
Emory University School of Law
REPRESENTING THE WHOLE CHILD:
A GEORGIA JUVENILE DEFENDER TRAINING MANUAL

2nd Edition

Barton Juvenile Defender Clinic
Emory University Law School
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AUTHOR

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**Barton Child Law & Policy Center:**

The Barton Child Law and Policy Center is a program of Emory Law School. Our mission is to promote and protect the legal rights and interests of children involved with the juvenile court, child welfare and juvenile justice systems; to inspire excellence and integrity among the professionals and within the institutions that serve children; and to prepare the next generation of lawyers.

The Center’s work is directed by Emory Law faculty and performed by law and other graduate students who participate in reform initiatives and holistic client representation by conducting research; advocating for individual clients; writing articles, policy papers, and other informational materials; and analyzing and drafting legislation and policy directives.

**Barton Juvenile Defender Clinic:**

The Barton Juvenile Defender Clinic (JDC), a clinical offering of the Barton Child Law & Policy Center, is an in-house legal clinic dedicated to providing holistic legal representation for children in delinquency and status offense proceedings. Student attorneys represent child clients in juvenile court and provide legal advocacy in the areas of school discipline, special education, and mental health, when such advocacy is derivative of a client’s juvenile court case.
### Contents

**SECTION I: Introduction** ..................................................1  
**SECTION II: History of the Juvenile Court** .........................3  
**SECTION III: Definition of a Child** .................................9  
**SECTION IV: Attorney-Client Relationship** .......................11  
   Role of the Defense Attorney in Juvenile Court ..................11  
   Interviewing Your Juvenile Client .....................................12  
   Juvenile Defense Top 10 ..................................................17  
   Ethical Responsibilities of a Juvenile Defense Attorney ..........20  
**SECTION V: The Georgia Juvenile Court**  
**Delinquency Process** ......................................................23  
   Referral/Complaint .........................................................23  
   Intake ..............................................................................24  
   Informal Adjustment .......................................................24  
   Detention .........................................................................25  
   Bail ..................................................................................28  
   Petition ............................................................................28  
   Timing ...............................................................................28  
   Arraignment ....................................................................29  
   Summons ..........................................................................30  
   Adjudication ....................................................................30  
   Disposition .......................................................................36  
   Post Disposition Issues ...................................................47  
**SECTION VI: Preparing Your Case** ...................................55  
   Discovery ..........................................................................55  
   Investigation .....................................................................56  
   Witnesses .........................................................................57  
   Developing a Theory of the Case ......................................57  
   Motions Practice ..............................................................58
SECTION VII: Transfer to Superior Court ................. 63
Exclusive Jurisdiction .............................................. 63
Concurrent Jurisdiction ........................................... 66
Discretionary Transfer to Superior Court .................. 66
Practice Considerations .......................................... 67

SECTION VIII: Competency ................................. 69
When to Seek a Competency Evaluation .................. 69
Procedure .................................................................. 70
Report ...................................................................... 70
Competency Hearing .............................................. 71
Disposition of Child Incompetent to Proceed ............. 72

SECTION IX: Who Are the Clients and
What Challenges Do They Face? ......................... 75
Adolescent Development ........................................ 75
Mental Health in Juvenile Justice ......................... 77
Learning and Developmental Disabilities ................ 79
Race, Ethnicity, and Culture ................................ 79
Gender ..................................................................... 81
Sexual Orientation and Gender Identity ................ 82
Immigration Status ............................................... 83

SECTION X: Department of Juvenile
Justice Policies & Procedures ............................... 89
Health and Medical Services ................................. 89
Behavioral Health Services .................................. 90
Education ............................................................. 90
Screening & Placement ........................................ 91
Graduated Sanctions ............................................ 92
Electronic Monitoring .......................................... 92
Rights of Youth .................................................. 92
SECTION XI: Other Areas of Client Advocacy

Education for Students with a Disability ................................................................. 95
School Discipline ..................................................................................................... 99
Housing .................................................................................................................... 101
Health Coverage .................................................................................................... 103
Public Benefits ....................................................................................................... 111
Employment ............................................................................................................. 115
Abuse/Neglect ....................................................................................................... 116
Reproductive Rights ............................................................................................... 117
Substance Abuse .................................................................................................... 119

Appendix A: Glossary ............................................................................................. 121

Appendix B: Resources .......................................................................................... 133

Juvenile Justice ........................................................................................................ 133
Education ................................................................................................................ 134
Mental Health ......................................................................................................... 135
Adolescent Development ....................................................................................... 136
Disability ................................................................................................................. 136
Substance Abuse .................................................................................................... 136
Immigrant Youth .................................................................................................... 137
Healthcare ................................................................................................................ 137
Public Benefits ....................................................................................................... 139
Other Services ....................................................................................................... 139

Appendix C: Selected Provisions - Georgia Rules of Professional Conduct .......... 141

Endnotes .................................................................................................................. 149
I. Introduction
SECTION 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 for juvenile clients. Juvenile clients should be given the same respect and autonomy as their adult counterparts.

