with disabilities by programs that receive federal funds.²⁶⁸ The ADA expands on the protections provided under Section 504. This law requires such procedures, such as self-evaluations conducted by correctional facilities, to determine whether the implemented policies and practices at the facility "prevent equal access for the participation of persons with disabilities in the facility's services."²⁶⁹

For all intents and purposes, the implementation of these protections can be ordered by the court during the dispositional phase, and all social services agencies involved, including the schools, will be included in helping the juvenile. Your role, as defense attorney, is to make sure the dispositional plan incorporates these protections

d) Determinations of Disability under O.C.G.A. §15-11-149

O.C.G.A. §15-11-149 governs the disposition of a juvenile with a disability in the juvenile court. The juvenile court has exclusive original jurisdiction over "any youth who is alleged to be in need of treatment or commitment as a mentally ill or mentally retarded child."²⁷⁰ The statute gives the juvenile court the authority to report a youth that is suspected of having a disability to the appropriate institution or agency.²⁷¹ Under this section the court has the power to detain and commit a youth to the Division of Mental Health, Developmental Disabilities, and Addictive Diseases of the Department of Human Resources when the youth is determined to be mentally retarded or mentally ill based on a study and report ordered by the court.²⁷²

Section (b) of §15-11-149 places the responsibility of disability determinations upon the judge. The judge must determine whether the youth would be considered disabled according to the federal statutory definitions in the IDEA. Twenty U.S.C.S. §1401(3)(A)(i) – (ii) defines "child with a disability" to include a child with a mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and who, by reason thereof, needs special education and related services.²⁷³

Section 1401(3)(B)(i)-(ii) continues on to remedy the problem of defining a child with a disability when he/she is below the age of nine. The section states that the term "child with a disability" for a child ages 3 through 9 may

"at the discretion of the State and local educational agency, include a child . . . experiencing developmental delays, as defined by the state and measured by

appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and who, by reason thereof, needs special education and related services.”²⁷⁴

If a disabled youth has an IEP it must be made part of the record at disposition.²⁷⁵ This section is particularly significant because determinations about disabilities could have an important bearing on how the youth’s case is handled within the juvenile court system.

2. Common Disabilities

The following are some of the more common disabilities among youth involved with the juvenile court as defined by the Individuals with Disabilities Education Act. Definitions are helpful tools provided by the legislature to better understand which youth are considered to have a particular disability. This list is not exhaustive, and other disabilities are listed in 20 U.S.C.S. §1401.²⁷⁶

Learning Disabled(LD) or Specific Learning Disability (SLD):

A learning disability is a disorder in youth of average or above average intelligence that affects one or more of the basic psychological processes involved in understanding or using language and manifests itself as difficulties in listening, thinking, speaking, reading, writing, spelling, and the ability to do math.²⁷⁷

Seriously Emotionally Disturbed (SED) or Seriously Emotionally and Behaviorally Disturbed:

A Serious Emotional Disturbance is a condition exhibited by one or more of the following characteristics over a long period of time and to a marked degree that adversely affects the youth’s educational performance: (1) an inability to learn that is not attributable to intellectual, sensory, or health factors; (2) an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; (3) inappropriate types of behavior or feelings under normal circumstances; (4) pervasive, chronic unhappiness or depression; (5) tendency to develop physical symptoms or fears associated with personal or school problems. It should be noted that SED does not include youth who are simply socially maladjusted.²⁷⁸

Attention Deficit Disorder (ADD) and Attention Deficit Hyperactivity Disorder (ADHD):

ADD/ADHD is an educational handicap caused by substantial inability to pay attention, impulsivity (making a series of unpremeditated decisions with poor outcomes), distractibility, and/or hyperactivity that interferes with developmentally appropriate social or academic functioning.²⁷⁹ ADD/ADHD is covered under the IDEA in the “Other Health Impairments” provision in cases where the condition is a chronic or acute health problem that results in heightened alertness to environmental stimuli that causes the youth to have a limited alertness with respect to the environment.²⁸⁰

Mental Retardation (MR)/Mildly Intellectually Disabled (MID)/ Moderately Intellectually Disabled (MOID):

Mental retardation is a disability resulting from the interaction between the limitations in capacity (intelligence and adaptive skills) and the demands of the environment.²⁸¹ Georgia statutes define a mentally retarded person as “having significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and originating in the developmental period.”²⁸²

Language and Speech Disorders:

Language and speech disorders involve difficulty in understanding or using spoken language resulting from one or more of the following: (1) articulation disorder; (2) abnormal voice characterized by persistent, defective voice quality, pitch or loudness; (3) fluency difficulty; (4) inappropriate or inadequate acquisition, comprehension, or expression of spoken language; or (5) hearing loss.²⁸³

Other Health Impairments:

This catchall provision incorporates youth who have limited strength, vitality, or alertness due to chronic or acute health problems, such as a heart condition, tuberculosis, rheumatic fever, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, nephritis, or diabetes that adversely affects the youth's educational performance.²⁸⁴

Research states that learning disabilities and emotional disturbances are the most common types of disabilities among youth in correctional facilities.²⁸⁵

3. School Discipline

Under the Georgia Code, each local school board is required to have disciplinary policies adopted under the "student code of conduct."²⁸⁶ The policies are required to be age appropriate and include a progressive discipline process.²⁸⁷ The code of conduct must be distributed to each student upon enrollment.²⁸⁸ The local school board determines the disciplinary action that will be taken for violation of the code of conduct.²⁸⁹

Students facing school disciplinary action have the right to notice, a hearing, legal representation, and to present and respond to evidence during a tribunal hearing.²⁹⁰ The disciplinary tribunal may make determinations of short-term suspension, long-term suspension or expulsion.²⁹¹ Youth may appeal within twenty days of the decision of the tribunal to the local school board.²⁹²

Schools have the authority to refuse enrollment or to re-enroll any student who has been adjudicated with a felony.²⁹³ The school board also has the authority to allow denied youth to enroll in alternative schools.²⁹⁴ Should a student try to enroll in another school system, the new school system has the authority to honor the disciplinary orders of the original school and refuse enrollment.²⁹⁵

a) Expulsion Policy for Students Bringing Weapons to School

Each local school board must establish a policy requiring at least a one-year expulsion of any student who brings a weapon to school.²⁹⁶ The school board has the authority to modify expulsion on a case-by-case basis. This includes placing a student in an alternative educational setting.

b) Disciplinary Policy for Students Committing Physical Acts of Violence Against a School Official or Employee

Georgia also has a zero tolerance policy regarding students who commit an act of physical violence against a school official, school employee, or school bus driver.²⁹⁷ "Physical violence" is defined as "intentionally making physical contact of an insulting or provoking nature," or "intentionally making physical contact which causes physical harm to another unless...in defense of himself or herself..." Under this section, upon an occurrence of alleged physical violence, a tribunal determines all issues of fact and intent.²⁹⁸ The tribunal

then makes recommendations to the school board regarding whether and when the student may return to public school. Section 20-2-751.6(c)(1) mandates that a student be expelled from the public school system if he or she was found by the tribunal to have committed an act of physical violence against a school official or employee, as described above. Expulsion under this section is permanent, lasting for the remainder of the student's eligibility to attend public school pursuant to section 20-2-150.²⁹⁹

The school board's discretion is specifically limited under this section. The school board has discretion to permit a student to attend an alternative school program during the period of expulsion. If no alternative program is available for students found guilty of committing violence against a school official while in kindergarten through sixth grade, the school board may, at its discretion, re-enroll the student in the regular public school program. Similarly, if the student found to have committed the act of physical violence is in kindergarten through eighth grade at the time of the offense, then the local school board may, at its discretion, allow the student to reenroll in the public school system for grades nine through twelve. This discretion does not explicitly extend to students in grades nine through twelve found to have committed an act of physical violence against a school employee.

c) Disrupting Public Schools

Georgia Code section 20-2-1181³⁰⁰ makes it "unlawful for any person to disrupt or interfere with the operation of any public school." The statute proscribes that it is a high and aggravated misdemeanor to commit such an offense.

The statute directly contributes to the criminalization of youth because it requires that those found to have disrupted the operation of a public school, be charged with a high and aggravated misdemeanor. Rather than giving school administrators the authority to discipline the disrupting students within the school setting, section 20-2-1181 facilitates the removal of misbehaving students from the schools and leaves them in the hands of law enforcement agencies. Additionally, this statute is very broad and does not define "disrupt," "interfere," or "operation," as used in the statute, so as to limit its scope. As worded, this section may act as a fall-back provision or a tack-on charge for school administrators to use loosely.

4. Housing

a) Housing Authorities

Housing authorities are governed by O.C.G.A. section 8-3-1, also known as the "Housing Authorities Law."³⁰¹ Housing authorities exist in all counties, as well as in some cities – i.e. Atlanta Housing Authority. The purpose of a housing authority is to provide affordable, decent, safe and sanitary urban or rural dwellings, apartments, or other living accommodations for persons of low income.³⁰² The applicable housing authority determines whether a particular family/person meets the "low income" standard.³⁰³ Additionally, the housing authority is responsible for the administration of public housing and in some counties the Housing Choice voucher program.

Legally, the housing authority has the power to prohibit any person reasonably suspected of committing a criminal act on the premises, who is not a resident, from entering, loitering or remaining on the land.³⁰⁴ The housing authority is also subject to the Fair Housing Act (FHA), which prohibits discrimination in the sale or rental of dwellings based on an individual's race, color, religion, sex, disability, handicap, familial status, or national origin.³⁰⁵ Importantly,

“disability” does not include alcoholism or drug addiction under the FHA.³⁰⁶ The statute of limitations on a discriminatory housing complaint is one year.³⁰⁷

b) Public Housing

Public housing is funded and governed by federal law and regulations but built and operated by cities. Under the public housing scheme, rent is based primarily on family size and income. The legal issues involved in public housing generally relate to leases and eviction. Although the housing authority sets a minimum rent requirement that must be paid regardless of income, a tenant can apply for an exemption. Once an exemption is requested, the minimum rent payment is suspended until the Public Housing Authority (PHA) makes a decision. A tenant cannot be evicted for nonpayment of rent during the 90 days pending a decision, even if the exemption is ultimately not granted. Furthermore, an eviction must be filed in court (also known as a dispossessory warrant). As to notice, PHA can terminate a lease with 14 days notice for failure to pay rent and with 30 days notice for a lease violation. A tenant is entitled to file a formal complaint through a grievance procedure, as outlined by the PHA.

c) Housing Choice Program (Formerly Section 8)

Housing Choice is a rental assistance program administered primarily by the Georgia Department of Community Affairs (DCA), but in a few localities, by the local housing authority. The program is funded entirely by the US Department of Housing and Urban Development. The Housing Choice Voucher Program operates by providing direct subsidy rent payments to qualified landlords for tenants participating in the program. Program participants normally pay approximately 30 percent of their adjusted income toward rent. The landlord’s subsidy is paid monthly by the DCA and normally consists of the difference between the gross rent, which includes an allowance for tenant paid utilities, and 30 percent of the tenant’s adjusted income.

A potential tenant must apply for Housing Choice rental vouchers. If it is found that he/she is not eligible, then he/she is entitled to an informal review of that determination.

There is a list of local resources in the appendix.

5. Medicaid/ Medical Care/Public Benefits

a) Medicaid

Medicaid is a medical assistance program designed to help people obtain medical care who would not otherwise be able to afford it. If a patient is eligible, Medicaid pays participating doctors, pharmacies, hospitals, or other providers. Among other groups, youth under 18 and pregnant girls/women are eligible to apply for Medicaid. The client may apply on his/her own behalf if he/she is living on his/her own. Additionally, if the client is pregnant, she may be eligible for immediate coverage, as opposed to waiting through the application process.

b) Application Process

Typically, the juvenile’s parents can apply for Medicaid at any Georgia Division of Family and Children Services (DFCS) office, local health department, or Social Security office.

If your client is pregnant, she can contact her local health department, primary health care center, or hospital and if eligible, receive a certification form that day in order to obtain

immediate pre-natal care.

Right From the Start Medicaid (RSM) – As part of the Medicaid program, RSM is an outreach project that has workers available to take applications early in the morning, in the evening and on weekends. For more information call 1-800-809-7276.

c) Medicaid Rights and Responsibilities

If the client is receiving Medicaid, it may be helpful to be familiar with the rights and responsibilities that govern the program.

Again, the role as defense counsel is to ensure that, if necessary, the dispositional plan includes getting the client on Medicaid, and determining whether certain needs or programs ordered by the court are covered.

MEDICAID RIGHTS AND RESPONSIBILITIES

Medicaid recipients have a right to:

- Timely and adequate notice in writing before any action is taken to terminate eligibility.
- A fair hearing if the recipient disagrees with a decision regarding eligibility or if medical needs are not properly being served.

NOTE: In order to continue receiving services during the appeal, the recipient must request a hearing within 10 days from the date of the notice.

- Fair treatment. An applicant cannot be denied eligibility based on race, age, sex, handicap, national origin, or political/religious beliefs.

Medicaid recipients have a responsibility to:

- Provide true and complete information about their circumstances.
- Report changes in circumstances.
- Give a right to payment to the State of Georgia if they receive any other type of health insurance or other health-related payment.

Table 10

d) Early & Periodic Screening, Diagnosis, and Treatment Service (EPSDT Medicaid Benefits)

EPSDT is the federal law under the Medicaid Act that requires states to cover comprehensive services to children receiving Medicaid up to age 21.³⁰⁸ Thus, all children under age 21 and

Medicaid eligible are covered under EPSDT. Services include: age appropriate screenings, immunizations, follow-up diagnostic services for conditions identified in the screens, and “medically necessary” treatment services (as defined by the health care provider).

Specific Adolescent Services

For adolescents, EPSDT requires the provision of services needed to treat any identified physical or mental health problem. Thus, EPSDT can be a mechanism for the client to obtain needed counseling and/or behavioral health services.

e) Non-Medicaid Healthcare Assistance

PeachCare

Under the Balanced Budget Act of 1997, the federal government created and funded a new children’s health insurance program, State Children’s Health Insurance Plan (SCHIP), that enabled states to initiate and/or expand health insurance coverage for uninsured children. In Georgia, the state created “PeachCare for Kids” – a health insurance program designed to cover children whose family income is too high to be eligible for Medicaid, but nonetheless lack health insurance coverage due to low income. PeachCare is available for eligible children under age 19, and therefore, may be a viable option for an uninsured client. For more information, please call 1-877-427-3224. There is an online application at <http://www.peachcare.org>.

