

I. THE PURPOSE OF JUVENILE COURT

A. History

1. beginnings of Juvenile Court
 - a. in the 18th century a child over 7 years old could be tried and punished in the same manner as adults
 - b. Chicago, Illinois established the country's first juvenile court, in 1899
 1. doctrine of *parens patriae*
 2. state has power and responsibility to protect children
 - c. focus was always on child's welfare
 - d. goal of rehabilitation
2. Georgia's Juvenile Court System
 - a. rudimentary juvenile courts established in 1908 and 1918
 - b. first Georgia juvenile code was enacted in 1951 (O.C.G.A. §15-11-1 *et. seq.*)

B. Goals of Juvenile Court (O.C.G.A. § 15-11-1)

1. that children whose well-being is threatened shall be assisted and protected and restored, if possible, as secure law-abiding members of society
2. that each child coming within the jurisdiction of the court shall receive, preferably in his own home, the care, guidance, and control that will be conducive to his welfare and the best interests of the state; and
3. that when a child is removed from the control of his parents the court shall secure for him care as nearly as possible equivalent to that which his parents should have given him

II. DEFINITIONS (O.C.G. A. § 15-11- 2)

A. Child (15-11-2(2))

1. a person under the age of 17
2. a person under the age of 21, who

- a. committed a delinquent act before aged 17, **and**
- b. is under juvenile court supervision
3. a person who is under the age of 18, if the charge is a status offense

B. Delinquent Act (15-11-2(6))

1. act which is a crime as defined by the laws of this state or another state if the crime occurred there
2. disobeying the terms of probation or the court's supervision
3. failing to appear as required by a citation issued for violation of O.C.G.A. § 3-3-23 (underage possession of alcohol)

C. Delinquent Child (15-11-2(7))

1. a child who has committed a delinquent act, **and**
2. is in need of treatment or rehabilitation
3. must have both 1 and 2

D. Status Offender (15-11-2(11))

1. offense would not be a crime if committed by an adult, such as truancy, runaway, unruly
2. term applies to child who is either accused **or** adjudicated

E. Unruly Child (15-11-2(12))

1. habitually and without justification truant
2. habitually disobedient to the reasonable and lawful commands of parent, guardian, or custodian and is ungovernable
3. has committed an offense applicable only to a child
4. without just cause and without consent leaves home
5. wanders or loiters about the streets or in any public place between the hours of midnight and 5 a.m.
6. disobeys the terms of supervision in the court's order after having been found unruly
7. goes to bars without parents or guardian and/or possesses alcohol
8. is any of the above, is in need of supervision, treatment, or rehabilitation; or
9. has committed a delinquent act and is in need of supervision, but not of treatment or rehabilitation

III. JURISDICTION OF JUVENILE COURT (OCGA § 15-11-28)

A. Exclusive Original Jurisdiction of Juvenile Court (15-11-28(a))

1. delinquency cases involving children
2. unruly cases involving children
3. children who are alleged to be in need of treatment or commitment as a mentally ill or mentally retarded child
4. traffic offenses involving children under 17
5. actions involving children who are on probation or under the supervision of the court

B. Concurrent Jurisdiction of Juvenile Court (15-11-28(b)(1))

1. with Superior Court
2. delinquent acts which would be a crime if tried in Superior Court and for which the child may be punished by death, life imprisonment without possibility of parole, or life

C. Exclusive Jurisdiction of the Superior Court (15-11-28(b)(2)(A))

1. child aged 13-17
2. alleged to have committed
 - a. murder
 - b. voluntary manslaughter
 - c. rape
 - d. aggravated sodomy
 - e. aggravated child molestation
 - f. aggravated sexual battery
 - g. armed robbery with a firearm

D. Transfers

1. From Juvenile To Superior (O.C.G.A. § 15-11-30.2)
 - a. after petition has been filed
 - b. before hearing on the merits
 - c. hearing must be held
 - d. entitled to 3 days notice
 - e. burden of proof on state
 - f. entitled to due process and fair treatment *Kent v. U.S.*, 383 US 541 (1966), *R.S. v. State*, 156 Ga. App. 460 (1980)
 - g. court *may* transfer to Superior court if it finds reasonable grounds that
 - i. child committed offense, **and**
 - ii. child is not committable to mentally retarded/ ill institution, **and**