The juvenile justice system exists to ensure appropriate care, treatment, and rehabilitation of court-involved youth.\(^1\) Despite a trend toward stricter penalties for delinquent behavior, the Georgia Juvenile Code retains the goals of providing treatment and rehabilitation and of equipping juvenile offenders with the ability to live responsibly and productively.\(^2\) Youth coming within the jurisdiction of the court shall receive, preferably in their own home, such care and guidance as will secure his or her moral, emotional, mental, and physical welfare as well as the safety of both the child and community.\(^3\) With this in mind, attorneys handling juvenile cases 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.

This manual was originally created in 2005 to provide defense attorneys in juvenile court with a general guide to appropriate and zealous advocacy on behalf of youth in juvenile court. Since that time, much has changed in juvenile defense, both nationally and here in Georgia. Nationally, the U.S. Supreme Court has issued four important decisions on the treatment of youth in the justice system. Locally, in 2014 Georgia implemented a new Juvenile Code. This 2\(^{nd}\) Edition encompasses both sets of changes.

This manual is an introduction to juvenile defense but not a complete reference. It is our intent to make this manual as widely-applicable throughout the state as possible. However, we 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.

Our intention is 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 throughout the system. Our goal is to help defense attorneys in juvenile court to recognize a youth’s many areas of need so that they may zealously advocate for their clients at every stage of a juvenile proceeding.
II. History of the Juvenile Court
SECTION II: History of the Juvenile Court

The first juvenile court was created by the Illinois legislature in 1899.⁴ The court was founded upon a belief in community responsibility to care for society’s children.⁵ Based upon the theory that youth were malleable, the court was created to support proper adolescent development and was described as benign, non-punitive, and therapeutic.⁶ Further, the court’s ideology recognized the limited responsibility of youth and the need for treatment rather than punishment.⁷ 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.⁸

The courts were created to remove the punitive aspects of the adult 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.⁹ Lawyers were rarely involved in the proceedings. The court’s handling of dependency matters created an umbrella characterization over all the court’s proceedings as civil.¹⁰ 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.¹¹ 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.¹²

The passage of time has greatly altered juvenile court proceedings. In In re Gault, the United States Supreme Court recognized due process as an indispensable foundation of individual freedom.¹³ In re Gault provided juveniles in delinquency proceedings certain procedural rights.¹⁴ These rights include notice of charges, right to counsel, right to confrontation and cross-examination, and privilege against self-incrimination.¹⁵ The Court held that the hearing must measure up to the essentials of due process and fair treatment.¹⁶

The Supreme Court recognized that the lack of constitutional protections did not further the Court’s objectives but rather hindered them.¹⁷ The Court
went further, stating that a lack of fairness in any of the court’s procedures could 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. Therefore, in determining whether a right applies in juvenile court, the court has an obligation to determine whether that right is essential to fundamental fairness.

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, and Georgia does not statutorily provide youth in juvenile court with the right to a jury trial.

Following the series of due process cases in the 1960s came a different trend in juvenile justice. From the mid-1980s through the 1990s, the system shifted away from rehabilitation and treatment and toward stricter penalties and punishments. This shift was predicated on the mythology of the juvenile “super-predator,” which served to instill in the general public a fear of juvenile offenders. It was during this time that Georgia decided to enact Senate Bill 440, which afforded the superior courts exclusive jurisdiction over seven different offenses if committed by youth at least 13 years old. In addition to this jurisdictional change, there was also an erosion of confidentiality provisions and an overall attitudinal shift towards a get-tough approach to juvenile delinquency.

While the shift that occurred in the 1990s has had long-lasting effects on the juvenile justice system, the most recent trend in juvenile justice is a more positive one for youth in the system. Beginning with the abolition of the death penalty for minors in 2005, the U.S. Supreme Court has begun to recognize the developmental differences between youth and adults. Notably, the Court has recognized that juveniles are more susceptible to immature and irresponsible behavior than adults, are more susceptible to peer pressure than adults, and are amenable to rehabilitation.