Georgia Partnership for Caring Foundation (GPCF)

GPCF is a private non-profit that provides non-emergency health care services to low income uninsured Georgians through a network of voluntary providers. There is no age or citizenship requirement for services. If the client has a medical need and is not covered by health insurance, he/she may be eligible for a donated visit to a primary care provider upon application. For more information please call 1-800-982-4723 or visit www.gacares.org.

f) Temporary Assistance to Needy Families (TANF)

General Overview

TANF is the Georgia State Plan to implement changes in public assistance (welfare) mandated by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193) signed into law on August 22, 1996. P.L. 104-193 converted Aid to Families with Dependent Children (AFDC), the federal cash assistance program to low-income families, into block grant funds to be administered by the states. TANF provisions include a lifetime limit for receipt of assistance, stringent work requirements, and strict eligibility guidelines. Juvenile court professionals must be aware of the changes in public benefits arising from TANF because resources traditionally accessed in juvenile court proceedings may no longer be available, and will certainly be limited. Additionally, there is a possibility that parents or caretakers may be referred to a Neglect Prevention Unit to assess potential risks to children from a failure to achieve self-sufficiency within mandated time limits.

There is a lifetime cap on TANF assistance of 48 months, but a recipient may apply for a hardship extension. Federal law puts a cap at 60 months for an extension. TANF recipients are also eligible for “support services” including, but not limited to childcare, transportation allowances, Medicaid, mental health services, occupational licensing fees, testing fees, uniforms, vision, and dental care. Once a recipient becomes ineligible for TANF due to

employment, the TANF to Work Support Payment (TWSP) kicks in. Under TWSP, the recipient receives a lump sum payment allowance for transportation and other expenses that are needed to accept or keep a job. This lump sum payment is provided once every 12 months.

How TANF Applies to Juveniles

If the juvenile client has a child, he/she is eligible for TANF benefits only if he/she and the child are living with a parent, legal guardian, another relative, or in a supportive living arrangement, unless the DHR has determined that it may be detrimental to the youth or parent to impose this requirement. Furthermore, teenage parents are also required to attend school, or other equivalent training program, and obtain passing grades. The Second Chance Homes program is available to minor parents and their children who receive TANF or whose household income falls below or equals 100% of the federal poverty limit. This program provides alternative living arrangements and 24-hour supervision in a structured environment for minor parents and their children. Other services include childcare, education, training in parenting skills, and family planning services.

Furthermore, if the client is a non-custodial father of a youth receiving TANF, then he is eligible to participate in the Fatherhood Initiative, which was created by the Office of Child Support Enforcement. This program encourages greater involvement by fathers in the lives of their children and provides job training, counseling, and other support services.

Another important aspect of TANF that applies to juveniles is the provision of mental health services for youth with serious mental health illnesses. These services include evaluation and diagnosis, individual/group/family therapy, and day treatment programs that teach work-related skills, and daily living skills. Services are obtained through a network of providers, including community service boards, and boards of health and private agencies. Therefore, if you think that the client is in need of a mental health evaluation but has no other resources (Medicaid or private insurance) to obtain one, then this may be a good option to pursue if he/she and his/her family are receiving TANF benefits.

6. Employment

Under Georgia law, the minimum age for employment is 12 years of age.³⁰⁹ One exception to this minimum age requirement is if a minor under age 12 works for his/her parent or a person standing in the place of his/her parent.³¹⁰ Furthermore, the age requirement does not apply to the employment of a minor in agriculture or domestic service in private homes.³¹¹ If a minor is between the ages of 12 – 16, he/she must obtain an employment certificate issued by his/her school superintendent.³¹² Additionally, Georgia law sets out certain restrictions for working minors. For example, minors under age 16 may not work in a “hazardous” or “dangerous” workplace environment.³¹³ Georgia law also sets out working hour limitations for minors. Minors under age 16 are not permitted to work during regular school hours, nor are they permitted to work between the hours of 9:00 p.m. and 6:00 a.m.³¹⁴ Finally, minors may not work more than four hours on any school day, eight hours on a non-school day, or forty hours in any one week.³¹⁵ For more detailed legal information, youth labor law is governed by Title 39, Chapter 2 of the Georgia Code. Additionally, the Georgia Department of Labor website has helpful and informative information broken down in a user-friendly fashion.³¹⁶

It may be in the client’s best interest to find employment. Sometimes a job will occupy his/her time and minimize the likelihood of further court involvement. Employment will look good to the judge at disposition, and can help to pay restitution if necessary. Whatever the reason,

there are many places for teens to look for a part-time job. If the client seeks a job, it is important to counsel the client about the obligations, responsibilities, and general etiquette involved with employment. Stress to the client that he/she needs to show up to work on time, dress appropriately, and treat co-workers and supervisors with respect.

PRACTICAL JOB TIPS FOR TEENS

- Suggest to the client that he/she find a volunteer position in an area that interests him/her. Not only does volunteer work look great to a judge at disposition, but it could also lead to a paid position for the client down the road.
- Fast food restaurants, grocery stores, malls, and movie theatres are also great places for clients to look for part-time employment. These types of employers are generally responsive to the needs and circumstances of part-time teen workers because teenagers are often an important component of their workforce.
- Once the client has identified a potential place of employment, it is important to ensure that he/she understands the application process. For many youth, this is their first contact with the “work world.” They often do not understand the importance of filling out an application even if a particular employer is not hiring at the time. Stress to the client that he/she fill out an employment application and turn it in even if the employer says that they are not currently hiring. Emphasize the need for follow through with a potential employer and to wear appropriate attire when applying.

Table 11

7. Domestic Violence/Abuse/Neglect

Georgia law defines family violence to include

“any felony or commission of battery, simple battery, simple assault, assault, stalking, criminal damage to property, unlawful restraint, or criminal trespass between past or present spouses, persons who are the parents of the same youth, parents and children, stepparents and stepchildren, foster parents and foster children, or other persons living or formerly living in the same household.”³¹⁷

Furthermore, parents, guardians, and other persons having immediate charge or custody of a youth under age 18 commit cruelty to children in the first degree “when such person willfully deprives the youth of necessary sustenance to the extent that the youth’s health or well-being is jeopardized.”³¹⁸ Any adult who knowingly and willingly contributes to the delinquency, unruliness, or deprivation of a minor is guilty of a crime.³¹⁹

Family violence, abuse, and neglect are often the instigating facts in a delinquency case. There may be a need to ask the court to appoint a guardian ad litem to investigate the home and social conditions there. Although it may ultimately be in the client’s best interests, refrain from the urge to immediately call DFCS to investigate the home and the family, as you cannot betray attorney-client privilege nor jeopardize the client’s trust in you and the process. Also,

be careful not to take on the role of being the client's parent.

8. Reproductive Rights

During the course of representation of juveniles, attorneys are likely to encounter a client who is pregnant. Therefore, it is important to understand the law in this area in order to appropriately counsel the client, if necessary.

Girls of any age may consent to medical procedures or treatment in connection with pregnancy, prevention of pregnancy, or childbirth.³²⁰ Consent is limited, by whether the treatment being offered is in fact being given in conjunction with pregnancy or childbirth.³²¹ Under the Parental Notification Act a pregnant un-emancipated minor must comply with certain requirements in order to obtain an abortion.³²² An un-emancipated minor must provide a statement signed by her parent or guardian stating that such person has been notified of the pending abortion of such minor.³²³ Alternative methods of notification include the physician providing twenty-four hours actual notice of the pending abortion and its location to the parent or guardian or by providing written notice of the pending abortion and the address of the place where it is to be performed. The abortion may then be performed twenty-four hours after delivery of notice.³²⁴

In the event that the client wants to by-pass the parental notification requirement, the Act provides for a procedure by which the juvenile can petition the court for a waiver of the parental notification requirement.³²⁵ The court must determine whether the juvenile is mature enough to make a decision concerning an abortion by herself, without a parent involved. These hearings are confidential.³²⁶ The youth can get a volunteer attorney to represent her at these hearings.

9. Substance Abuse

Adolescence is a time when many young people experiment with drugs and alcohol. For some youth this experimentation may lead to a serious problem that leads to their involvement with the court system. According to a study by the National Institute of Justice's Arrestee Drug Abuse Monitoring Program in the year 2001, juvenile drug arrests represented 8.9% of all arrests of individuals under age 18. Even for youth who were not detained specifically on drug charges, drugs often play a destructive role in their lives.

It is worthwhile to be mindful of indications that the client has a substance abuse problem. Because it is unlikely that an attorney will have a long-standing daily relationship with the client that would enable monitoring of his/her habits and behavior more closely, it is important to speak to someone who may have knowledge of the client's drug use if there is suspicion of a drug problem that could affect disposition. Although the signs vary from person to person, some indicators to look out for and/or ask about include:

WARNING SIGNS OF SUBSTANCE ABUSE

- Drug or alcohol related charges.
- A series of positive drug screens.
- Withdrawal symptoms while in detention.
- Possession of drug paraphernalia.
- Extreme behavioral fluctuations/moodiness not otherwise explained.
- Inability to sit still – not otherwise explained.
- The smell of drugs/alcohol on the client’s breath/body/clothes.
- Red eyes – pupils larger or smaller than normal.
- Slurred, incoherent speech.
- Unexplained need for money – perhaps even stealing.

Table 12

Please note that although this list is neither exhaustive nor definitive, it can serve as a guide to the “types” of signs to look for.

If there is knowledge or suspicion that the client has a drug or alcohol abuse problem, consider asking him/her if drug rehabilitation treatment is a desired or acceptable option, particularly if it would mean not getting “locked up.” Disposition for a juvenile adjudicated delinquent on drug charges, or a probation violation involving drug allegations, should address several issues, including: 1) does the juvenile need inpatient or outpatient treatment; 2) is the juvenile simply being a delinquent and/or rebellious teenager; and 3) are drugs being used to self medicate a mental illness. Work with the client to develop a disposition plan that addresses the treatment needs in a manner that is acceptable to the client.

VIII. TRANSFER

A. Senate Bill 440 / Automatic Transfer Statute

Georgia's automatic transfer statute was enacted into law in 1994 under Senate Bill 440 (SB440) or the "Seven Deadly Sins" law.³²⁷ This law gives the superior court exclusive jurisdiction over any youth 13 to 17 years of age who is alleged to have committed any of the following offenses:

- Murder;
- Voluntary manslaughter;
- Rape;
- Aggravated sodomy;
- Aggravated child molestation;
- Aggravated sexual battery; or
- Armed robbery if committed with a firearm.³²⁸

However, the law does provide for transfer down to juvenile court under a few circumstances. Prior to indictment, the District Attorney may decline to prosecute in superior court and then must file a petition in juvenile court.³²⁹ Any case transferred by the District Attorney in this manner is subject to disposition under the provisions of the designated felony statute.³³⁰ This creates the potential for commitment up to five years in the custody of the Department of Juvenile Justice.³³¹

The superior court may also transfer a case down to juvenile court, after indictment and a hearing, if the juvenile is alleged to have committed an act, which is not punishable by loss of life, imprisonment for life without possibility of parole, or confinement for life in a penal institution.³³² However, the State of Georgia can appeal this transfer.³³³

The superior court may also transfer a case down to the juvenile court for disposition if the youth is convicted of a lesser-included offense not included in the above list.³³⁴ Do everything possible to get the juvenile's case transferred back to juvenile court and disposed of there.

B. Transfer Hearing

Another way a juvenile may also fall under the jurisdiction of the superior court is by a transfer of his/her case by the juvenile court. The juvenile court has discretion to transfer jurisdiction of cases to superior court after holding a transfer hearing and making required findings of fact.³³⁵ Under Georgia law, a distinction is made between when a juvenile court *may* transfer a case to superior court and when it *shall* transfer a case to superior court. An order of transfer to Superior Court is appealable as a final order.

The juvenile court may transfer a case, after a hearing, if there are reasonable grounds to believe the youth, either fifteen at the time of a delinquent offense, or not younger than thirteen when committing a delinquent offense punishable by loss of life or confinement for life, and the interests of the youth and the community require the transfer.³³⁶

A case must be transferred to superior court, after a hearing believes there are reasonable grounds to believe a youth at least fourteen years of age who was confined at a YDC allegedly

committed murder, voluntary manslaughter, aggravated assault, or aggravated battery.³³⁷

If a youth is alleged to have committed a designated felony act of burglary, and the juvenile has been found to have committed burglary on three separate prior occasions, then the juvenile court must hold a transfer hearing.³³⁸ If at the transfer hearing, the juvenile court finds reasonable grounds to believe that the juvenile committed the act of burglary, then the court must transfer the case to superior court.³³⁹

C. The Eight Determinative Factors for Transfer – Kent v. U.S.

In 1966 in Kent v. United States,³⁴⁰ the United States Supreme Court outlined eight determinative factors for a juvenile court to consider when deciding whether to waive juvenile court jurisdiction and transfer jurisdiction to adult court.³⁴¹ In Georgia, these are the factors to be weighed by the juvenile court when deciding whether “the interests of the youth and the community require that the youth be placed under legal restraint and the transfer be made.”³⁴²

8 DETERMINATIVE FACTORS UNDER KENT V. U.S.

According to the Supreme Court, the eight determinative factors the juvenile court should consider are the following:

- The seriousness of the alleged offense to the community and whether the protection of the community requires waiver.
- Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner.
- Whether the alleged offense was against persons or against property, greater weight being given to offenses against persons, especially if personal injury resulted.
- The prosecutive merit of the complaint.
- The desirability of trial and disposition of the entire offense in one court when the juvenile’s associates in the alleged offense are adults who will be charged with a crime.
- The sophistication and maturity of the juvenile as determined by consideration of his home, environmental situation, emotional attitude, and pattern of living.
- The record and previous history of the juvenile.
- The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile (if found to have committed the alleged offense) by the use of procedures, services, and facilities currently available to the juvenile court.³⁴³

Table 13

Although not all factors will necessarily be present in each individual case, it is important to be aware of all the factors a judge will consider as it relates to the client and his/her situation in order to effectively strategize and intelligently argue why the client should not be transferred in accordance with these factors.

IX. HEARINGS

A. Adjudication

The adjudicatory hearing is the trial in juvenile court. These trials are bench trials. There are no jury trials in juvenile court. The adjudicatory hearing is the opportunity to present legal defense. Always be concerned with preserving the record for a possible appeal.

Youth who have gone through the intake process often enter an early admission. At the initial client interview, discuss the elements of the offense and make him/her aware that the standard of proof is beyond a reasonable doubt.³⁴⁴ Explain the difference between guilty and not guilty and what it means to admit or deny the charges. The youth should also have a clear understanding of the disposition powers of the court and possible outcomes for his/her case.

1. Motions

Although, a good deal of juvenile court motion practice takes place during hearings, it is good practice to file pre-adjudication written motions.³⁴⁵ This maintains the expedited nature of the delinquency system. Pre-trial written motions can alert the court to issues related to competency, discovery, or even factors related to the theory of the case. Pre-trial motions also expedite the process when evaluations of the client are needed. Finally, pre-trial motions build the client's case for appeal, if it is necessary.