- iii. interests of child **and** community require transfer
 - h. Child must be
 - i. at least 15, **or**
 - ii. 13-14 who have committed
 - (1). offense punishable by life, **or**
 - (2). aggravated battery
 - i. court *shall* transfer if it finds reasonable grounds that
 - i. murder, **or**
 - ii. voluntary manslaughter, **or**
 - iii. aggravated assault, **or**
 - iv. aggravated battery, **and**
 - v. in a YDC, **and**
 - vi. child at least 14
 - j. entitled to access to all records and files court *will consider*
 - k. order must include findings of fact and conclusions of law
 - l. order is final and can be appealed
 - m. child's statements at hearing are not admissible in criminal proceeding if proper objection made
2. From Superior To Juvenile (15-11-28 (b))
- a. Post-indictment (15-11-28 (b)(2)(B))
 - i. by Superior Court
 - ii. after investigation, and
 - iii. for extraordinary cause, but only
 - iv. if not punishable by possible life sentence
 - (a). voluntary manslaughter
 - (b). aggravated sexual battery
 - (c). first offense of aggravated child molestation
 - b. Pre-indictment (15-11-28 (b)(2)(C))
 - i. by District Attorney
 - ii. after investigation, and
 - iii. for extraordinary cause
 - c. transferred case will be subject to the provisions of the designated felony act
 - d. transfer constitutes notice that the case is subject to designated felony treatment
 - e. if convicted of lesser included case may be transferred to juvenile court for disposition (15-11-28 b)(2)(D))

IV. VENUE

A. Adjudicatory Hearing (O.C.G.A. § 15-11-29)

1. in the county in which the conduct occurred, or
2. in the county of the child's residence

B. Dispositional Hearing (O.C.G.A. § 1. 5-11-30)

1. in the county in which the conduct occurred, or
2. in the county of the child's residence

V. PROCEDURE

A. Arrest (O.C.G.A. § 15-11-45)

1. taken into custody
 - a. child may truthfully respond negatively to questions regarding “arrests”
 - b. may prevent dissemination of “arrest records”
2. reasonable grounds
 - a. child is delinquent, or
 - b. child is unruly
 - c. runaway
 - d. escapee
 - e. curfew violation
 - f. probation violation

B. Informal Detention (O.C.G.A. § 15-11-46 and 46.1)

1. made by intake officer
2. presumption favors release
3. four factors (15-11-46)
 - a. protect person or property of others
 - b. protect person or property of child
 - c. prevent child from leaving or being taken from court’s jurisdiction
 - d. child has no parent or guardian
4. 15-11-46.1
 - a. public policy is against restraints on freedom of children prior to adjudication
 - b. shall be imposed only when

- i. probable cause, and
- ii. clear and convincing evidence that detention is necessary
- c. purposes of preadjudicatory detention
 - i. protecting “jurisdiction and process of the court”
 - ii. reducing likelihood of serious bodily harm to others
 - iii. protecting child from imminent bodily harm, upon child’s request
- d. shall not be used for
 - i. punishment, treatment or rehabilitation
 - ii. to allow parents to avoid legal responsibilities
 - iii. to satisfy demands of victim, police or community
 - iv. in order to have convenient access to child
 - v. to facilitate further interrogation or investigation
- e. if detention is necessary, then
 - i. respect for privacy, dignity and individuality of child and family
 - ii. protect physical and psychological health of child
 - iii. tolerance of diversity
 - iv. equal treatment of all by race, class, ethnicity and gender
 - v. avoidance of regimentation and depersonalization
 - vi. avoidance of stigmatization
 - vii. assurance that child is aware of right to counsel

B. Detention Hearing (O.C.G.A. § 15-11-49)

1. with arrest warrant: within 72 hours
2. without arrest warrant: within 48 hours
3. child and parent/guardian entitled to notice
4. is detention justified under 15-11-46
5. also determines probable cause: reasonable grounds to believe the complaint is true: URJC 8.1
6. child is entitled to counsel: T.K. v. State, 126 Ga. App. 269 (1972)
7. hearsay is allowed: URJC 8.1