Despite this positive trend, the consequences for youth involved in the justice system remain great. 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. 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 after a delinquent offense will be facilitated by zealous and appropriate defense advocacy.
IMPORTANT SUPREME COURT DECISIONS ON JUVENILE JUSTICE: DUE PROCESS

Kent v. United States, 383 U.S. 541 (1966)
Held that there is a right to a judicial hearing before a discretionary transfer of jurisdiction to criminal court. In that hearing, the youth is entitled to representation by an attorney who has been granted access to relevant records and a written ruling from the court on the transfer decision.

In re Gault, 387 U.S. 1 (1967)
Held that youth are guaranteed due process rights essential to fundamental fairness 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 protection against self-incrimination.

In re Winship, 397 U.S. 358 (1970)
Held that the “beyond a reasonable doubt” standard of proof applies to adjudication hearings in delinquency cases.

McKeiver v. Pennsylvania, 403 U.S. 528 (1971)
Held that youth in the juvenile justice system are not constitutionally entitled to trial by jury.

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

Held that the preventive detention of youth accused of delinquent acts pending trial is constitutional.
**Roper v. Simmons, 543 U.S. 551 (2005)**
The Eighth and Fourteenth Amendments forbid the imposition of the death penalty on offenders who were under the age of 18 when their crimes were committed.

The Eighth Amendment prohibits the imposition of a life without parole sentence for offenders under the age of 18 who did not commit homicide. Any such offender must be provided a meaningful opportunity to obtain release.

A child’s age properly informs the *Miranda* custody analysis, so long as the child’s age was known to the officer at the time of police questioning, or would have been objectively apparent to a reasonable officer.

Mandatory life imprisonment without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment’s prohibition on cruel and unusual punishments. A judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles.
III. Definition of a Child
SECTION III: Definition of a Child

The legal age of majority in Georgia is 18 years of age. For purposes of the Georgia Juvenile Code, a child is defined as any individual who is:

- Under the age of 18 years,
- Under the age of 17 years when alleged to have committed a delinquent act;
- Under the age of 22 years and in the care of DFCS as a result of being adjudicated dependent before reaching 18 years of age;
- Under the age of 23 years and eligible for and receiving independent living services through DFCS as a result of being adjudicated dependent before reaching 18 years of age; or
- Under the age of 21 years who committed an act of delinquency before reaching the age of 17 years and who has been placed under the supervision of the court or on probation to the court for the purpose of enforcing orders of the court.

The minimum age for criminal responsibility for an act, omission or negligence is 13.

The juvenile court has concurrent jurisdiction with the superior court over a youth who commits an act that would be a crime that could be punishable by death or life imprisonment.

The superior court has exclusive original jurisdiction over the trial of any child 13 to 17 years of age who is alleged to have committed: (1) murder; (2) murder in the second degree; (3) voluntary manslaughter; (4) rape; (5) aggravated sodomy; (6) aggravated child molestation; (7) aggravated sexual battery; or (8) armed robbery if committed with a firearm.

There is no statutory minimum age for delinquency actions.

For definitions and explanations of other commonly-used terms, please see the glossary at the end of this document.
IV. Attorney-Client Relationship
A defense attorney is a critical player in the juvenile justice system – charged with protecting a child’s right to due process and zealously advocating for the child-client’s expressed interest. The juvenile defender is the only person in the juvenile justice system responsible for understanding and articulating the child’s expressed interests. In this sense, the role of a juvenile defender mimics the role of a criminal defense attorney. However, unique to the role of the juvenile defender is the need for child-focused counseling such that the client is empowered to make informed decisions about his or her case, despite the client’s vulnerable age.

In the courtroom, the most fundamental responsibility of the juvenile defender is zealous advocacy for the expressed interest of the child-client. A defense attorney should act as the juvenile’s voice to the court at every stage of the proceedings, recognizing the juvenile client as the ultimate authority in making his or her own decisions. Such decisions could include the decision to accept an adjudication of delinquency by admitting to the delinquent act, or to bring the case before the judge in a bench trial. Even if the decision made by the juvenile client strikes counsel as ill-considered or contrary to the best interest of the child, a juvenile defender is bound to articulate the child’s decision to the court, and do everything within his or her power to achieve the goals of the client.

The young age of a client does not affect the vigor with which a defense attorney should pursue the juvenile client’s interests and goals. However, the special status of childhood remains a factor that affects the role of a juvenile defender. Child-clients do require a degree of counseling, informing, and advising that adult clients may not. For instance, it is essential that a child understand his or her release conditions, or what it means to waive certain rights.

Therefore, outside of the courtroom, a juvenile defender must seek to empower the client to make informed decisions that reflect an understanding of the juvenile court system and of the potential
consequences for certain decisions. In doing so, counsel must take into account the unique susceptibilities of youth, the nuances of the juvenile court system, the consequences of adjudication, and the social, familial, psychological, emotional, and educational needs of the client.