Each party has the right to sequester the witnesses.³⁴⁶ Invoke the rule of sequestration at the beginning of the hearing to prevent having the testimony of one witness affect that of others, and to prohibit witness communication outside of the courtroom.³⁴⁷ Attempt to ensure that witnesses do not revisit the specifics of the case and their testimony while waiting to testify. Usually, the court allows at least one parent to remain with the client during the course of the trial even if they will offer testimony. However, parents are not parties to delinquency or unruly proceedings and the client may request that they not be present in the courtroom.

2. Informal Adjustment

A case may be informally adjusted during the court intake process, preventing the case from reaching an adjudicatory phase.³⁴⁸ Even after the petition has been filed, a motion to informally adjust the case may be made by either party.³⁴⁹ The court may informally adjust the case if the alleged delinquent act is not of a serious nature, appears amenable to informal handling, or is an unruly act and it best suits the needs of the youth and the public.³⁵⁰

3. Opening Statement

Opening statements rarely occur in juvenile court. However, they are an excellent opportunity for defense attorneys to gain control of the courtroom and present the theme of the case and their best facts. A theme captures the essence of the case in a few lines.

4. Presenting Juvenile Witnesses

Take special care to prepare witnesses who are themselves juveniles. Explain to the client what an oath means and go over his/her testimony until the client can adequately answer defense questions on the stand. Practice cross-examination so he/she has a feel for what it is like. Tell the client to count to three and then answer the question, whether on cross

or direct. This gives him/her a brief moment to really think about the question and his/her answer. It also provides an opportunity for objections when necessary.

Do not try to get a young witness to speak like an adult; let him/her speak in his/her normal tone, voice, and character – anything else will appear rehearsed and false. Often a juvenile's manner of testifying will indicate to the judge the reality of the circumstances under which your client was charged and can be helpful in getting an acquittal.

5. Closing Statement

Just as in superior court, remind the court of the prosecution's burden of proof. Review the favorable evidence. This is the last chance during trial to review the defense theme and to present the client in a favorable light. Remember to direct the closing statement to the fact finder who is the judge AND jury, so to speak. There is no need to elaborate on typical closing argument rhetoric, as there will not be a jury present.

B. Disposition

This hearing, which occurs after a juvenile has been adjudicated delinquent or unruly, is to determine if a youth is in need of treatment, rehabilitation, or supervision.³⁵¹ This is a critical hearing for the client and requires good advocacy. Although disposition can immediately follow adjudication, it can also be scheduled at a later date if any party so requests or the judge so orders.³⁵²

1. Disposition Advocacy

A good advocate will assist a youth who is not detained with opportunities to take steps on his/her own to demonstrate rehabilitation, while investigating appropriate disposition outcomes or alternatives to detention. As explained earlier, if a youth is detained and disposition is scheduled for a later date, it must be within 30 days of the adjudicatory hearing.³⁵³ If the youth is detained prior to adjudication it would be best to come to trial prepared to proceed into disposition to lessen the length of time the client spends in detention. If the client is not in detention, it may be useful to schedule disposition within a reasonable time to allow for reports and investigation.³⁵⁴

Evidence & Reports

The rules of evidence do not apply to disposition hearings, so all information that is deemed helpful may be relied upon to the extent of its probative value.³⁵⁵ However, the parties may review written reports, and individuals making reports may be cross-examined.³⁵⁶

Prior to the disposition, the court can direct the probation officer or other designee to prepare a written social study report on the youth and his/her family, the household environment, and other matters relevant to disposition.³⁵⁷ A good advocate will not rely exclusively on this report but will do his/her own investigation and report. During the pendency of any proceeding, the court may also order that a youth be examined by a physician or psychologist to determine whether there is a mental illness or a developmental disability.³⁵⁸ Prior to disposition, attempt to locate programs and services that the client will be willing to participate in and will address anticipated concerns of the court.

On the application of a party or on the court's own motion, the court may issue a protective order, restraining order, or otherwise control the conduct of a parent, guardian, or other person in relation to an order of disposition.³⁵⁹ The protective orders may be enforced by contempt of

court.³⁶⁰ Some of the requirements of the protective order may require the person to:

- Abstain from offensive conduct against the youth;³⁶¹
- Give proper attention to the care of the home;³⁶²
- Cooperate in good faith with the agency or association to which the youth is referred;³⁶³
- Refrain from acts or omissions that tend to make the home improper for the youth;³⁶⁴
- Ensure the youth attends school;³⁶⁵
- Participate in counseling or treatment; and³⁶⁶
- Enter a substance abuse program.³⁶⁷

During the disposition hearing, present the court with the person behind the conduct. Subpoena family members, teachers, friends, potential mentors and anyone who can speak positively about the client to testify at disposition. If possible, demonstrate to the court that the client has support within the community. Present the court with people who can explain who the client is and may assist with dispositional planning and avoidance of detention for the client. Also obtain supplemental records of the client such as report cards and letters from coaches, teachers, or faith related persons. If the client would like to express his/her remorse prepare him/her to communicate to the judge. Having the client write the judge a letter could also be helpful.

2. Mental Health Issues and Psychological Reports

If not done prior to disposition, the court may order a study and report on the youth's condition if anyone suspects the youth has a mental illness or a developmental disability.³⁶⁸ Further, the court shall make a determination of disability according to 20 U.S.C. §§ 1401(a)(1) and 1401(a)(15).³⁶⁹ If there is a school IEP, it must be made part of the record at disposition.³⁷⁰

3. Disposition Powers of the Court

If the court finds a youth does not need treatment, rehabilitation, or supervision, it shall dismiss the proceedings and release the youth from detention or any restriction previously imposed.³⁷¹ If a youth is adjudicated delinquent and found in need of treatment, rehabilitation, or supervision, the court has several available disposition powers that are not limited to but include detention and probation.³⁷² See page 25 for a complete list of the disposition powers of the court.

If a youth is adjudicated unruly, the court may order any of the disposition options discussed on page 25. However, as stated above, a youth may not be committed to the Department of Juvenile Justice unless the court expressly finds that the youth is not amenable to treatment or rehabilitation in the community.³⁷³

If a youth is adjudicated delinquent for a designated felony, the court may order restrictive custody.³⁷⁴ This includes a five-year commitment to the Department of Juvenile Justice, with at least one year being served at a YDC. In addition, the youth's school is given a copy of the court's findings, and the youth is subject to fingerprinting and photographing requirements as if he/she were an adult.³⁷⁵

4. Elements of a Disposition Plan³⁷⁶

DISPOSITION PLAN CHECKLIST

- Living Arrangements
- Psychological Assessment or Treatment
- Counseling
- Community Service
- Positive Relations with Law Enforcement
- Restitution
- Symbolic Restitution
- Education
- Vocational Training
- Employment
- Community Advocate/Third Party Monitor
- Relinquishing a Right/Sacrificing Freedom
- Special Considerations
- Letters of Support and Recommendation

Table 14

1. Living Arrangements

Consider where and with whom the client is living. If the complainant is the parent and/or the client has fled his legal abode, evaluate alternate living arrangements. The client may have interest in living with other family members or relatives. It would be prudent to visit or have an evaluation of the proposed home performed in advance. There may also be a need to ask for a guardian ad litem to investigate whether alternative living arrangements would be appropriate.

2. Psychological Assessment or Treatment

The reasons behind delinquent or unruly behavior are numerous. Many youth have unidentified mental health or other needs for which they have not received treatment. The

initial step for such youth is a mental health or substance abuse evaluation. Having an evaluation may also assist the client with identifying the reasons behind the actions that led to involvement with the court.

3. Counseling

After evaluation, the client may be willing to receive mental health and/or family counseling for the identified needs. It may also be beneficial to the client and the family to engage in counseling. Identify the program the client is willing to attend, ensure enrollment, and exactly what will be expected of the client during the program.

4. Community Service

Some clients may be too young to find a job, but unpaid work or volunteer assistance to a community agency, church, school, or law enforcement agency may constitute genuine “pay back” for an injury or damage. Community service may offer the juvenile a positive experience while assuring supervision for the time that is involved. Community service may also serve as a meaningful demonstration of restorative justice by any client, regardless of his/her age, to the court.

5. Positive Relations with Law Enforcement

For some youth their experience and knowledge of law enforcement is negative and it would be beneficial for them to witness or experience law enforcement from a different perspective. Some police or sheriff offices have established mentoring or community policing programs. If there is no specific program in the county, approach an agency and inquire about interest in identifying a way to acquaint the youth with the positive aspects of policing.

6. Restitution

This would involve payment of the victim’s monetary loss in order to compensate for damages or financial loss suffered as a result of the juvenile offender’s delinquent activity. It can be limited by the juvenile’s ability to legally obtain an income. An order of restitution should be drawn so as to have a restorative impact on the youth and the victim. Carefully consider the ability of the client or his/her family to make restitution, especially if the client is indigent.

7. Symbolic Restitution

At times the client and his/her family may not be financially capable of providing monetary restitution. When this occurs the youth may be able to offer some other form of restitution to compensate society rather than the individual victim. Symbolic restitution may be made to any individual or group who may have suffered an indirect financial expense due to the juvenile offender’s behavior, or to a charitable organization. The form of symbolic restitution can vary and can include community service.

8. Education

In most cases, the court will require the client to complete some form of education. It is useful to demonstrate the client's willingness to pursue this end. The plan might include continuation of current schooling, enrollment in GED courses, special education classes, or vocational training. For many youth with legal problems, learning or other disabilities are factors which have never been addressed. Remember that under the Individuals with Disabilities Education Act (IDEA), juveniles have a right to appropriate educational and remedial services.³⁷⁷

9. Vocational Training

Vocational training is another form of education that can prepare the client for his/her adult life. It is also a good use of the client's time and demonstrates to the court the client's improved decision-making skills and plans for the future. When a vocational opportunity is not immediately available, appropriate, or not of interest to the client, try suggesting an apprenticeship or mentoring.

10. Employment

If the client is not enrolled in school and is of legal age to work, it is a good use of their time to seek employment. Employment is a good way to demonstrate the client's role as part of the community and a need to remain in the community. It will be useful to include specific information about the location of employment, hours of work, duties, and who will supervise the client. Most judges, however, will not allow a job to interfere with a youth's education, and will often consider employment as a secondary option in a dispositional hearing.

11. Community Advocate/Third Party Monitor

A highly recommended, if not essential, component for most youth, this element provides individuals in the community to monitor and support the client's progress and behavior. Properly arranged, a third party monitor can extend supervision beyond that normally provided by probation or parole officials. There may be more than one advocate or third party monitor. This function may be linked to activities such as employment, counseling, and vocational training. Community organizations such as churches and civic organizations may contribute to this function.

12. Relinquishing a Right/Sacrificing a Privilege

The most common form involves "house arrest," which need not be linked to electronic monitoring. Other provisions may involve limits upon the use of a car or travel, rigid structuring of the client's time, restriction on privacy and voluntary submission to searches, as well as probation. The provision may require the involvement of the parent/guardian. Punishment may also involve having to give up treasured activities such as fishing, hunting, or other sports, and television.

13. Special Considerations

Defense counsel should incorporate a multifaceted approach to disposition using community

resources and services. Examples include steps to solve medical needs, transportation problems, transferring probation elsewhere (Interstate Compact), obtaining financial assistance including public assistance and Medicare benefits, help with immigration problems, or, as previously noted, a program to address developmental disabilities. The role of defense counsel often involves identifying and communicating with appropriate social service agencies in your client's community that can help assist his need for treatment and rehabilitation. It often takes a community's vast pool of resources to help one youth. All options should be considered.

14. Letters of Support and Recommendation

A disposition plan needs to provide indications of the support available to the juvenile offender in the community as well as the support available from family, friends, employers, public officials, and clergy. Care must be taken that letters are consistent with the sentencing strategy, including acceptance of responsibility, presented to the court.

CHECKLIST FOR DISPOSITION
<ul style="list-style-type: none"><input type="checkbox"/> Schedule disposition at a later date than adjudication.<input type="checkbox"/> Look for alternatives to detention.<input type="checkbox"/> Present the person behind the offense.<input type="checkbox"/> Invite friends, family, and mentors.<input type="checkbox"/> Motion for a social study report.<input type="checkbox"/> Identify the client's areas of need and strengths.<input type="checkbox"/> Develop a disposition plan based on the need and strengths.<input type="checkbox"/> Prepare the client to speak at disposition.

Table 15

X. DETENTION

A. Detention Hearings

It is crucial to be cognizant of the provisions regarding timing of the hearings because you will need to ensure that the client is not unlawfully detained. According to the Uniform Rules for Juvenile Courts in Georgia, if a juvenile who is alleged to have committed a delinquent act is detained, then a detention hearing must be held within 72 hours from the moment of detention.³⁷⁸ If the 72 hours expires on a weekend or legal holiday, then the hearing must be held on the next day which is not a weekend or legal holiday.³⁷⁹ If the client is not detained, but is to be further prosecuted then a petition must be filed with the court within 30 days of his/her release.³⁸⁰ If after the detention hearing the client is not released, a petition must be filed within 72 hours of the detention hearing.³⁸¹ If any of the timelines are not met, the complaint must be dismissed without prejudice.³⁸²

1. Adjudicatory Hearings

Once a petition is filed, if the client is in detention, the court must set a date for a hearing on the petition not later than 10 days after the filing of the petition.³⁸³ If the client is not in detention, then the court has 60 days from the filing of the petition in which to set a hearing date.³⁸⁴ If any of the timelines are not met, the complaint must be dismissed without prejudice.³⁸⁵

2. Disposition Hearings

If the client is adjudicated delinquent and is detained prior to the disposition hearing, the court must conduct the disposition hearing within 30 days of the adjudicatory hearing “unless the court makes and files written findings of fact explaining the need for the delay.”³⁸⁶

3. Unruliness

If the client is suspected to be unruly, then he/she can only be held in a holding facility for unruly youth for a period of 12 hours.³⁸⁷ If a parent or guardian has not assumed custody of the child at the end of such period, or if the child has not been brought before the juvenile court, or if an intake officer has not made a detention decision, the child shall be released from custody.³⁸⁸ “Counties and municipalities are authorized to establish facilities where a child who is suspected of being unruly or who is in violation of a curfew may be informally detained until the parent or guardian assumes custody of the child. A child shall not be restrained in a cell or other such place apart from other children unless such child engages in disruptive or unruly behavior while at the holding facility.”³⁸⁹ If the client is found to be unruly, the court then has the authority to make any disposition it could make for a delinquent youth with the exception that if the court orders commitment to DJJ, it must first find that the youth “is not amenable to treatment or rehabilitation.”³⁹⁰

B. Detention Procedures

The Georgia Code governs the facilities in which various juveniles who are before the court can be housed. For instance, if the client is alleged to be delinquent, he/she may only be detained in a licensed foster home or other home approved by the court, a facility operated by a licensed youth welfare agency, or in a detention home or center specifically for delinquent youth.³⁹¹ On the other hand, if the client is alleged to have committed a status offense, such

as unruliness, and has not been released from custody, he/she may be detained in a licensed foster home or other home approved by the court, a facility operated by a licensed youth welfare agency, or in a secure juvenile detention facility for not more than 72 hours.³⁹²

C. DJJ's Alternatives to Detention

The Department of Juvenile Justice has a current policy in place that favors alternatives to detention whenever possible. In order to determine whether a particular juvenile in its custody is appropriate for an alternative placement to detention, DJJ administers an assessment called the "Detention Assessment Instrument." The range of alternatives to detention that are available can be found in Chapter 14 (Community Corrections) of the Georgia DJJ Policy Handbook³⁹³, which is discussed in more depth in the next chapter.