D. Petition

1. if child detained: filed within 72 hours of decision (15-11-49(b))
2. if child released: filed within 30 days of decision (15-11-49(e))
3. can be made by anyone with knowledge of facts or information and belief that alleged facts are true
4. court must determine that petition is in best interests of public and child (15-11-37)
5. must contain

- a. facts
 - b. name, age and address of child
 - c. names and addresses of parents/guardians
 - d. place and date of detention, if applicable
6. must satisfy due process
 - a. specify alleged code violation
 - b. on notice of lesser included offenses
 - c. must allege sufficient facts to allow for preparation of a defense
 - d. does not have to inform that offense is a designated felony

E. Arraignment (URJC 10.1)

1. optional
2. formal hearing
 - a. child advised of his/her rights
 - b. admit or deny allegations in the Petition
3. may be held in conjunction with adjudicatory hearing
4. judge has the option to accept or reject an admission
5. mass arraignments are okay (*In the Interest of Q.J.A.*, 255 Ga. App. 564 (2002))

F. Adjudicatory Hearings (O.C.G.A. § 15-11-41)

1. “trial” on the merits
2. shall be recorded
 - a. may be waived
 - b. if not recorded and not waived, reversible error (*In re R. L. M.*, 171 Ga. App. 940 (1984))
 - c. **caution:** there are several caselaw exceptions to b.
3. if child has been detained: must be held within 10 days
4. if child has been released: must be held within 60 days
5. continuances are allowed
6. the child’s parent can never be excluded, even if he/she is testifying
7. state has the burden of proof
 - a. beyond a reasonable doubt
 - b. must prove every element of offense (*In re Winship*, 397 U.S. 358 (1970), *In re R.B.W.*, 269 Ga. 452 (1998))
8. the child is entitled to all due process rights except jury trial (*In re Gault*, 387 U.S. 1 (1967), *Kent v. U.S.*, 383 U.S. 541 (1966))
9. (15-11-78) hearings are closed, except
 - a. designated felony

- b. prior adjudication, unless sex abuse or deprivation issues
 - c. any disposition hearing, at judge's discretion
- 10. double jeopardy principles attach (*Breed v. Jones*, 421 U.S. 519 (1975), *In the Interest of J.C.*, 257 Ga. App. 657 (2002) (footnote 1.))
- 11. adjudicatory order is interlocutory
 - a. not directly appealable
 - b. must have certificate of immediate review for appeal

G. Dispositional Hearing (O.C.G.A. § 15-11-65)

- 1. separate dispositional hearing
- 2. mandatory (*D.C.A. v. State*, 135 Ga. App. 234 (1975))
- 3. is child in need of treatment, rehabilitation or supervision
- 4. if child is detained
 - a. must be held within 30 days of adjudicatory
 - b. may be continued, with written findings of fact as to why
- 5. court can look at all helpful information
- 6. right to examine and cross examine witnesses
- 7. right to present evidence
- 8. standard is "clear and convincing evidence"
- 9. right to review reports, upon request
- 10. if child does not need further services of the court
 - a. no finding of delinquency
 - b. petition must be dismissed
- 11. adjudication and disposition are not "convictions" (15-11-72)

H. Dispositional Alternatives (O.C.G.A. § 15-11-66)

- 1. all options available for deprived child (15-11-55)
- 2. probation
- 3. residential placement
- 4. commitment to Department of Juvenile Justice
- 5. restitution (must have evidence of damages on record)
- 6. community service
- 7. fine

I. Dispositional Orders (O.C.G.A. § 15-11-70)

- 1. if committed to DJJ
 - a. in force for two years, unless
 - i. DJJ moves for extension
 - ii. notice and hearing to child and parent/guardian