**Interviewing Your Juvenile Client**

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. It is also important that you schedule the interview to allow for ample time to speak with the client so that you can establish rapport with the client, learn about the client’s objectives, gather information about the case, and answer any questions the client may have. 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.

When a client is detained prior to the initial court date, lengthy meetings prior to court might be impossible. However, it is still essential that you meet with the client prior to the hearing, and that you learn as much about the client as you can at that time. These interviews will focus primarily on gathering information essential to the court date – is there probable cause and, if so, can you present an argument for release from detention. A follow-up meeting with the client will be necessary after the detention hearing.

**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.

Some of your clients, particularly those with mental health issues, may feel uncomfortable during the interview process. Some helpful practices include providing the client with a “fidget” toy during the interview, giving the client pen and paper to draw on while interviewing them, and permitting the client to avoid eye contact – perhaps even by sitting side-by-side rather than face-to-face.

**Explaining Confidentiality**

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. Make sure to clarify the exceptions for confidentiality for future crimes and misrepresentations to the court.

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 for parents to feel resentment or mistrust when excluded from meetings between counsel and the child-client. It is important to try not to alienate the parent because he/she may often be the only means to access the client.

In some 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 much as possible, direct these questions to the client and allow the client to answer.
Communication

Conducting a thorough interview with a juvenile can be challenging. When interviewing a juvenile, it is essential that you adjust your expectations of the interview. You should be prepared for unorganized thinking, incomplete narratives, lack of specificity, and even some lack of cooperation or open hostility to your presence. The juvenile may have a limited understanding of legal terms and may be too intimidated to ask questions. When you counsel your client with respect to legal options, you should also anticipate that your client may ask you to make the decisions for him or her.\(^{42}\)

To overcome some of these obstacles, have the juvenile describe the process in his/her own words; limit the use of legal terms and complex questions, and 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.

The most commonly used interview method for speaking with youth is the T-Funnel method.\(^{43}\) In order to hear the client’s account of the allegations ask him/her to describe what took place without interruption. Once the client has finished talking then ask questions. 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.\(^{44}\)

Given the imprecise nature of language, it is often helpful to have the client provide drawings of the incident – a map identifying locations, a diagram of where people were standing, etc. Similarly, when a client is faced with a decision to be made (trial or accepting a plea, testify or not), it can be helpful to work with the client to create a chart highlighting the pros and cons. The client should keep the chart as a reference guide leading up to the court date.
Preparing the Client for Court

The explanation of court procedure during the initial interview is a useful way to prepare the client for court. 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. Explain who the different players in the courtroom are, along with the roles of each of these players.

Explain your court’s expectations with respect to appropriate courtroom attire. 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. In most juvenile courts, baggy pants are frowned upon, and shirts must be tucked in. In some courtrooms, it is advisable that boys should remove their 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. Many judges also require that the defendant address the court with either “ma’am” or “sir.” Tell the client to think about what he/she will say to the judge when asked to explain what happened in relation to 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.

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. Also, be aware that the parent in many cases is the complainant and may be pressuring the youth to accept responsibility.

It is your responsibility as the attorney to investigate the client’s case, even if the client initially informs you that he/she wishes to enter an admission. It is also your responsibility to advise your client as to the best course of action.

**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.
- Get the release of information signed.
- Speak with client alone to discuss his/her account of the events.
- Learn client’s objectives for the representation.
- Answer any questions the client has.
- Schedule next meeting or discuss next court date.
- Make sure the client has transportation and directions to court.
- Explain appropriate dress/behavior in court.
- Advise 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.
1. **Maintain your ethical obligations as an attorney.**

   A client accused of a delinquent offense has the same civil liberties at risk as a person accused of a criminal offense. Although the consequences of delinquent offense may appear less significant or detrimental than those for 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. 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 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. **Don’t forget about 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. If necessary, 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. Learn about 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 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 who will be able to appreciate the significance of those accomplishments.

**Ethical Responsibilities of a Juvenile Defense Attorney**

A juvenile defender, like any other licensed attorney, is bound by the rules of ethics as laid out by the State Bar of Georgia. Accordingly, a juvenile defender must provide competent, diligent, and zealous advocacy to protect his or her client’s constitutional right to due process. This takes on special importance with regard to juvenile clients, as youth can be particularly vulnerable to being lost in the complexities of a complex juvenile justice system. It is critical that counsel have the skills and knowledge to fiercely protect his client’s procedural and substantive rights through what can be a confusing and overwhelming process, especially for a child.