XI. DEPARTMENT OF JUVENILE JUSTICE POLICIES & PROCEDURES

A. DJJ Policies and Procedures

The following is an overview of some of the DJJ policies and procedures that are most likely to impact you as a juvenile defense attorney. Please keep in mind that these are internal agency policies that are subject to change. Therefore, if you have a question about a particular policy, it is advised that you confirm its current content on the DJJ website.³⁹⁴

1. *Health and Medical Services*

All youth admitted to a DJJ facility will receive a comprehensive physical examination.³⁹⁵ This examination is to be used by DJJ staff in determining a youth's medical needs and the appropriate course of treatment if necessary. If a youth is admitted to DJJ and is:

- 1) Known to have a chronic condition;
- 2) Complaining of a medical problem upon admission; and/or
- 3) Taking prescribed medications,

then the comprehensive physical must be completed within three days of admission.³⁹⁶

If one or more of these three factors are not present, then the physical must be completed within seven days of admission.³⁹⁷ Additionally, DJJ staff will provide an HIV test if requested by the youth or if clinically indicated.³⁹⁸ Youth have the opportunity to request health services daily.³⁹⁹

DJJ must ensure that pharmaceutical services are provided at secure facilities on a 24-hour basis in order to ensure the timely dispensing of medications.⁴⁰⁰

2. *Behavioral Health Services*

All youth housed in DJJ secure facilities must be provided with quality behavioral health care.⁴⁰¹ This will be accomplished by a designated mental health authority dedicated to each secure facility.⁴⁰² Furthermore, decisions by the mental health staff regarding behavioral health services shall not be compromised for security reasons.⁴⁰³ Additionally, youth have the right to request behavioral health services daily.⁴⁰⁴

The behavioral health staff must screen each youth entering a DJJ secure facility (no later than two hours from the time of admission) for mental health problems and suicide risk factors.⁴⁰⁵

3. *Education*

DJJ operates as its own special school district, subject to all applicable rules and regulations of the State Board of Education.⁴⁰⁶ Therefore, youth in DJJ custody are entitled to the same opportunity for education that would have been provided to them in a local school system. Be aware that academic credit earned from a juvenile's stay in a DJJ facility is transferable to his/her regular school. It is DJJ's responsibility to ensure that this takes place.

4. Community Corrections

It is DJJ's policy to provide a range of alternatives to detention in a secure facility.⁴⁰⁷ The Detention Assessment Instrument is used as a guide in both detention and alternative placements.⁴⁰⁸

An administrative revocation can occur when a youth is in violation of the terms of community placement.⁴⁰⁹ If this happens, the youth can potentially face a return to, or placement in, an institutional treatment program.⁴¹⁰ During the revocation process, youth have the legal right to: an impartial hearing, reasonable notice, a statement of the alleged violations, the right to speak on his/her own behalf and introduce evidence, the right to confront adverse witnesses, and the right to legal representation.⁴¹¹

Screening & Placement

DJJ is responsible for making placement decisions about the youth in its care. Therefore, upon commitment to DJJ, all youth are screened and assessed to determine appropriate placement.⁴¹² After a youth is screened, the local screening committee is responsible for recommending placement, and must recommend placement in the least restrictive placement that is appropriate to the youth and public safety.⁴¹³ If there is concern that a client is inappropriately placed by DJJ, it would be wise to work cooperatively with DJJ in trying to get an alternative placement since once a juvenile is committed, DJJ has almost complete control and discretion over placement. There are a few exceptions, youth adjudicated with designated felonies or SB440 offenses must be housed at the YDC as well as youth committed for 90-day short-term programs.

Graduated Sanctions

DJJ also operates under a system of graduated sanctions. This means that a continuum of reinforcements and sanctions is used at each level to provide consequences for violations of probation or placement in order to motivate youth to change their behavior.⁴¹⁴

Electronic Monitoring

Although not available statewide, some areas do have access to electronic monitoring services. Electronic monitoring allows DJJ to monitor the whereabouts of a juvenile under its supervision.⁴¹⁵ This service is typically utilized for youth placed in a community corrections program or on conditional release.⁴¹⁶

5. Rights of Youth

According to DJJ, youth in facilities or programs will not be denied access to the courts and will have the right to uncensored, confidential contact with their attorney by phone, in writing, or in person. DJJ also assures that those youth who seek judicial relief will not be penalized or retaliated against from any agent of DJJ. A youth's access to counsel of the courts will not be infringed upon regardless of their disciplinary status within a facility or program.⁴¹⁷ In addition to the right to contact with legal counsel and the courts, juveniles in DJJ custody possess many other rights. Some of these include:

- The right to be free from discrimination based on race, sex, national origin, religion, age, handicap.
- The right to be treated with respect and dignity.

- The right to be given notice of rules and procedures.
- The right to be free from corporal punishment, verbal, physical, and emotional abuse. Additionally to be free from harassment, ridicule, or interference with eating, sleeping or bathroom functions.
- The right to practice religious faith and to have access to clergy, spiritual advisers, religious publications and to participate in religious services.
- The right to vote if eligible.
- The right to have access to his/her case file.
- Freedom of expression.
- Due process.
- Equal access to programs and services.
- The right to exercise.⁴¹⁸

XII. POST DISPOSITION APPEAL ISSUES

A. Appeals

As is the case with final judgments in superior court, the Georgia Court of Appeals or the Georgia Supreme Court reviews the final judgments of a juvenile court judge on appeal.⁴¹⁹ Adjudicatory orders by themselves are not considered final judgments.⁴²⁰ In order to be appealable as a final judgment, the adjudicatory order must be accompanied by a disposition order following a disposition hearing.⁴²¹ Juveniles are granted the same rights of appeal as are possessed by adults.⁴²² Additionally, under state case law, objections not raised at trial are deemed to be waived and cannot be raised for the first time on appeal.⁴²³

B. Modification of Disposition

In certain circumstances, the juvenile court may modify its disposition orders. The standard for modification is “that changed circumstances so require in the best interest of the youth, except an order committing a delinquent youth to the Department of Juvenile Justice, after the youth has been transferred to the physical custody of the Department of Juvenile Justice, or an order of dismissal.”⁴²⁴ Basically, if the situation or other circumstances in your client’s life change to the extent that his/her disposition order is no longer appropriate, you should motion the court for modification. However, as discussed previously, if the client has been committed to the custody of DJJ, then you will have to work cooperatively with DJJ to alter his/her placement. Furthermore, any party to the proceeding, including the probation officer, may petition the court for modification.⁴²⁵ The petition must set forth with particularity the grounds upon which modification is sought.⁴²⁶

C. Motions to Terminate Under O.C.G.A. §15-11-70

If it appears that the purposes of the order have been accomplished, then the court may terminate its disposition order prior to its expiration on or without application of the party.⁴²⁷ If the client is put on probation, it is important to keep up to date on his/her progress. If the client gets new charges while on probation, then he/she may sink further into the court system. One way to avoid this scenario is to remain in contact with the client and his/her probation officer in order to stay abreast of the client’s probation progress. When the client has met the probation conditions over a period of time, discuss with the probation officer the possibility of asking the court to terminate the disposition order. Additionally, be aware that when the client reaches age 21, all orders affecting him/her terminate.⁴²⁸

XIII. SEALING JUVENILE COURT RECORDS

Under Georgia law, a youth who has been adjudicated delinquent or unruly may apply to have his/her records sealed.⁴²⁹ The records to be sealed would include court records and all other law enforcement files and records.⁴³⁰ Records may be sealed, if after a hearing, the court finds that:

- Two years have elapsed;⁴³¹
- Since the final discharge of the person, he/she has not been convicted of a felony or of a misdemeanor involving moral turpitude or adjudicated a delinquent or unruly child and no proceeding is pending against the person seeking conviction or adjudication; and⁴³²
- The person has been rehabilitated.⁴³³

If the records are sealed, the proceedings are treated as though they never occurred and copies of the order will be sent to relevant agencies.⁴³⁴ Subsequent inspection of the sealed files is permitted only after the client, who is the subject of the files, petitions the court.⁴³⁵ Only persons named in the court's order following the petition will be allowed access to the file.⁴³⁶ Criminal justice officials may petition the court for inspection of records for criminal justice purposes.⁴³⁷ Designated felony adjudications and any juvenile court proceedings that would be open to the public cannot be sealed.⁴³⁸

XIV. APPENDIX

A. Glossary

ADJUDICATION

A fact-finding hearing, similar to a “trial” in adult court. The main differences are that adjudicatory hearings are heard by a judge, not a jury, and the child is found “delinquent,” not “guilty.” To find that a child is *delinquent*, the judge must find that the child committed the act *beyond a reasonable doubt*, the same “burden of proof” that applies in adult criminal trials. The formal rules of evidence apply.

AFTERCARE SERVICES or SUPERVISION

The services provided to a juvenile conditionally released from a treatment or confinement facility and placed under supervision in the community. These support services promote the smooth transition of youth into the community through supervision, counseling and assistance with networking the appropriate agencies.

CENTRALIZED STATES

These states are characterized by across-the-board state control of delinquency services, including state-run juvenile probation services, institutions, and aftercare services.

CHILD

Any individual who is under the age of 17 in Georgia or 18 in most other states or is under the age of 21, who committed a delinquent act before reaching age of 17 (or 18) and was placed under court supervision or probation.

COMBINATION STATES

The organization of basic delinquency services in these states features a mix of state-controlled and locally operated delinquency services. For instance, they may have largely state-run systems--but with significant local control in the more populous, urban areas.

COMMITMENT

A juvenile court disposition that places a youth in the custody of the Department of Juvenile Justice for supervision, treatment, and rehabilitation for up to two years.

COUNSELING / CASE MANAGEMENT

The process by which the Probation Officer develops a plan that pursues rehabilitation of the youth and prevents further involvement with the court. The Probation Officer can offer counseling, supervision and may network with other resource providers in the community for appropriate program referrals.

DEPARTMENT OF HUMAN RESOURCES (DHR)

The Georgia Department of Human Resources provides about 80 programs that ensure the health and welfare of Georgians. These include programs that control the spread of disease, enable older people to live at home longer, prevent children from developing lifelong disabilities, train single parents to find and hold jobs, and help people with mental or physical disabilities live and work in their communities. The DHR divisions include: Mental Health, Developmental Disabilities and Addictive Diseases (MHDDAD), Aging Services, Public Health, and Family and Children Services (DFCS).

DEPARTMENT OF JUVENILE JUSTICE (DJJ)

The Department of Juvenile Justice provides supervision, detention, and a wide range of treatment and educational services for youth referred to the Department by the juvenile courts. The DJJ also provides assistance or delinquency prevention services for at-risk youth through collaborative efforts with other public and private entities.

DEPENDENT

Anyone under the legal care of someone else. A child ceases to be a dependent when they reach the age of emancipation, which varies by state law, and even then, some states allow for continued treatment as a dependent.

DESIGNATED FELONY (DF)

The list of designated felony offenses by a youth who is 13 or older also includes:

- A second offense of weapon possession by youth 13 to 17 years of age;⁴³⁹
- Kidnapping;⁴⁴⁰
- First or second degree arson;⁴⁴¹
- Aggravated battery;⁴⁴²
- Robbery and armed robbery not involving a firearm;⁴⁴³
- Battery upon a teacher or other school personnel;⁴⁴⁴
- Attempted murder or attempted kidnapping;⁴⁴⁵
- Carjacking;⁴⁴⁶
- Manufacturing, transporting, distributing, possessing with intent to distribute, and offering to distribute an explosive device;⁴⁴⁷
- Any act that would be a felony if done by an adult, if the youth has committed felony offenses on three prior occasions;⁴⁴⁸
- Any violation of code section 16-13-31 in relation to trafficking in illegal drugs;⁴⁴⁹
- Any violation of code section 16-14-4 in relation to racketeering;⁴⁵⁰
- Any violation of code section 16-10-52 relating to escape;⁴⁵¹
- Any violation of code section 16-15-4 relating to street gangs.⁴⁵²
- An offense within the exclusive jurisdiction of the superior court that is transferred to the juvenile court for adjudication.⁴⁵³

The juvenile court judge determines whether or not a youth should be detained for a period not less than 12 months and not more than 60 months. If detained, a youth must be placed in a Youth Development Campus facility. Commitment orders are valid for five years or until a youth is 21 years old.

DETENTION

The temporary custody of juveniles who are accused of a delinquent offense and require a restricted or secure environment for their own or the community's protection while awaiting a final court disposition. States may also use detention as a sanction for probation violations or as a disposition option.

DIVISION OF FAMILY AND CHILDREN SERVICES (DFCS or DFACS)

The Division of Family and Children Services is the division of DHR that investigates child abuse; finds foster homes for abused and neglected children; helps low income, out-of-work parents get back on their feet; assists with childcare costs for low income parents who are working or in job training; and provides numerous support services and innovative programs to help troubled families.

DISPOSITION

The phase of delinquency proceeding similar to the "sentencing" phase of adult trial. The judge must consider alternative, innovative, and individualized sentences rather than imposing standard sentences.

DIVERSION

An alternative to trial decided upon at intake to refer the child to counseling or other social services. This officially stops or suspends a case prior to court adjudication and refers the youth into a community education, treatment, or work program in lieu of adjudication or incarceration. Successful completion of a diversion program results in the dismissal or withdrawal of formal charges. Offenders who fail to comply with the diversion terms and conditions are subject to formal prosecution.

EARLY & PERIODIC SCREENING, DIAGNOSIS, & TREATMENT (EPSDT)

Medicaid provides health screenings and treatment to all Medicaid eligible children up to age 21. Under EPSDT, each state must screen children regularly and provide all necessary medical and mental health treatment for any problem discovered through screening.

GROUP HOME

A placement for delinquent youth who come from unstable home situations. Group counseling is an integral part of all group home programs, though each home may have a unique counseling program.