- iii. necessary for treatment and rehabilitation
 - b. DJJ can discharge child sooner than two years with no court action
- 2. any other disposition
 - a. not more than two years
 - b. can be extended
 - i. hearing prior to expiration on motion of a party or court
 - ii. notice and opportunity to be heard
 - iii. court finds extension necessary to accomplish purpose of original order
 - iv. does not exceed two years from prior order's expiration
 - c. court may terminate any order or extension early
 - i. no application necessary
 - ii. court finds that purpose(s) of order have been accomplished
- 3. when child turns 21 all orders terminate

J. Sealing Records (O.C.G.A. 15-11-79.2)

- 1. if complaint is dismissed or adjusted court *shall* order records sealed
- 2. if adjudicated delinquent or unruly
 - a. by application or court's own motion
 - b. hearing
 - c. court *shall* order sealing if
 - i. two years since final discharge of child
 - ii. no conviction for felony or misdemeanor of moral turpitude
 - iii. no subsequent adjudications
 - iv. no pending criminal or delinquency proceedings
 - v. child has been rehabilitated
- 3. notice of the hearing must be given to
 - a. district attorney
 - b. authority which granted the final discharge
 - c. custodian of files and records, if records are included in motion
- 4. once order is entered the proceeding shall be treated as if it never occurred
- 5. does not apply to O.C.G.A. §15-11-78 (a) and (b)

VI. UNIQUE PROCEEDINGS IN JUVENILE COURT

A. Adjustment (O.C.G.A. §15-11-69; URJC, Rule 4.3)

- 1. diverts case from formal adjudicatory process

2. generally used for minor offenses or unruly acts
3. intake officer may withhold filing of a petition
 - a. best interest of the child and the community to handle the case informally
 - b. child and parent or guardian must consent
4. adjustment options
 - a. counseling and adjustment
 - i. one time conference with the child and parents
 - ii. no further need to see them
 - b. counsel and advice
 - i. need for follow-up
 - ii. less formal than probation
 - iii. no more than 3 months
 - c. refer to counseling
 - d. individualized agreements appropriate to the circumstances of the case
5. if petition has been filed judge may allow it to be withdrawn so case can be informally adjusted
6. not available if the child is alleged to have committed a designated felony without prior written notification of the district attorney's office

B. Unruly

1. defined in O.C.G.A. § 15-11-2 (11),(12)
2. court must find
 - a. child committed an unruly act
 - b. child is in need of treatment, rehabilitation or supervision
3. delinquency case can be converted to unruly
4. due process rights apply (*K.E.S. v. State, 134 Ga. App. 843 (1975)*)
5. stricter time limits for pretrial detention
6. stricter limits on facilities for pretrial detention

C. Designated Felony (O.C.G.A. § 15-11-63)

1. Children 13-17 years of age who are charged with
 - a. kidnapping
 - b. first or second degree arson
 - c. aggravated assault
 - d. aggravated battery
 - e. robbery
 - f. armed robbery not involving a firearm
 - g. battery against school teacher or school personnel
 - h. attempted murder
 - i. attempted kidnapping
 - j. carjacking

- k. violations of Code Sections 16-7-82,84, or 86, which involve bombs and explosives
 - l. second (or subsequent) offense of possession of pistol or revolver by minor (16-11-132)
 - m. any offense in 15-11-28 which is transferred by the Superior Court for adjudication, or for extraordinary cause by D.A.
2. Children of any age less than 17
- a. violation of O.C.G.A § 16-11-127.1, weapon at
 - i. school zone
 - ii. school property
 - iii school function
 - iv. school bus or other transportation furnished by a school
 - b. trafficking in cocaine, marijuana, methamphetamine or other illegal drugs under O.C.G.A.§13-13-31
 - c. racketeering
 - d. escape, if previously adjudicated a designated felon
 - e. second or subsequent adjudication of possession of hoax destructive device (16-7-85) or interference with police or emergency workers during a bomb threat (16-7-87)
 - f. second or subsequent theft of motor vehicle. (16-8-2 through 16-8-9)
 - g. violation of 16-15-4, relating to street gangs
 - h. any other felony, if there are three prior adjudications for felonies
 - i. the prior felonies do not have to have been committed after age 13
 - ii. if the child is 15, the charge is burglary, *and* there have been three separate prior adjudications of burglary, the case must be transferred to Superior Court, which can then transfer it back
3. Disposition of Designated Felon
- a. order must be made within 20 days of conclusion of hearing
 - b. shall include written findings of fact as to whether child needs restrictive custody
 - i. needs and best interests of the child
 - ii. record and background of the child
 - iii. nature and circumstances of the offense including whether or not child or another person inflicted any injury
 - iv. need for protection of the community
 - v. age and physical condition of victim
 - c. if child inflicted serious physical injury to someone over 62, restrictive custody is mandatory (15-11-63 (d))
 - d. if no restrictive custody, then same disposition as any other child adjudicated delinquent