To meet the ethical requirement of competence, counsel must demonstrate the legal knowledge, skill, thoroughness and preparation reasonably necessary for representation. In seeking to provide competent representation, it is important that juvenile defense attorneys recognize that juvenile defense is a specialized field, requiring specialized knowledge and specialized training. A juvenile defender must also possess thorough knowledge of adolescent development, the status of youth in the legal system, the unique procedures of juvenile court, and the long-term consequences of juvenile adjudication. Defense attorneys in juvenile court are further bound to represent their child-clients’ expressed wishes with the same diligence and zeal as would be expected of any other attorney.
Beyond the need for competence, diligence, and zealous advocacy, certain ethical requirements are triggered by the unique position of youth in the justice system. For instance, the attorney must learn to recognize and respect the difference between the expressed wishes of the child and what is in the best interest of the child. The attorney must also maintain normal attorney-client relationship with the youth, regardless of the wishes of the child’s parents or guardians.

Juvenile defenders are obligated to advocate for the expressed desires of his or her child-client, as opposed to the “best interests” of a child.52 “Best interest” is a term generally used in juvenile court to refer to the assessment of what types of services, actions, and orders will best serve a child, whether or not these are aligned with the child’s wishes.53 While the role of a guardian ad litem in juvenile court is to advocate for what he or she believes to be in the best interest of the child, a juvenile defender is bound to safeguard the child-client’s substantive rights, by acting as the child’s voice to the court. This is vital to the ethical obligations of a juvenile defender, as the “best interests” and expressed interest may stand in distinct opposition to one another. When a defense attorney substitutes his or her own perception of what is in the child’s best interest for the client’s expressed wishes, he or she dilutes the child’s constitutional right to counsel. If a juvenile client demonstrates a lack of developmental maturity in his decision-making, counsel should offer advice and guidance to his or her client, but still ultimately remains ethically bound to advocate for the juvenile client’s expressed goals.54

Even where the wishes of a juvenile client collide with the wishes of the child’s parents, the juvenile defender’s duty is to his or her client, not the child’s parents. This ethical duty applies further to what the child-client tells a juvenile defense attorney in confidence. The child-client is entitled to a normal attorney-client relationship, including the attorney-client privilege. Therefore, a juvenile defender is bound to maintain the confidences of his/her client, even from the child’s parents, unless the client gives informed consent to the exposure of such confidential disclosures.55 The only exception to maintaining confidence arises when an attorney believes the disclosure necessary to prevent reasonably certain death or substantial bodily harm to the client, or to prevent harm or substantial financial loss to another as a result of client criminal conduct or third party criminal conduct clearly in violation of the law.56
V. The Georgia Juvenile Court Delinquency Process
SECTION V: The Georgia Juvenile Court Delinquency Process

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

### Referral/Complaint

A referral or complaint begins the process through which the youth may be adjudicated “delinquent.” Youth may be referred to the court through complaints from law enforcement, school resource officers, parents and/or other citizens.

Upon the filing of a complaint, the youth may either be referred to intake or given a date for arraignment.57
Intake

If a youth is referred to intake, the intake officer shall inform the youth of the following:

- The contents of the complaint
- The nature of the proceedings
- The possible consequences or dispositions that may apply to the case following adjudication
- Due process rights

Any statements made by youth during their intake screening may not be used against them at the adjudication hearing except as rebuttal or impeachment evidence.

The intake officer may elect to pursue the case through informal adjustment or another non-adjudicatory procedure.

The intake officer is also responsible for administering a detention assessment to determine if the child should be detained or released.

Informal Adjustment

The intake officer may refer a case to informal adjustment if:

- “Counsel and advice” without an adjudication would be in the best interests of the youth and the public. The factors to be considered in making this decision include:
  - The nature of the alleged offense
  - The age and individual circumstances of the youth

DUE PROCESS RIGHTS

- The right to an attorney and to an appointed attorney
- The privilege against self-incrimination
- The right to confront and cross-examine witnesses
- The right to testify and to compel the testimony of others
- The right to a speedy adjudication hearing
- The right to appeal and to receive a transcript for the purpose of appeal
The prior record of the youth

- Recommendations for informal adjustment made by the complainant or victim
- The youth and his or her parent consents
- If the alleged offense is a Class A or Class B designated felony, the district attorney must consent to an informal adjustment

Informal adjustment lasts for up to three months, with the opportunity for extension for one additional three-month period.  

**Detention**

Detaining a child, even for a brief period of time, can have numerous negative consequences. Among other effects, detention has been shown to increase recidivism, interrupts a youth’s education, exacerbates existing mental health issues, and places youth at risk of victimization. As such, effective advocacy during the detention process is essential.