GUARDIAN AD LITEM (GAL)

Phrase literally meaning "guardian for the proceeding." The GAL is an adult, sometimes an attorney, who is appointed to look after the welfare and represent the legal interests of the child before the court.

INDIGENT PERSON

A person requesting an attorney who is unable to pay for the services due to statutorily defined financial hardship.

INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA)

A Federal law that ensures “free and appropriate public education” for all children with disabilities.

INDIVIDUALIZED EDUCATIONAL PROGRAM (IEP)

A written plan required by federal and state law for every child who is receiving special education and related services. The IEP must describe all services needed by the child and the services to be provided for appropriate education in the least restrictive environment.

INFORMAL ADJUSTMENT

Prior to a petition being filed, or on the court’s withdrawal of a petition, the case may be informally adjusted if certain prerequisites are met. If conditions favor an informal adjustment, an Informal Adjustment Agreement is prepared which is valid up to three months and may be extended by court order for an additional three-month period. Informal adjustment alternatives include counseling and adjustment, counseling and advisement, referral to counseling and individualized agreements that may include mediation.

INTAKE

The process used to determine whether the interests of the public or the juvenile require the filing of a petition with the juvenile court. Generally, a Juvenile Probation Parole Specialist receives, reviews, and processes complaints, recommends detention or release where necessary, and provides services for juveniles and their families, including diversion and referral to other community agencies. If a case is handled formally, a petition, complaint, or other legal instrument will be filed with the juvenile court and a hearing will be scheduled. If the case is handled informally, the probation department may supervise the juvenile for a period of time or the case may be diverted to some alternative tribunal, such as a teen court or community panel.

INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN (ICPC)

A uniform law enacted by all states, Washington D.C. and the U.S. Virgin Islands. It establishes procedures for the placement of children in foster care across state lines.

INTENSIVE SUPERVISION PROGRAMS

These programs were initiated to minimize out-of-home placements by providing daily contact between youth and probation staff that extended into evening hours. Electronic Monitoring is often used in conjunction with intensive supervision techniques.

JUDGMENT

Any official decision or finding of a judge or administrative agency hearing officer regarding the respective rights and claims of parties to an action; also known as a decree or order.

JUVENILE COURT INTAKE OFFICER

A person who determines whether a child should be taken into custody or released. This person can be either a juvenile judge, a court service worker, a probation officer or superior court judge.

MANDATORY WAIVER

A provision that requires juvenile courts to waive jurisdiction to cases under certain circumstances. In a mandatory waiver situation, the juvenile court must receive the case initially, conduct some sort of preliminary hearing to ensure that the mandatory waiver statute applies, and issue an order transferring the case to criminal court. By contrast, when an offense has been excluded by law from juvenile court jurisdiction, the case originates in criminal court, and the juvenile court ordinarily has no involvement.

MEDICAID

Health insurance for low-income children, their parents, or other caretaker relatives or pregnant women.

MULTI AGENCY TEAM FOR CHILDREN (MATCH)

A process within DHR that arranges care for children with severe behavioral disturbances who need mental health treatment in residential settings.

NINETY-DAY (90-DAY) SHORT TERM PROGRAM (STP)

A 90-day STP is a dispositional option in which there is judicial discretion to order a child to serve up to a maximum of 90 days in a youth development center or in another treatment program. STP was formerly referred to as boot camp.

NON-SECURE DETENTION

The Community Detention Program provides a non-secure alternative to detention in a Regional Youth Detention Center. The program consists of three services:

- Attention Home - bed spaces located with private families, group homes or other institutions.
- In-Home Supervision - allows the youth to remain at home while awaiting court hearings or out-of-home placement.
- Electronic Monitoring - uses technology and monitoring equipment to allow juvenile offenders to remain in the community in lieu of detention.

PLEADING

In juvenile court, a plea of “not guilty” will move the case to adjudication, and a plea of “guilty” or “nolo contendere” will result in waiver of the right to trial. State procedures vary widely in how intelligent and voluntary pleas are accepted.

PROBATION

A period of time, not to exceed two years, in which an adjudicated delinquent is released back into society while being supervised as to his/her conformity to certain conditions. Probation orders may impose a wide variety of conditions. Unlike adults, juveniles cannot reject probation and request incarceration.

PROBATION SUPERVISION

Guidance, treatment, or regulation by a probation agency of the behavior of a juvenile delinquent, resulting from a formal court order. These services may include investigation, reports and recommendations to the court, and referrals to other public agencies.

REGIONAL YOUTH DETENTION CENTER (RYDC)

Regional Youth Detention Centers are facilities that provide temporary, secure care and supervision of youth who are charged with offenses or who have been found delinquent and are awaiting disposition of their cases by the court. Committed youth are often held in RYDC while awaiting placement in one of the department's treatment programs or facilities.

RESTITUTION

A disposition requiring a defendant to pay damages to a victim. The law prohibits making restitution a condition of receiving probation. Poor families cannot be deprived of probation simply because they are too poor to afford restitution. Some states do not allow families to pay restitution.

RULE NISI

The process by which a party must show cause why a proposed rule or temporary order should not become a final order of the court, or why a party should not be compelled to comply with a court order.

SECURE DETENTION

Regional Youth Detention Centers (RYDC) provide temporary, secure care and supervision of youth who are charged with crimes or who have been found guilty of crimes and are awaiting disposition of their cases by juvenile court. Additionally, youth committed to DJJ are frequently held in secure detention while awaiting placement in one of the department's treatment programs or facilities.

SENATE BILL 440 (SB440)

Commonly used name for the Georgia Juvenile Code Article entitled "School Safety and Juvenile Justice Reform Act of 1994." This legislation provides the superior court with exclusive jurisdiction over children ages 13-17 who are alleged to have committed one of the following offenses (commonly referred to as the "Seven Deadly Sins"): aggravated child molestation, aggravated sexual battery, aggravated sodomy, murder, rape, voluntary manslaughter, or armed robbery with a firearm. Prior to indictment, the district attorney may elect to send the case to juvenile court.

SPECIALIZED RESIDENTIAL SERVICES

Services purchased from the private sector that provide residential treatment services for delinquent and unruly youth who need more specialized care than the Department of Juvenile Justice programs currently provide. These youth require either long-term residential placement or specialized treatment services emphasizing mental health care.

SUPPLEMENTAL SECURITY INCOME (SSI)

Benefits provided to children and parents who are disabled but have not worked enough to receive social security disability; eligibility is determined based on disability.

YOUTH DEVELOPMENT CAMPUSES (YDC)

Department of Juvenile Justice long-term secure detention facilities for committed youth. YDC's house youth committed to DJJ, youth with 90 days sentences, or SB440 youth.

STATUS OFFENDER

A child who is charged with, or adjudicated of an offense, which would not be a crime if the child were an adult. These offenses can include: curfew violation, truancy, running away from home, incorrigibility, and habitually disobeying parents.

TRANSFER PROVISIONS

Statutory provisions authorizing or requiring adult criminal prosecution of juveniles for serious and violent crimes. All states allow juveniles under certain conditions to be tried in criminal court, as if they were adults, by way of one or more transfer mechanisms.

UNRULY CHILD

A child who:

- While subject to compulsory school attendance is habitually and without justification truant from school;
- Is habitually disobedient of the reasonable and lawful commands of his or her parent, guardian, or other custodian and is ungovernable;
- Has committed an offense applicable only to a child;
- Without just cause and without the consent of his or her parent or legal custodian deserts his or her home or place of abode;
- Wanders or loiters about the streets of any city, or in or about any highway or any public place, between the hours of 12:00 Midnight and 5:00 A.M.;
- Disobeys the terms of supervision contained in a court order which has been directed to such child, who has been adjudicated unruly; or
- Patronizes any bar where alcoholic beverages are being sold, unaccompanied by such child's parents, guardian, or custodian, or possesses alcoholic beverages; and
- In any of the foregoing, is in need of supervision, treatment, or rehabilitation; or
- Has committed a delinquent act and is in need of supervision, but not of treatment or rehabilitation.

B. Useful Websites

The following are links are for national and Georgia related websites. For a complete listing of links both nationally and local visit: <http://www.juveniledefender.org/>.

COURTS

Federal Judiciary

<http://www.uscourts.gov/>

Georgia Supreme Court

<http://www2.state.ga.us/Courts/Supreme/>

Georgia Court of Appeals

<http://www.gaappeals.us/>

United States Court of Appeals 4th Circuit

<http://pacer.ca4.uscourts.gov/opinions/opinion.php>

United States Court of Appeals 5th Circuit

<http://www.ca5.uscourts.gov/>

United States Court of Appeals 11th Circuit

<http://www.ca11.uscourts.gov/>

11th Cir Case Search

<http://law.emory.edu/11circuit/11casearch.html>

NATIONAL RESOURCES

Code of Federal Regulations

<http://www.gpoaccess.gov/cfr/index.html>

Library of Congress

<http://www.gpoaccess.gov/cfr/index.html>

United States Congress

<http://thomas.loc.gov/home/thomas.html>

United States Senate

<http://www.senate.gov/index.htm>

JUVENILE JUSTICE LINKS

American Bar Association's Juvenile Justice Center

<http://www.abanet.org/crimjust/juvjus/home.html>

ABA National Juvenile Defender Center

<http://www.abanet.org/crimjust/juvjus/jdc.html>

Girls' Justice Initiative
<http://www.girlsjusticeinitiative.org/index.shtml>

Haywood Burns Institute
<http://www.burnsinstitute.org/>

National Center for Juvenile Justice
<http://www.ncjj.org/>

National Center for Mental Health and Juvenile Justice
<http://www.ncmhjj.com/>

National Center for Education, Disability and Juvenile Justice
<http://www.edjj.org/>

National Council of Juvenile and Family Court Judges
<http://www.ncjfcj.org/>

National Mental Health Association Juvenile Justice Site
<http://www.nmha.org/children/justjuv/index.cfm>

Office of Juvenile Justice and Delinquency Prevention
<http://ojjdp.ncjrs.org/>

Research Network on Adolescent Development and Juvenile Justice
<http://www.mac-adoldev-juvjustice.org/>

SPECIAL NEEDS ORGANIZATIONS

Center for Law and Education
<http://www.cleweb.org/>

National Association of Protection and Advocacy Systems, Inc.
<http://www.protectionandadvocacy.com/>

National Center for Education, Disability and Juvenile Justice
<http://www.edjj.org/>

MENTAL HEALTH ORGANIZATIONS

American Academy of Child & Adolescent Psychiatry
<http://www.aacap.org/>

National Association for the Mentally Ill (NAMI)
<http://www.nami.org/>

National Center for Mental Health and Juvenile Justice
<http://www.ncmhjj.com/>

National Mental Health Association
<http://www.nmha.org/>

Substance Abuse & Mental Health Services Administration National Mental Health Information Center
<http://www.samhsa.gov/centers/clearinghouse/clearinghouses.html>

GEORGIA GOVERNMENT SITES

State of Georgia Website
<http://www.georgia.gov/00/home/0,2125,4802,00.html>

Attorney General's Office
<http://www.ganet.org/ago/>

Council of Juvenile Court Judges
<http://www.georgiacourts.org/councils/cjcj/index.htm>

Department of Community Health
<http://www.communityhealth.state.ga.us/>

Department of Corrections
<http://www.dcor.state.ga.us/>

Department of Juvenile Justice
<http://www.djj.state.ga.us/>

Department of Education
<http://www.doe.k12.ga.us/index.asp>

Department of Human Resources
<http://dhr.georgia.gov/02/home/0,2177,5696,00.html>

Division of Mental Health, Developmental Disabilities and Addictive Diseases
<http://www2.state.ga.us/departments/dhr/mhmrsa/index.html>

The Governor's Council on Developmental Disabilities
<http://www.gcdd.org/>

Georgia Bureau of Investigation
<http://www.state.ga.us/gbi/index.html>

Georgia Public Defender Standards Council
<http://www.gpdsc.com/>

Georgia Advocacy Office
<http://www.thegao.org/>

C. Tools & Forms

1. Suggested Reading

American Bar Association Juvenile Justice Center, Juvenile Defender Delinquency Notebook (Barbara Butterworth et. al. eds .,September 2000).

This is an excellent trial preparation notebook complete with forms and checklists. Available at: www.juveniledefender.org

Anne Graffam Walker, Handbook on Questioning Children: A Linguistic Perspective (American Bar Association 2d ed. 1999).

This is a wonderful book to help perfect the craft of interviewing children.

2. Case preparation tools

I HAVE BEEN CHARGED WITH A DELINQUENT OR UNRULY OFFENSE: NOW WHAT?

What is a delinquent offense?

A delinquent offense is an offense that would be a crime if you were an adult.

What is an unruly offense?

An unruly offense is an offense that is only a crime because you are under the age of 18. Types of unruly offenses are: running away from home, disobeying your parents, skipping school, wandering on the streets between 12:00 am and 5:00 am., goes to a bar, or posses alcohol.

What does I have a right to remain silent really mean?

This is called a Miranda warning and it means that you have a right to say absolutely nothing to anyone until you have an attorney with you. This means you don't have to answer anyone's questions, including your parents until your attorney is with you.

When can I ask for an attorney?

You can ask for an attorney if you are arrested as soon as you are arrested. When you ask for your attorney do not answer anyone's questions until your attorney arrives.

Who should I talk to about my case?

ONLY your lawyer! Don't talk to your friends, teachers or anyone other than your lawyer about your case. Also tell you parents not to talk about it either.

What will happen now?

After you ask for the attorney and are given his/her name and phone number, you should call them right away and set up a time to meet.

What happens if the court finds me guilty of a delinquent offense?

The Judge has several options those include:

Probation, commitment to DJJ, require you to pay back money for lost, stolen or damaged items, community service, suspension of driver's license not beyond age 18; stop you from getting your license not beyond age 18; serving up to 90 days at a YDC; require school attendance or get your GED;

GETTING READY FOR COURT

Clothes- Sunday Best-

NO- gang colors or markers, baggy pants, shorts, halter tops, midriff tops, low rise pants, short skirts, short shorts, logos, drug/alcohol logos or Big jewelry or earrings for boys.

YES- long pants, polo shirts, button down shirts, tucked in shirts, knee length dresses or skirts. Think school uniform.

While you are in the courtroom no:

Gum

Beepers

Cell phones

* Remember if you have any questions to just ask your lawyer.