- e. if court finds that restrictive custody is needed
 - i. continue hearing and enter order of restrictive custody
 - ii. child is placed in custody of DJJ for 5 years, or until 21
 - iii. must serve at least one year in a youth development center
 - iv. if a previous adjudication as designated felon, then child must serve at least 18 months
 - v. no home visits during first 6 months, except in emergency situations
 - vi. after initial period of custody then 12 months of intensive supervision
 - vii. need written order from DJJ in order to be released from intensive supervision
 - viii. DJJ may petition court to extend initial placement for 12 months after another dispositional hearing
 - ix. DJJ can keep child in confinement for longer than specified in court's order
- 4. no statutory or due process requirement that child be notified that he/she is being charged with designated felony

VI. COMPETENCY PROCEEDINGS (O.C.G.A. § 15-11-150-155)

A. Definitions

- 1. dependent
 - a. child who is charged with delinquency or unruly
 - b. found not mentally competent by the court
 - c. charges have not been dismissed
- 2. mental competency plan
 - a. treatment plan for child
 - b. developed at interagency meeting of agencies and other interested parties involved in the case
 - c. after court has found child incompetent and dependent
 - d. goal
 - i. to restore child to mental competency
 - ii. child will be able to participate in court proceedings
- 3. mentally competent
 - a. child can understand nature of proceedings
 - b. can understand how he/she fits into the proceedings
 - c. able to assist attorney in the proceedings
- 4. plan manager
 - a. appointed by court
 - b. convenes meetings of the relevant participants
 - c. gathers all necessary information
- 5. examiner must be
 - a. licensed psychologist or psychiatrist

- b. expertise in child development
- c. trained in forensic evaluation procedures

B. Procedure

1. after petition has been filed
2. either court or child's attorney may file motion
3. stays all time limits
4. examiner conducts evaluation
5. if issue is retardation, examiner must be licensed psychologist
6. written report within 30 days, unless court grants extension
 - a. reason for evaluation
 - b. evaluation procedures used
 - c. pertinent background information
 - d. results and diagnosis
 - e. description of abilities and deficits as to
 - i. understanding nature and object of proceedings
 - ii. comprehending his/her role in proceedings
 - iii. assisting attorney in his/her case
 - f. opinion as to significance of child's competency, strengths and deficits
 - g. opinion as to competency of child
7. if child is found mentally incompetent
 - a. diagnosis as to whether child will become competent in foreseeable future
 - b. recommendations for remediation to address child's deficits
 - c. recommendations for modification of court procedures that may assist in child's ability to understand the proceedings
8. copies of report to child's attorney, state's attorney and any guardian ad litem for child
9. court may order additional examination
 - a. good cause shown
 - b. only one examination by examiner from Department of Human Resources is allowed
10. no statement by child or information obtained in any proceeding regarding competency is admissible against child in case in chief
11. hearing must be held within 60 days of initial order for evaluation, unless continued for good cause
12. due process rights attach
13. examiner is court's witness and both state and child's attorney may cross-examine
14. court's finding of fact
 - a. based on evaluation(s)
 - b. child has burden of proof
 - c. preponderance of evidence

- d. copy of findings to parties within 10 days
- 15. if child found competent
 - a. proceedings resume
 - b. time limits begin to run
- 16. if child not competent
 - a. adjudicated “dependent”
 - b. if a misdemeanor court may dismiss without prejudice
 - c. cannot transfer to superior court, adjudicate or have disposition
 - d. if no previous appointment of guardian for child, then court shall appoint one
 - e. appoint plan manager
- 17. any party may ask for rehearing on competency issue
 - a. reasonable grounds to believe child is competent
 - b. follow the same procedures as initial hearing