Initial detention decisions are made at intake, with the guidance of a detention assessment instrument. If the intake officer finds that detention is warranted, the child is entitled to a detention hearing in front of a judge. At that hearing, the judge must first find that there is probable cause to believe that the child has committed the offense. Next, the judge determines if continued detention is necessary. The relevant standards for each stage of this process are outlined below.

**Detention Assessment**

When a child is brought to intake, the intake officer must administer a detention assessment to determine if the child should be held or released.  

A Detention assessment is an actuarial tool, approved by the board of juvenile justice and validated on a targeted population, used to make detention decisions. It identifies and calculates specific facts that are likely to indicate a child’s risk to public safety pending adjudication and the likelihood that such child will appear for juvenile proceedings for the act causing the detention decision to be made.
Place of Detention

Youth may be detained in a licensed foster home, home approved by the court, home of a non-custodial parent or relative, a facility operated by a licensed child welfare agency, or in a secure or non-secure residential facility. If the youth is 15 or older, they may be held in jail for up to 24 hours if certain conditions are met.\(^\text{66}\)

Placement shall be in the least restrictive facility available, consistent with the best interests of the child.\(^\text{67}\)

Detention Hearing: Procedure

If a youth is taken into custody at intake, a detention hearing shall be held promptly, and not later than 2 days if the youth was taken into custody without an arrest warrant or 5 days if the youth was taken into custody pursuant to an arrest warrant.\(^\text{68}\)

In the event that 2 days is longer than 48 hours, because of weekends or holidays, the court should review the detention decision and make a determination with respect to probable cause within 48 hours of the youth being taken into custody.\(^\text{69}\)

At the beginning of the detention hearing, the court shall inform the child of:

- The contents of the complaint or petition
- Nature of the proceedings
- Right to make an application for bail
- Possible consequences or dispositions of an adjudication on the charges
- Due process rights

All youth appearing at a detention hearing must be provided with an attorney.\(^\text{70}\)
Detention Hearing: Probable Cause

A youth may not be detained unless there is probable cause to believe that the child has committed the act of which he or she is accused. At the probable cause hearing, the judge decides if there is adequate evidence to justify allowing the case to proceed and a petition to be filed. Probable cause hearings in Georgia take many different forms, with varying levels of formality. Attorneys are often asked to stipulate to probable cause at these hearings. While this may be the appropriate course of action in certain circumstances, before doing so, you should consider the benefits that may result from challenging probable cause. Even without a “victory” at this stage, a probable cause hearing may result in other benefits, including the potential to lock witnesses into a certain version of events and to obtain discovery.

Detention Hearing: Detention Decision

The detention decision should be based on clear and convincing evidence that freedom should be restrained, that no less restrictive alternative will suffice, and that:

- The child may inflict serious bodily harm on others pending adjudication
- The child has a demonstrated pattern of theft or destruction of property such that detention is required to protect the property of others
- Detention is necessary to secure the child’s presence in court, or
- An order for such child’s detention has been made by the court

Pre-adjudication detention may not be imposed:

- To punish, treat or rehabilitate
- To allow the parents or guardian to avoid legal responsibilities
- To satisfy demands of victim, law enforcement or community
- To permit more convenient administrative access
• To facilitate further interrogation or investigation
• Due to a lack of a more appropriate facility

Conditional or supervised release shall be favored over more intrusive alternatives.

Before entering an order authorizing detention, the court shall determine whether a child’s continuation in his or her home is contrary to his or her welfare and whether there are available services that would prevent or eliminate the need for detention. The court shall make that determination on a case-by-case basis and shall make written findings of fact referencing any and all evidence relied upon in reaching its decision. If an alleged delinquent child can remain in the custody of his or her parent, guardian, or legal custodian through the provision of services to prevent the need for removal, the court shall order that such services shall be provided.

**Bail**

Youth have the same right to bail as adults. The only difference between bail for adults and for youth is that bail for youth may only be granted at intake or at the detention hearing.

Bail for a youth may only be posted by a person having custody of the youth or an adult blood relative or step-parent. If not the custodian, the person posting bail must immediately return the youth to the person having legal custody.

**Petition**

The petition is the formal charging document alleging that a youth is delinquent. The petition must be filed by the district attorney or a designee of the district attorney.