Client Interview Form

CLIENT NAME: _____ NICKNAME: _____

DOB/AGE: _____ RACE: _____ GENDER: MALE / FEMALE

DATE: _____ TIME: _____ INTERVIEWER _____

CLIENT ADDRESS: SAME AS MOTHER / FATHER _____

HOME PHONE: _____ CELL: _____ WORK: _____

BEST TIME TO REACH: _____

MOTHER'S NAME & ADDRESS _____

FATHER'S NAME & ADDRESS: _____

CLIENT LIVES WITH: _____

NAME & ADDRESS _____

COUNTY: _____ DOCKET NUMBER: _____ DATE OF CHARGE _____

JUDGE: _____ CLERK/PHONE: _____

CHARGES: _____

PROSECUTOR: _____ PROBATION OFFICER _____

WITNESSES: _____

PREVIOUS CHARGES & DATES: _____

DISPOSITION OUTCOMES: _____

PARENTS MARRIED? Y / N PARENTS REMARRIED? Y / N

STEP PARENT / PARTNER NAMES: _____

SIBLINGS NAMES & AGES _____

CLIENT LIVES W/ SIBLINGS ? Y / N WHO RAISED CLIENT? _____

OTHER CLOSE FAMILY/ RELATIVES: _____

SCHOOL ATTENDS: _____ ENROLLED? Y / N GRADE: _____

ATTENDANCE REGULAR? Y / N IF NO WHY? _____

SCHOOL DISCIPLINE? ISS:# _____ OSS# _____ EXPULSIONS # _____

IEP/504? _Y / N OBTAINED COPY? Y / N RECEIVE SPECIAL ED? Y / N

ANY MENTAL HEALTH NEEDS/ DIAGNOSIS? _____

MEDICAL NEEDS: _____

TREATING DR. NAME: _____

NOTES:

Authorization for Release of Confidential Records and Information

To: _____

Re: _____

DOB: _____

SSN: _____

I, _____, DOB: ____/____/20____, do hereby certify that I am the PARENT/GUARDIAN of _____ and I consent to the release of _____ records and the release of any and all information pertaining to him or her which is considered personal and confidential, including but not limited to the following: juvenile court, probation, police, Department of Juvenile Justice, educational, medical and dental, psychiatric/psychological, foster care, employment, military, social/personal and child protection.

The above listed information is to be released in order to provide legal representation to _____.

You are authorized to release this information to the following individuals:

Insert name here or assigns

Organization/Agency/Firm name and address

I understand that this information is personal and private and that I am not required to release this information. I certify that I have the legal authority to provide this consent and hereby waive the privilege of confidentiality as to these records and authorize you to make full disclosure to the above named people. Since these records are personal and confidential, however, I specifically request that you not release them to anyone else.

I understand that my permission to release this information may be cancelled at any time except when the information has already been released. My permission to release this information will expire when my child is no longer represented by the Insert Name/ Firm Name, unless otherwise revoked.

Signed: _____

Client name (print)

Relationship: Parent/Guardian

Signature

Date: _____

Date: _____

Witnessed: _____

D. Resources

1. Juvenile Justice

The following is a list of juvenile justice and child advocacy resources that may be able to provide further assistance if needed.

Southern Juvenile Defender Center

Emory University School of Law

1301 Clifton Road

Atlanta, Georgia 30322

404-727-2072

www.juveniledefender.org

Barton Child Law and Policy Clinic

Emory University School of Law

1301 Clifton Road

Atlanta, Georgia 30322

404-727-6444

www.childwelfare.net

2. Immigration Resources

The following Immigration resource centers may be able to provide further assistance with an immigration issue.

National Immigration Law Center

3435 Wilshire Blvd., Suite 2850

Los Angeles, CA 90010

213-639-3911 (f)

info2nilc.org

www.nilc.org

Immigrant Legal Resource Center

1663 Mission Street, Suite 602

San Francisco, CA. 94103

415-255-9499

415-255-9792 (f)

www.ilrc.org

National Immigration Project of the National Lawyers Guild
14 Beacon Street, Suite 506
Boston, MA. 02108
617-227-9727
617-227-5495 (f)
www.nationalimmigrationproject.org

3. Housing Resources

The Georgia Department of Community Affairs has a Section 8 central office, as well as 5 regional offices that you may contact for further information.

Central Office – Atlanta

GA. Department of Community Affairs
60 Executive Park South NE
Atlanta, GA. 30329-2231

Eastman Regional Office

100 Pearl Bates Ln.
Eastman, GA. 31023-4069
912-374-6962

Albany Regional Office

323 Pine Ave. Suite 202
Albany, GA. 31701-2587
229-430-4384

Athens Regional Office

485 Newton Bridge Rd. Suite 2
Athens, GA. 30607-1169
706-369-5636

Waycross Regional Office

960-A City Blvd.
Waycross, GA. 31501-4239
912-285-6280

Carrollton Regional Office
185 Parkwood Cir.
Carrollton, GA. 30117-0609
770-836-6660

4. Medicaid Resources

Medicaid Contact Information

Georgia Department of Community Health: 404-656-4507 or
www.communityhealth.state.ga.us

Medicaid Recipient Inquiries: (404) 656-3200

Medicaid Card Inquiries: 1-800-282-4536

To find your local County Health Department call: 404-657-2700

Division of Family and Children Services: 404-651-6318 or <http://dfcs.dhr.georgia.gov>
<http://dfcs.dhr.georgia.gov>

Social Security Administration: 1-800-772-1213

5. Substance Abuse Resources

For more information about drug treatment services available to the clients you can contact:

The Georgia Division of Mental Health, Developmental Disabilities and Addictive Diseases.

The Division of MHDDAD serves people of all ages and those with the most severe problems. The MHDDAD regional offices are the contact points for people needing treatment for mental illness or addictive diseases, problems, support services for people with mental retardation and related developmental disabilities, or substance abuse prevention services. Services are provided across the state through seven regional hospitals, and through contracts with 25 community service boards, boards of health and various private providers. For more information or to locate a regional office call 404-657-2168.

The Metro Atlanta Council on Drugs and Alcohol

The Council on Alcohol and Drugs is a substance abuse prevention and education agency that develops programs and materials based on the most current research on drug use and its impact on community. Although not a direct service provider itself, it does have a helpline available Monday-Friday 8:30 a.m. - 5:00 p.m. All calls are confidential and handled by qualified counselors in a professional manner. Please call 770-239-7442 or visit www.macad.org.

The Georgia Drug Abuse Helpline – 1-800-338-6745.

The United Way – 211 Community Resource Guide

The United Way is a great resource for finding a variety of services for the clients. By visiting the website, or simply by dialing 2-1-1 on your telephone (Outside metro Atlanta, call 404-614-1000), a community specialist can connect you with the resources you need in your area. Website: www.211.org or www.unitedwayatl.org.

ENDNOTES

(Endnotes)

¹ O.C.G.A. §15-11-1(1)(2003).

² O.C.G.A. §15-11-1(2)(emphasis added).

³ Patricia Puritz, American Bar Association & Tammy Sun, Southern Center for Human Rights, Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings (July 2001).

⁴ Id. at 26-27.

⁵ Id.

⁶ Id. at 46.

⁷ Elizabeth J. Clapp, Mothers of All Children: Women Reformers and the Rise of Juvenile Courts in Progressive Era America 1(1998).

⁸ In re Gault, 387 U.S. 1, 16 (1967).

⁹ Id. See also, Martin R. Gardner, Understanding Juvenile Law 179, 182-186 (1999).

¹⁰ Martin R. Gardner, supra note 9, at 183.

¹¹ Id.

¹² Id.

¹³ Barry Feld, The Transformation of the Juvenile Court, 75 Minn. L. Rev. 691 at 695.

¹⁴ Id.

¹⁵ Id.

¹⁶ In re Gault, 387 U.S. at 20.

¹⁷ Id. at 20.

¹⁸ Id. at 29-30.

¹⁹ Id. at 30.

²⁰ Id. at 23.

²¹ Id. at 26.

²² In re Causey, 363 So. 2d 472, 474 -75 (La. 1978).

²³ Kent v. U.S. , 383 U.S. 541, 555-56 (1966).

²⁴ American Bar Association Juvenile Justice Center, Juvenile Defender Delinquency Notebook (Barbara Butterworth et. al. eds .,September 2000).

²⁵Hanna Liebman Dershowitz, Texas Appleseed , et al. , Juvenile Practice is Not Child's Play: A Handbook for Attorneys Who Represent Juveniles in Texas 3 (2002).

²⁶ O.C.G.A. § 39-1-1(a).

²⁷ O.C.G.A. § 15-11-2(2)(A)(2003).

²⁸ O.C.G.A. § 15-11-1(2)(B).

²⁹ O.C.G.A. § 15-11-1(2)(C).

³⁰ O.C.G.A. § 16-3-1. This infancy can be raised as a defense but this section does not preclude the capability of committing criminal acts by those under the age of 13. See also K.M.S. v. State, 129 Ga. App. 683, 685 (1973).

³¹ O.C.G.A. § 15-11-28(b)(1).

³² O.C.G.A. § 15-11-63(a)(2)(A).

³³ O.C.G.A. § 15-11-63(a)(2)(B)(i).

³⁴ O.C.G.A. § 15-11-63(a)(2)(B)(i)-(ii).

³⁵ O.C.G.A. §15-11-63(a)(2)(B)(ii).

³⁶ Id.

³⁷ Id.

³⁸ O.C.G.A. § 15-11-63(a)(2)(B)(iii).

³⁹ O.C.G.A. § 15-11-63(a)(2)(B)(v).

⁴⁰ O.C.G.A. § 15-11-63(a)(2)(B)(vi). This also includes any violation of §§ 16-7-82, 16-7-84, or 16-7-86.

⁴¹ O.C.G.A. § 15-11-63(a)(2)(B)(vii).

⁴² O.C.G.A. § 15-11-63(a)(2)(B)(viii).

⁴³ O.C.G.A. § 15-11-63(a)(2)(B)(ix).

⁴⁴ O.C.G.A. § 15-11-63(a)(2)(B)(x).

⁴⁵ O.C.G.A. § 15-11-63(a)(2)(B)(x)(c.1).

⁴⁶ O.C.G.A. § 15-11-63(a)(2)(B)(x)(d). This section is referring to the prosecution of SB440 offenses in juvenile court following a transfer from superior court.

⁴⁷ Georgia Rules of Professional Conduct R. 2.1(2003-2004)[hereinafter GRPC] (These rules are mandatory

for practitioners licensed in Georgia and are enforced by the State Bar of Georgia. Violation of the rules can result in disbarment. See GRPC R. 4-101, R. 4-102).

⁴⁸ GRPC R. 1.2; Institute of Judicial Administration / American Bar Association Juvenile Justice Standards Relating to Counsel for Private Parties Rule 3.1(a) (1979)[hereinafter Juvenile Justice Standards].

⁴⁹ Juvenile Justice Standards R. 3.1(b)(i).

⁵⁰ Juvenile Justice Standards R. 3.1(b)(ii)[c][1].

⁵¹ Juvenile Justice Standards R. 3.1(b)(ii)[a].

⁵² Id.

⁵³ GRPC R. 2.1 & cmt.

⁵⁴ Id.

⁵⁵ Frank P. Cervone & Linda P. Mauro Reponses to the Conference: Ethics, Cultures, and Professions in the Representation of Children; 64 Fordham L. Rev. 1975, 1976 (1996).

⁵⁶ Marvin R. Ventrell, Rights & Duties: An Overview of the Attorney-Child Client Relationship, 26 Loy. U. Chi. L. J. 259, 270 (1995).

⁵⁷ Miranda v. Arizona, 384 U.S. 436 (1966).

⁵⁸ See generally Thomas Grisso et. al., Juveniles Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants , 27 Law & Hum. Behav. 333 (2003).

⁵⁹ O.C.G.A. § 15-11-24.2.

⁶⁰ O.C.G.A. § 15-11-46.

⁶¹ Uniform Rules for the Juvenile Courts of Georgia R. 4.1, R. 4.2 (1985)[herinafter URJC].

⁶² URJC R. 4.3.

⁶³ URJC R. 4.7.

⁶⁴ O.C.G.A. § 15-11-46(1).

⁶⁵ O.C.G.A. § 15-11-46.1(b)(3).

⁶⁶ O.C.G.A. § 15-11-28(b)(2)(A).

⁶⁷ O.C.G.A. § 15-11-62.

⁶⁸ O.C.G.A. § 15-11-49(c)(1).

⁶⁹ O.C.G.A. § 15-11-49(c)(1).

⁷⁰ O.C.G.A. § 15-11-49(c)(1).

⁷¹ O.C.G.A. § 15-11-6(b); O.C.G.A. § 15-11-49(c)(4).

⁷² URJC R. 8.1.

⁷³ O.C.G.A. § 15-11-2(6)(A).

⁷⁴ O.C.G.A. § 15-11-2 (6)(C).

⁷⁵ O.C.G.A. § 15-11-2(12).

⁷⁶ O.C.G.A. § 15-11-49(e).

⁷⁷ O.C.G.A. § 15-11-49(b).

⁷⁸ O.C.G.A. § 15-11-37.

⁷⁹ O.C.G.A. § 15-11-49(b).

⁸⁰ O.C.G.A. § 15-11-30.2.

⁸¹ O.C.G.A. § 15-11-30.2(a)(4)(A).

⁸² O.C.G.A. § 15-11-30.2(c).

⁸³ O.C.G.A. § 15-11-30.2(e).

⁸⁴ O.C.G.A. § 15-11-39(a). This time limit may be waived if appropriate.

⁸⁵ O.C.G.A. § 15-11-65(a).

⁸⁶ Id. These time limits may be waived.

⁸⁷ O.C.G.A. § 15-11-65(c).

⁸⁸ O.C.G.A. § 15-11-65(a).

⁸⁹ A.C.G. v. State, 131 Ga. App. 156 (1974).

⁹⁰ Id.

⁹¹ O.C.G.A. § 15-11-40(b).

⁹² O.C.G.A. § 15-11-66.

⁹³ In the Interest of A.H.S., 223 Ga. App. 824, 825-26 (1996).

⁹⁴ O.C.G.A. § 15-11-68.

⁹⁵ O.C.G.A. § 15-11-67.

⁹⁶ O.C.G.A. § 15-11-63(e)(1)(B). Time spent in a RYDC prior to disposition may be counted toward the sentence.

⁹⁷ O.C.G.A. § 15-11-63(e)(1)(C).

⁹⁸ O.C.G.A. § 15-11-63(h).

⁹⁹ O.C.G.A. § 15-11-83.

¹⁰⁰ O.C.G.A. § 15-11-3.