C. Case Plan

- 1. plan manager
 - a. submits mental competency plan within 30 days
 - b. plan shall include
 - i. details as to what deficit the plan is attempting to address
 - ii. outline of provisions for supervision of child
 - iii. outline of treatment plan
 - iv. identification of all parties and their role in plan
 - c. plan is developed at a meeting of relevant parties called by the plan manager
 - i. required to attend
 - (a). parent or guardian
 - (b). child’s attorney
 - (c). state’s attorney
 - (d). child’s guardian ad litem
 - (e). representatives from mental health or mental retardation agency
 - (f). probation officer or caseworker
 - (g). representative from child’s school
 - ii. may request
 - (a). representative from division of public health
 - (b). protective services worker
 - (c). representatives from resources relevant to plan
 - (d). family members
 - (e). any other relevant person or entity
 - d. plan manager shall collect all previous histories of the child
 - i. previous evaluations

- ii. assessments
 - iii. school records
 - iv. must be available for consideration at meeting
- 2. disposition hearing within 30 days after plan submitted to court
- 3. review hearings every 6 months
- 4. plan manager informs court who should testify
- 5. 10 days notice
- 6. opportunity to be heard
- 7. victim of delinquent or unruly act entitled to 190 days notice
 - a. opportunity to be heard
 - b. opportunity to present victim impact statement
- 8. judge may sequester witnesses to protect child's rights
- 9. court order will incorporate plan as part of disposition
- 10. plan may be amended on mother and hearing
- 11. at disposition and review hearings court may consider dismissal of petition, without prejudice
- 12. if child later determined to be competent petition may be refiled
- 13. state may seek civil commitment under O.C.G.A. Title 37, Chapters 3 and 4

D. Jurisdiction

- 1. if child is adjudicated dependent and charge is a felony
 - a. court retains jurisdiction for 2 years
 - b. may be extended for additional two year periods
- 2. if child is adjudicated dependent and charge is misdemeanor
 - a. court retains jurisdiction for 120 days
 - b. may not be extended
- 3. if child reaches 18 plan manager refers child to adult services

VII. MENTALLY ILL OR MENTALLY RETARDED CHILDREN (O.C.G.A. §§ 15-11-149, 37-3-1 et. seq)

A. Definitions

- 1. mentally ill (37-3-1(11))
 - a. disorder of thought or mood
 - b. significantly impairs
 - i. judgment
 - ii. behavior
 - iii. capacity to recognize reality
 - iv. ability to cope with ordinary demand of life
- 2. mentally retarded
 - a. significantly subaverage general intellectual functioning **and**
 - b. deficits in adaptive behavior **and**
 - c. originating in the developmental period

- d. in need of community services as defined in O.C.G.A. § 37-5-3
- 3. handicapped as defined in 20 USC §1400 et seq. (Individuals with Disabilities Education Act)
- 4. IEP Individualized Education Program
- 5. if child has IEP it shall be made part of dispositional record

B. Procedure

- 1. court may commit to appropriate institution, agency or individual
 - a. study and report on child's mental condition
 - b. may happen at any time in the proceedings
 - c. facility may refuse if it is overcrowded (*Jones v. State, 134 Ga App. 611*)
- 2. if child is found to be committable
 - a. child is mentally retarded or mentally ill
 - b. child is detained
 - c. court order within 10 days, committing child to the Department of Human Resources Division of Mental Health, Developmental Disabilities and Addictive Diseases
- 3. if child is found not committable
 - a. case proceeds from where proceedings were halted
 - b. order for evaluation acts as a stay of proceedings
- 4. child convicted under 15-11-28
 - a. if between 13-15
 - b. suffering from mental illness or mental retardation
 - c. sent to Department of Human Resources Division of Mental Health, Developmental Disabilities and Addictive Diseases rather than to Department of Corrections