**Timing**

Detained Youth: The petition must be filed no later than 72 hours after the detention hearing. If the petition is not filed within this timeframe,
the child shall be released from detention and the complaint shall be dismissed without prejudice.\footnote{79}

Youth Not in Detention: The petition must be filed within 30 days of the filing of the complaint, or within 30 days of release from detention. An extension may be granted upon a showing of good cause.\footnote{80}

**Contents**

The Petition must include:

- The facts bringing the youth within the jurisdiction of the court, including a statement that it is in the best interests of the youth and the public that the proceeding be brought and that such child is in need of supervision, treatment, or rehabilitation
- The name, age, and address of the youth
- The name and address of the youth’s parent or guardian
- The place of detention at the time taken into custody
- Whether the youth is charged with a Class A or Class B Designated Felony\footnote{81}

**Amendments**

The Petition may be amended at any time prior to the adjudication hearing. However, if an amendment making material changes or alleging new charges of delinquency is made, a child may request a continuance of his or her adjudication hearing. After jeopardy attaches, the Petition shall not be amended to include new charges.\footnote{82}

**Arraignment**

For a youth who is not detained prior to the adjudication hearing, an arraignment shall be scheduled within 30 days of the filing of the petition. At the arraignment, the Court must inform the youth of the contents of the petition, the nature of the proceedings, possible consequences or dispositions, and the youth’s due process rights.
A represented youth may enter an admission at this time and a youth whose liberty is not in jeopardy may waive his or her right to counsel at the arraignment. ⁸³

**Summons**

A summons is issued to the youth and his or her parent or guardian requiring them to appear before the court at a certain time, and to answer the allegations of a petition alleging delinquency. It must state that a party is entitled to an attorney and that one can be appointed for them. ⁸⁴

**Service**

The Summons must be served personally as soon as possible and at least 72 hours before the adjudication hearing. If the parties are located in the state at a known address, but cannot be found, the summons can be served via registered mail, certified mail, or overnight mail, at least 5 days before the adjudication hearing, return receipt requested. ⁸⁵

If the parties are located out of state, but their address is known, they must be notified either personally or by mail at least 5 days before the hearing. ⁸⁶

**Failure to Appear**

If a parent fails to appear or fails to bring the youth, the Court may issue a rule nisi ordering the parent to show cause why he or she should not be held in contempt. Failure to appear in response to an order to show cause results in a bench warrant for the parent or guardian.

A bench warrant may be issued for a youth 16 years or older who fails to appear at a hearing or for a youth under age 16 who willfully refuses to appear at a hearing. Sworn testimony must be provided to support the assertion that a child under the age of 16 willfully refused to appear. ⁸⁷

**Adjudication**

At the outset of the adjudication hearing, the youth will be asked whether he or she wishes to admit or deny the charges. If the child admits the charges, the judge will move to a plea colloquy to determine if there is a factual basis for the admission. If the youth denies the charges, the judge
will move forward with an adjudication hearing. A continuance may be granted upon a showing of good cause, only for the amount of time shown to be necessary. When a continuance is granted, the facts that necessitate the continuance shall be entered into the record.

**Timing**

The adjudication hearing for detained youth must occur no later than 10 days after the petition has been filed. For a youth who is not detained, the adjudication hearing shall be held no later than 60 days after the petition has been filed.

**Plea Bargaining**

While plea bargaining should be entered into only after a thorough investigation and evaluation of the case, when appropriate plea negotiations can ultimately assist the client with reduced charges and disposition outcomes with which the client is willing to agree.

Prior to engaging in plea negotiations and proceeding forward with an admission, consider the following:

- 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 scheduled adjudication hearing.

It is essential to consult with the client prior to initiating plea-bargaining discussions. Ensure that the client enters the plea with full understanding.  

**Entering an Admission**

The decision to admit or deny the charges rests solely with the client. Clients will want to enter an admission for any number of reasons. Some want to get the process over with as quickly as possible and think that an admission is the way to achieve this result. Some want to accept responsibility for their actions. Some believe that the evidence will show that they committed the offense that was charged. No matter the reason, it is the duty of the defense attorney to provide advice and counsel to the client with respect to the entering of an admission. In the end, if the client wishes to enter an admission, the defense attorney should try to obtain the best possible outcome for the client through either plea bargaining or zealous advocacy at the disposition hearing in front of the judge.

It is useful to review the plea colloquy with the client prior to entering an admission before the court.

**Adjudication Hearing**

If your client enters a denial of the charges, the next step is to have an adjudication hearing.

These hearings are bench trials; there are no jury trials in juvenile court in Georgia. The adjudication hearing is the opportunity to test the sufficiency of the State’s evidence and to present a legal defense. During the adjudication 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 a delinquent child. Keep in mind that to be considered a “delinquent child” the youth has to have committed a delinquent act AND be in need of treatment or rehabilitation.