- ¹⁰¹ O.C.G.A. § 15-11-70.
- ¹⁰² O.C.G.A. §15-11-70(4).
- ¹⁰³ See GRPC R. 1.1.
- ¹⁰⁴ Juvenile Justice Standards R. 1.2.
- ¹⁰⁵ See GRPC R. 1.2. There are exceptions to these rules where the lawyer may limit the objectives of representation following full disclosure and consent and a lawyer can not engage or facilitate illegal or fraudulent activity.
- ¹⁰⁶ See GRPC R. 1.14, cmt. 2 “The fact that a client suffers from a disability does not diminish the lawyer’s obligation to treat the client with attention and respect.” Id.
- ¹⁰⁷ GRPC R. 1.14.
- ¹⁰⁸ GRPC R. 1.14(a).
- ¹⁰⁹ Katherine Hunt Federle, The Ethics of Empowerment: Rethinking the Role of Lawyers in Interviewing and Counseling the Child Client, 64 Fordham L. Rev. 1655, 1656,(1996).
- ¹¹⁰ GRPC R. 1.2.
- ¹¹¹ See generally Anne Graffam Walker, Handbook on Questioning Children: A Linguistic Perspective (American Bar Association 2d ed. 1999).
- ¹¹² See GRPC R. 1.14(b); Juvenile Justice Standards R. 3.1(c).
- ¹¹³ Katherine Hunt, supra note 111, at 1657.
- ¹¹⁴ Id.
- ¹¹⁵ Marvin R. Ventrell, supra note 57.
- ¹¹⁶ See GRPC R. 1.4(a).
- ¹¹⁷ See GRPC R. 1.4(b).
- ¹¹⁸ Katherine Hunt, supra note 111, at 1658.
- ¹¹⁹ Id. at 1660.
- ¹²⁰ GRPC R. 1.6. There is implied authority to make disclosures when appropriate in carrying out representation except to the extent limited by client’s instructions.
- ¹²¹ Juvenile Justice Standards R. 3.3(b). Except as permitted by the client, an attorney should not knowingly reveal a confidence to a parent of the client.
- ¹²² O.C.G.A. § 24-9-24.
- ¹²³ GRPC R. 1.2(d); See also In re: Fulon County Grand Jury Proceedings, 244 Ga. App. 380 (2000).
- ¹²⁴ Kentucky Department of Public Advocacy, Juvenile Law Manual, 4-4 (2002).
- ¹²⁵ Dershowitz, supra note 25, at 7.
- ¹²⁶ Id.
- ¹²⁷ Id.
- ¹²⁸ University of South Carolina’s Children’s Law Office Juvenile Justice Resource Center, Training & Resource Manual for Attorneys Representing Juveniles in Family Court 14 (2001).
- ¹²⁹ Id.
- ¹³⁰ Id. at p. 8.
- ¹³¹ Id.
- ¹³² O.C.G.A. § 15-11-75(g).
- ¹³³ O.C.G.A. § 15-11-75(a).
- ¹³⁴ O.C.G.A. § 15-11-75(b).
- ¹³⁵ O.C.G.A. § 15-11-75(d)(1).
- ¹³⁶ O.C.G.A. § 15-11-75(c).
- ¹³⁷ Id.
- ¹³⁸ O.C.G.A. § 15-11-75(e).
- ¹³⁹ Id.
- ¹⁴⁰ O.C.G.A. § 15-11-75(f).
- ¹⁴¹ O.C.G.A. § 15-11-75(b).
- ¹⁴² Crawford v. State, 240 Ga. 321 (1977).
- ¹⁴³ O.C.G.A. § 24-3-53.
- ¹⁴⁴ Juvenile Justice Standards R. 7.1.
- ¹⁴⁵ O.C.G.A. § 24-3-15.
- ¹⁴⁶ URJC R. 10.4(a).
- ¹⁴⁷ Juvenile Defender Delinquency Notebook, supra note 24 at 61.
- ¹⁴⁸ Id. at 62.
- ¹⁴⁹ McLeod v. State, 554 S.E.2d 507, 508 (Ga. 2001).
- ¹⁵⁰ Juvenile Defender Delinquency Notebook, supra note 24, at 63-64.

- ¹⁵¹ See generally Lisa M. Boesky, Juvenile Offenders with Mental Health Disorders: Who Are They and What Do We Do With Them? (2002).
- ¹⁵² Georgia Dep't Juv. Just., Governor's 2003 Transition Briefing 4 (Nov. 2002).
- ¹⁵³ Boesky, supra note 151, at 3.
- ¹⁵⁴ Id.
- ¹⁵⁵ See id. at 5.
- ¹⁵⁶ O.C.G.A. §15-11-149(a).
- ¹⁵⁷ O.C.G.A. §15-11- 68.
- ¹⁵⁸ Lisa M. Boesky, Mentally Ill Youths and the Juvenile Justice System: A Primer on Mental Health Disorders, Juv. Fam. Just. Today, Winter 2003, at 18-20.
- ¹⁵⁹ American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders (American Psychiatric Ass'n ed., 4th ed., text revision, 2000) [hereinafter DSM-IV-TR].
- ¹⁶⁰ Id.
- ¹⁶¹ Id.
- ¹⁶² Id.
- ¹⁶³ National Mental Health Ass'n, Children's Health Matters: Attention-Deficit/Hyperactivity Disorders (ADHD) (visited Apr. 25, 2004) http://www.nmha.org/children/children_mh_matters/adhd.cfm.
- ¹⁶⁴ Id.
- ¹⁶⁵ National Mental Health Ass'n, Children's Health Matters: Bipolar Disorder (visited Apr. 26, 2004) <http://www.nmha.org/infoctr/factsheets/76.cfm>.
- ¹⁶⁶ Id.
- ¹⁶⁷ Id.
- ¹⁶⁸ Id.
- ¹⁶⁹ DSM-IV-TR, supra note 159.
- ¹⁷⁰ Id.
- ¹⁷¹ Id.
- ¹⁷² See Boesky, supra note 151, at 63.
- ¹⁷³ Id.
- ¹⁷⁴ Id.
- ¹⁷⁵ National Mental Health Ass'n, Children's Health Matters: Depression and Children (visited Apr. 25, 2004) http://www.nmha.org/children/children_mh_matters/depression.cfm.
- ¹⁷⁶ Id.
- ¹⁷⁷ Id.
- ¹⁷⁸ Id.
- ¹⁷⁹ Id.
- ¹⁸⁰ 20 U.S.C. § 1401(26) (2004).
- ¹⁸¹ DSM-IV-TR, supra note 159.
- ¹⁸² 20 U.S.C. § 1401(3)(b) (2004); 34 C.F.R. §§ 300.7(b), (c)(6), 300.13 (2004).
- ¹⁸³ O.C.G.A. § 37-4-2(12).
- ¹⁸⁴ DSM-IV-TR, supra note 159.
- ¹⁸⁵ O.C.G.A. § 15-11-150(a)(2).
- ¹⁸⁶ See id.
- ¹⁸⁷ O.C.G.A. § 15-11-151(5).
- ¹⁸⁸ O.C.G.A. § 15-11-152(a).
- ¹⁸⁹ Id.
- ¹⁹⁰ O.C.G.A. § 15-11-152(h). This includes the pending adjudication that led to the evaluation.
- ¹⁹¹ A qualified examiner must be either a licensed psychologist or psychiatrist who has expertise in child development and has received training in forensic evaluation procedures through formal instruction, professional supervision or both. O.C.G.A. §15-11-151(7).
- ¹⁹² O.C.G.A. § 15-11-152(c).
- ¹⁹³ O.C.G.A. § 15-11-152(c)(2), (3), (4).
- ¹⁹⁴ O.C.G.A. § 15-11-152(c)(5)(A), (B), (C).
- ¹⁹⁵ O.C.G.A. § 15-11-152(c)(6).
- ¹⁹⁶ O.C.G.A. § 15-11-152(c)(7).
- ¹⁹⁷ O.C.G.A. § 15-11-152(f).
- ¹⁹⁸ O.C.G.A. § 15-11-152(d)(1).
- ¹⁹⁹ O.C.G.A. § 15-11-152(d)(2), (3).
- ²⁰⁰ O.C.G.A. §15-11-152(g).

- ²⁰¹ O.C.G.A. § 15-11-153(a).
- ²⁰² Id.
- ²⁰³ O.C.G.A. § 15-11-153(c).
- ²⁰⁴ Id.
- ²⁰⁵ Id.
- ²⁰⁶ O.C.G.A. § 15-11-153(b).
- ²⁰⁷ O.C.G.A. § 15-11-153(c).
- ²⁰⁸ O.C.G.A. § 15-11-153(b).
- ²⁰⁹ O.C.G.A. § 15-11-153(e). A dependent youth is one who is alleged to have committed a delinquent act but is incompetent, and the pending charges have not been dismissed.
- ²¹⁰ Id.
- ²¹¹ Id.
- ²¹² O.C.G.A. § 15-11-154(b).
- ²¹³ Id.
- ²¹⁴ These can be representatives from the local mental health provider or community service board or from the Division of Mental Health, Developmental Disabilities and Addictive Diseases.
- ²¹⁵ O.C.G.A. § 15-11-154 (c)(1) (A) – (G).
- ²¹⁶ O.C.G.A. § 15-11-154(c)(3).
- ²¹⁷ O.C.G.A. § 15-11-154(b)(1).
- ²¹⁸ O.C.G.A. § 15-11-154(b)(2).
- ²¹⁹ O.C.G.A. § 15-11-154(b)(3).
- ²²⁰ O.C.G.A. § 15-11-154(b)(4).
- ²²¹ O.C.G.A. § 15-11-155 (a).
- ²²² O.C.G.A. § 15-11-155(a), (b).
- ²²³ O.C.G.A. § 15-11-155(b).
- ²²⁴ Id.
- ²²⁵ O.C.G.A. § 15-11-155(c).
- ²²⁶ O.C.G.A. § 15-11-155(a).
- ²²⁷ O.C.G.A. § 15-11-155(d).
- ²²⁸ O.C.G.A. § 15-11-155(e).
- ²²⁹ Id.
- ²³⁰ O.C.G.A. § 15-11-155(g)(1).
- ²³¹ O.C.G.A. § 15-11-58(o); O.C.G.A. § 15-11-155(g)(1). The order may be extended for additional two-year periods as provided in O.C.G.A. § 15-11-58(o).
- ²³² O.C.G.A. § 15-11-155(g)(2).
- ²³³ O.C.G.A. § 15-11-155(f).
- ²³⁴ Id.
- ²³⁵ O.C.G.A. § 37-3-1(9.1)(A)(i).
- ²³⁶ Id.
- ²³⁷ See O.C.G.A. § 37-3-1(9.1)(B).
- ²³⁸ See Judith Cox & James Bell, Addressing Disproportionate Representation of Youth of Color in the Juvenile Justice System 3 J. Center Families Children & Cts. 31, 35 (2001).
- ²³⁹ Marty Beyer et al., A Better Way to Spend \$500,000: How the Juvenile Justice System Fails Girls, 18 Wis. Women's L. J. 51, 53 (2003).
- ²⁴⁰ See generally Francine T. Sherman, Girls in the Juvenile Justice System: Perspectives on Services and Conditions of Confinement, Girls' Just. Initiative (2003).
- ²⁴¹ Beyer, supra note 239 at 52.
- ²⁴² Id.
- ²⁴³ See Randi Feinstein et al., Urban Just. Ctr., Justice for All? A Report on Lesbian, Gay, Bisexual and Transgendered Youth in the New York Juvenile Justice System 26 (2001).
- ²⁴⁴ Id. at 17.
- ²⁴⁵ Id. at 18.
- ²⁴⁶ See National Mental Health Ass'n, Bullying in Schools: Harassment Puts Gay Youth at Risk (visited Mar. 20, 2004) <http://www.nmha.org/pbedu/backtoschool/bullyingGayYouth.cfm>.
- ²⁴⁷ 8 U.S.C. § 1182(a) (2004); 8 U.S.C. 1227(a) (2004); See also, Katherine Brady, Immigrant Legal Resource Center, Special Immigrant Juvenile Status for Children Under Juvenile Court Jurisdiction 27 (2001).
- ²⁴⁸ Brady, supra note 247, at 29.

- ²⁴⁹ 8 C.F.R. § 287.3(d) (2004).
- ²⁵⁰ 8 U.S.C. § 1101(a)(27)(J) (2004).
- ²⁵¹ See Brady, supra note 250, at 2.
- ²⁵² Id. at 6.
- ²⁵³ Id. at 3-4. Some of the requirements for SIJS qualification include: involvement in dependency, delinquency or other juvenile court proceedings; eligibility for long-term foster care, which means that family reunification is not a viable option; and a court or administrative agency ruling that it is not in the youth's best interest to return to the country of origin based on abuse, neglect or abandonment.
- ²⁵⁴ 8 U.S.C. § 1101(a)(27)(J) (2004).
- ²⁵⁵ See generally Brady, supra note 247, at 12.
- ²⁵⁶ 20 U.S.C. § 1400 (2004).
- ²⁵⁷ See 34 C.F.R. § 300.2(b)(1)(iv) (2004).
- ²⁵⁸ See 20 U.S.C. § 1401(8), (25) (2004); 34 C.F.R. §§ 300.13, 300.26, 300.121, 300.300 (2004). See generally American Bar Association Juvenile Justice Center, Special Ed Kids in the Justice System: How to Recognize and Treat Young People with Disabilities That Comprise their Ability to Comprehend, Learn, and Behave (Lourdes Rosado, ed. 2000).
- ²⁵⁹ See 20 U.S.C. § 1401(22) (2004); 34 C.F.R. § 300.24 (2004). See generally Special Ed Kids in the Justice System, supra note 258.
- ²⁶⁰ See 20 U.S.C. §§ 1401(30), 1414(d) (2004); 34 C.F.R. §§ 300.29, 300.47, 300.348 (2004). See generally Special Ed Kids in the Justice System, supra note 263.
- ²⁶¹ 29 U.S.C. § 794 (2004).
- ²⁶² Sheri Meisel et al., "Collaborate to Educate: Special Education in Juvenile Correctional Facilities" in In Building Collaboration Between Education and Treatment for At-risk and Delinquent Youth 59-72 (1998) http://www.edjj.org/Publications/pub01_17_00.html.
- ²⁶³ Id.
- ²⁶⁴ Id.
- ²⁶⁵ Id.
- ²⁶⁶ See generally Special Ed Kids in the Justice System, supra note 258.
- ²⁶⁷ Id.
- ²⁶⁸ See generally Americans with Disabilities Act of 1990, P.L. No. 101-336, 104 Stat 327 (codified as amended in sections of 42 U.S.C.).
- ²⁶⁹ Meisel, supra note 262.
- ²⁷⁰ O.C.G.A. § 15-11-28(a)(1)(D).
- ²⁷¹ O.C.G.A. § 15-11-149(a).
- ²⁷² O.C.G.A. § 15-11-149(c). The statute also provides for handling of juveniles who are not found to be committable and juveniles who are diagnosed with a mental disorder or mental retardation. O.C.G.A. § 15-11-149(d) states that a juvenile who is not found to be committable shall proceed to disposition or transfer under the regular procedures. O.C.G.A. § 15-11-149(e) states that O.C.G.A. § 15-11-62 shall not apply to juveniles ages 13 to 15 who are determined to be suffering from a mental illness or mental retardation. Chapter 62 of the Georgia Code gives custody of juveniles housed in youth detention centers to the Department of Corrections. It also provides for youth confinement separate from adults and lists certain resources that the youth confinement units are required to provide, such as life training skills and academic training. 15-11-149(e) excludes disabled juveniles from custody of the Department of Corrections and vests custody in the Division of Mental Health, Developmental Disabilities, and Addictive Diseases of the Department of Human Resources. See generally 20 U.S.C.S. § 1401 (2004).
- ²⁷³ 20 U.S.C. § 1401(3)(A) (2004).
- ²⁷⁴ 20 U.S.C. § 1401(3)(B) (2004).
- ²⁷⁵ O.C.G.A. § 15-11-149(b).
- ²⁷⁶ 20 U.S.C. § 1401(3), (26) (2004).
- ²⁷⁷ 20 U.S.C. § 1401(26) (2004).
- ²⁷⁸ 34 C.F.R. § 300.7(c)(4)(ii) (2004).
- ²⁷⁹ See 34 C.F.R. § 300.7(c)(9) (2004).
- ²⁸⁰ 34 C.F.R. § 300.7(c)(9) (2004).
- ²⁸¹ See generally 20 U.S.C. § 1410(3)(b), 34 C.F.R. §§ 300.7(b) and (c)(6), 300.13 (2003).
- ²⁸² O.C.G.A. § 37-4-2(12).
- ²⁸³ 34 C.F.R. § 300.7(c)(11) (2004).
- ²⁸⁴ 34 C.F.R. § 300.7(c)(9) (2004).
- ²⁸⁵ The National Council On Disabilities, Addressing the Needs of Youth with Disabilities in the Juvenile Justice

System: The Current Status of Evidence Based Research. (May 2003) Available at www.ncd.gov/newsroom/publications/juvenile.html.

²⁸⁵ O.C.G.A. § 20-2-735.

²⁸⁶ Id.

²⁸⁷ O.C.G.A. § 20-2-736(a).

²⁸⁸ O.C.G.A. § 20-2-736(b).

²⁸⁹ O.C.G.A. § 20-2-754(b)(1).

²⁹⁰ O.C.G.A. § 20-2-755.

²⁹¹ O.C.G.A. § 20-2-754(c).

²⁹² O.C.G.A. § 20-2-768(a).

²⁹³ O.C.G.A. § 20-2-768(b). It is state policy to reassign disruptive students to alternative school rather than expel or suspend those students. O.C.G.A. § 20-2-768(c).

²⁹⁴ O.C.G.A. § 20-2-751.2(b).

²⁹⁵ O.C.G.A. § 20-2-751.1.

²⁹⁶ O.C.G.A. § 20-2-751.6.

²⁹⁷ Id. The tribunal consists of three teachers or certificated education personnel who are appointed by the local school board.

²⁹⁸ Id. See also O.C.G.A. § 20-2-150 outlining eligibility for enrollment in the public school system.

²⁹⁹ O.C.G.A. § 20-2-1181.

³⁰⁰ O.C.G.A. § 8-3-1.

³⁰¹ See O.C.G.A. § 8-3-2.

³⁰² O.C.G.A. § 8-3-3.1.

³⁰³ O.C.G.A. § 8-3-36.

³⁰⁴ O.C.G.A. § 8-3-202(a). See also, 42 U.S.C. § 3604.

³⁰⁵ O.C.G.A. § 8-3-201(7)(C).

³⁰⁶ O.C.G.A. § 8-3-208(a).

³⁰⁷ Medicaid Act, 42 U.S.C. § 1396 (1994).

³⁰⁸ O.C.G.A. § 39-2-9.

³⁰⁹ Id.

³¹⁰ Id.

³¹¹ O.C.G.A. § 39-2-11.

³¹² O.C.G.A. § 39-2-2.

³¹³ O.C.G.A. § 39-2-3, §39-2-4.

³¹⁴ O.C.G.A. § 39-2-7.

³¹⁵ <http://www.dol.state.ga.us/>.

³¹⁶ O.C.G.A. § 19-13-1.

³¹⁷ O.C.G.A. § 16-5-70.

³¹⁸ O.C.G.A. § 16-12-1.

³¹⁹ O.C.G.A. § 31-9-2(a)(5).

³²⁰ 1971 Op. Att’y Gen. N. 71-177 (noting that the determination of what constitutes “in connection with pregnancy or childbirth” must result in a fact-specific inquiry because of “the myriad types and possibilities of medical treatment which may be offered as an adjunct to family planning services, along with the absence of any court decisions construing which medical treatments are given in connection with pregnancy or childbirth”).

³²¹ O.C.G.A. § 15-11-110.

³²² O.C.G.A. § 15-11-112(a)(1)(A).

³²³ O.C.G.A. §§ 15-11-112(a)(1)(B),(C).

³²⁴ O.C.G.A. § 15-11-112(b).

³²⁵ O.C.G.A. § 15-11-112(a)(2)(b).

³²⁶ O.C.G.A. § 15-11-28(b).

³²⁷ Id. Also known as the “Seven Deadly Sins.”

³²⁸ O.C.G.A. § 15-11-28(b)(C).

³²⁹ O.C.G.A. § 15-11-63.

³³⁰ Id.

³³¹ O.C.G.A. § 15-11-28(b)(1)(B). In some instances cases may be transferred down when the superior court believes the youth is amenable and in need of treatment and rehabilitation. In many cases sex offense cases are transferred down to juvenile court in order to allow expedited access to services that would not be possible through the Department of Corrections or superior court process.

³³² O.C.G.A. § 5-7-1.

333 O.C.G.A. § 15-11-28(b)(1)(D).
334 O.C.G.A. § 15-11-30.2.
335 O.C.G.A. § 15-11-30.2(a); O.C.G.A. § 15-11-30.2(a)(4).
336 O.C.G.A. § 15-11-30.2(b).
337 O.C.G.A. § 15-11-30.3(a).
338 O.C.G.A. § 15-11-30.3(c).
339 Kent v. United States, 383 U.S. 541 (1966).
340 Id.
341 O.C.G.A. § 15-11-30.2(a)(3)(C).
342 Kent, 383 U.S. at 566.
343 O.C.G.A. § 15-11-65(a).
344 Juvenile Defender Delinquency Notebook, supra note 24, at 65.
345 O.C.G.A. § 24-9-61.
346 See O’Kelley v. State, 333 S.E.2d 838 (Ga. 1985).
347 O.C.G.A. § 15-11-69.
348 Id.
349 Id.
350 O.C.G.A. § 15-11-2(12)(I).
351 Id.
352 O.C.G.A. § 15-11-65(a).
353 O.C.G.A. § 15-11-65(c). These reports may include but are not limited to the disposition plan, a studies and reports regarding the client and his/her home life and family, psychological exams, and IEP’s.
354 O.C.G.A. § 15-11-65(b).
355 Id.
356 O.C.G.A. § 15-11-12(a).
357 O.C.G.A. § 15-11-12(b).
358 O.C.G.A. § 15-11-11(a).
359 O.C.G.A. § 15-11-11(c).
360 O.C.G.A. § 15-11-11(a)(3).
361 O.C.G.A. § 15-11-11(a)(4).
362 O.C.G.A. § 15-11-11(a)(5).
363 O.C.G.A. § 15-11-11(a)(6).
364 O.C.G.A. § 15-11-11(a)(7).
365 O.C.G.A. § 15-11-11(a)(8).
366 O.C.G.A. § 15-11-11(a)(9).
367 O.C.G.A. § 15-11-149(a).
368 O.C.G.A. § 15-11-149(b).
369 Id.
370 Id.
371 O.C.G.A. § 15-11-66.
372 O.C.G.A. § 15-11-67.
373 O.C.G.A. § 15-11-63. A designated felony is an act that could have been prosecuted in superior court.
374 Id.
375 Juvenile Defender Delinquency Notebook, supra note 124 (citing Marty Beyer et al., More than Meets the Eye: Rethinking Assessment, Competency, and Sentencing for a Harsher Era of Juvenile Justice 59 (Patricia Puritz, A.B.A. Juv. Just. Ctr., eds. 1997).
376 29 U.S.C. §§ 1400-1415.
377 URCJ R. 6.8.
378 Id.
379 Id.
380 Id.
381 In the Interest of R.D.F., 466 S.E. 2d 572 (Ga. 1996). Holding that such timelines are mandatory, rather than directory. But note, these time limits may be waived to secure legal representation or for reasons within the court’s discretion.
382 O.C.G.A. § 15-11-39(a).
383 Id.
384 In the Interest of R.D.F., 466 S.E. 2d 572 (Ga. 1996).
385 O.C.G.A. § 15-11-65(a).

³⁸⁶ O.C.G.A. § 15-11-47(e)(1).
³⁸⁷ Id.
³⁸⁸ O.C.G.A. § 15-11-47(e)(2).
³⁸⁹ O.C.G.A. § 15-11-67.
³⁹⁰ O.C.G.A. § 15-11-48(a).
³⁹¹ O.C.G.A. § 15-11-48(e).
³⁹² DJJ Policy is available on-line at <http://www.djj.state.ga.us/policy/pmain.asp>.
³⁹³ See <http://www.djj.state.ga.us/policy/pmain.asp>
³⁹⁴ Ga. Dept. Juv. Just., Policy 11.1 (effective date 09/01/02), available at http://www.djj.state.ga.us/policy/mainhealth_med.htm.
³⁹⁵ Id.
³⁹⁶ Id.
³⁹⁷ Id.
³⁹⁸ Ga. Dept. Juv. Just., Policy 18.2 (effective date 11/15/03), available at http://www.djj.state.ga.us/policy/mainhealth_med.htm.
³⁹⁹ Ga. Dept. Juv. Just., Policy 11.9 (effective date 07/01/03), available at http://www.djj.state.ga.us/policy/mainhealth_med.htm.
⁴⁰⁰ Ga. Dept. Juv. Just., Policy 12.1 (effective date 08/01/03), available at http://www.djj.state.ga.us/policy/mainhealth_med.htm.
⁴⁰¹ Id.
⁴⁰² Id.
⁴⁰³ Ga. Dept. Juv. Just., Policy 18.2 (effective date 11/15/03), available at http://www.djj.state.ga.us/policy/mainhealth_med.htm.
⁴⁰⁴ Id.
⁴⁰⁵ Ga. Dept. Juv. Just., Policy 13.1 (effective date 08/15/03), available at http://www.djj.state.ga.us/policy/mainhealth_med.htm.
⁴⁰⁶ Ga. Dept. Juv. Just., Policy 14.2.4 (effective date 11/01/00), available at http://www.djj.state.ga.us/policy/mainhealth_med.htm.
⁴⁰⁷ Id.
⁴⁰⁸ Ga. Dept. Juv. Just., Policy 14.8 (effective date 09/15/00), available at http://www.djj.state.ga.us/policy/mainhealth_med.htm.
⁴⁰⁹ Id.
⁴¹⁰ Id.
⁴¹¹ Ga. Dept. Juv. Just., Policy 14.11 (effective date 07/01/02), available at http://www.djj.state.ga.us/policy/mainhealth_med.htm.
⁴¹² Id.
⁴¹³ Ga. Dept. Juv. Just., Policy 14.18 (effective date 08/01/02), available at http://www.djj.state.ga.us/policy/mainhealth_med.htm.
⁴¹⁴ Ga. Dept. Juv. Just., Policy 14.21 (effective date 06/01/02), available at http://www.djj.state.ga.us/policy/mainhealth_med.htm.
⁴¹⁵ Id.
⁴¹⁶ Ga. Dept. Juv. Just., Policy 15.3 (effective date 05/15/01), available at http://www.djj.state.ga.us/policy/mainhealth_med.htm.
⁴¹⁷ Ga. Dept. Juv. Just., Policy 15.1 (effective date 07/16/01), available at http://www.djj.state.ga.us/policy/mainhealth_med.htm.
⁴¹⁸ O.C.G.A. § 15-11-3.
⁴¹⁹ M.K.H. v. State, 207 S.E. 2d 645 (Ga. 1974).
⁴²⁰ Id.
⁴²¹ J.J. v. State, 218 S.E. 2d 668, 671 (Ga. 1975).
⁴²² In the Interest of D.L.S., 482 S.E. 2d 418 (Ga. 1997).
⁴²³ O.C.G.A. § 15-11-40(b). This also includes a revocation of an order for probation on the grounds that the terms of probation have not been observed.
⁴²⁴ O.C.G.A. § 15-11-40(c).
⁴²⁵ Id.
⁴²⁶ O.C.G.A. § 15-11-70(c).
⁴²⁷ O.C.G.A. § 15-11-70(d).
⁴²⁸ O.C.G.A. § 15-11-79.2(b)
⁴²⁹ O.C.G.A. § 15-11-79.2(b) referring to records specified in O.C.G.A. § 15-11-82 and O.C.G.A. § 15-11-83.

⁴³⁰ O.C.G.A. § 15-11-79.2(b)(1).
⁴³¹ O.C.G.A. § 15-11-79.2(b)(2).
⁴³² O.C.G.A. § 15-11-79.2(b)(3).
⁴³³ O.C.G.A. § 15-11-79.2(d).
⁴³⁴ Id.
⁴³⁵ Id.
⁴³⁶ Id.
⁴³⁷ O.C.G.A. § 15-11-79.2(e) referring to hearings held under O.C.G.A. § 15-11-78.
⁴³⁸ O.C.G.A. § 15-11-63(a)(2)(A).
⁴³⁹ O.C.G.A. § 15-11-63(a)(2)(B)(i).
⁴⁴⁰ O.C.G.A. § 15-11-63(a)(2)(B)(ii).
⁴⁴¹ Id.
⁴⁴² Id.
⁴⁴³ Id.
⁴⁴⁴ O.C.G.A. § 15-11-63(a)(2)(B)(iii).
⁴⁴⁵ O.C.G.A. § 15-11-63(a)(2)(B)(iv).
⁴⁴⁶ O.C.G.A. § 15-11-63(a)(2)(B)(vi). This also includes any violation of §§ 16-7-82, 16-7-84, or 16-7-86.
⁴⁴⁷ O.C.G.A. § 15-11-63(a)(2)(B)(vii).
⁴⁴⁸ O.C.G.A. § 15-11-63(a)(2)(B)(viii).
⁴⁴⁹ O.C.G.A. § 15-11-63(a)(2)(B)(ix).
⁴⁵⁰ O.C.G.A. § 15-11-63(a)(2)(B)(x).
⁴⁵¹ O.C.G.A. § 15-11-63(a)(2)(B)(x)(c.1).
⁴⁵² O.C.G.A. § 15-11-63(a)(2)(B)(x)(d). This section is referring to the prosecution of SB440 offenses in juvenile court following a transfer from superior court.