The state has the burden to prove the case beyond a reasonable doubt. The hearing shall be conducted in accordance with the rules of evidence. After hearing all of the evidence, the court shall make and record its findings on whether the acts were committed by the child. If the youth
PLEA COLLOQUY

If, after discussion with the lawyer, the youth decides to enter an admission, the judge will next make an inquiry to determine if there is a factual basis for the admission. While every judge asks slightly different questions during the plea colloquy, listed below are some common questions to review with the client:

• What is your name?
• How old are you?
• What grade are you in?
• The judge may read the charges from the petition.
• Do you understand what you’ve been charged with?
• Do you understand the possible disposition outcomes if I adjudicate you delinquent of these charges?
• 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 a trial on these charges?
• 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?
• Do you wish to make an admission today?
• Have you been made any promises in exchange for your admission?
• Has any person made any promises or threats to you to force you to enter an admission?
• Are you currently under the influence of any drugs or alcohol that would make it so that you do not understand what’s happening here today?
• Are you entering an admission freely and voluntarily because you committed the acts charged in the petition?
• Explain in your own words what happened.
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.\textsuperscript{97}

**Motions**

Although a good deal of juvenile court motion practice takes place during the adjudication hearing, it is good practice to file pre-adjudication written motions.\textsuperscript{98} 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.

In addition to pre-adjudication motions, which are discussed in the section on Preparing Your Case, there are several motions that should be considered during the adjudication hearing:

*Motion to invoke the rule of sequestration:*

Each party has the right to sequester the witnesses.\textsuperscript{99} 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.\textsuperscript{100} 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 hearing even if they will offer testimony. However, parents are not parties to delinquency proceedings. In the event that there is a conflict, consider asking the court to appoint a guardian ad litem for purposes of the hearing and to remove the parent from the courtroom.

Keep in mind that victims have the right to remain in the courtroom, unless it has been established that he or she is a material and necessary witness and that the court finds that there is a substantial probability that the person’s presence would impair the conduct of a fair trial. Even if the victim will be testifying, the rules of sequestration do not apply. However, the
court must require that the victim be scheduled to testify as early as practical in the proceedings.101

Motion for Directed Verdict:

The standard for assessing the sufficiency of the prosecution’s case is: “whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.”102

In light of this standard, the court will view the evidence in the light most favorable to the prosecution. As a result, motions for directed verdict generally will not rely upon challenges to the credibility of the state’s witnesses or evidence. Instead, the motion for directed verdict will usually highlight a lack of evidence to support one or more element of the offense.

Opening Statement

Opening statements are an excellent opportunity for defense attorneys to gain control of the courtroom and to present the theory and theme of the case. It is an opportunity to present your client’s story of innocence at the beginning of the proceeding, and to provide a lens for the judge to view all other testimony, including that of the prosecution’s witnesses. While it is common practice to waive opening statements in juvenile court, this should only be done when there are valid strategic reasons within a given case.

Presenting Juvenile Witnesses

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

**Closing Argument**

This is the last chance during the adjudication hearing to highlight the facts that support your theory and to present your client in a favorable light. A closing argument should contain the defense theory of the case, stated clearly and succinctly. It should then selectively review the evidence that supports the theory of the case and draw the necessary inferences from the evidence in support of your theory. When presenting to a judge, it is important for a closing argument to also incorporate the relevant law and legal principles; while a jury is provided with a set of instructions as to the relevant law, this is not typically true for a judge during a bench trial. A closing argument is a good place to remind the judge of the favorable law as well as the prosecution’s burden of proof. Finally, your closing argument should explicitly ask the judge to find your client not delinquent.

**Disposition**

This hearing, which occurs after a juvenile has been found to have committed a delinquent act, is to determine if a youth is in need of treatment, rehabilitation, or supervision.¹⁰³

“The role of counsel at disposition is essentially the same as at earlier stages of the proceeding: to advocate, within the bounds of the law, the best outcome available under the circumstances according to the client’s view of the matter . . .”¹⁰⁴

**Procedure and Pre-Disposition Reports**

The disposition hearing may occur immediately after adjudication or at a later date within 30 days of the adjudication hearing.¹⁰⁵ The disposition hearing may occur later than 30 days after the adjudication hearing only if the court makes and files written findings of fact explaining the need for delay.¹⁰⁶
The court may consider any evidence, including hearsay, that the court finds to be relevant, reliable, and necessary to determine the needs of a child who committed a delinquent act and the most appropriate disposition.\textsuperscript{107}

After a finding that a child has committed a delinquent act, the court may direct that a written predisposition report be prepared by the probation officer or other designee.\textsuperscript{108}

The original predisposition report shall be provided to the court and copies of the report shall be provided to the attorney for the child and the prosecuting attorney at least five days prior to the disposition hearing.\textsuperscript{109}

At any time prior to the issuance of a final dispositional order, the court may order a behavioral health evaluation of the child.\textsuperscript{110}

Prior to the disposition hearing, and upon request, the parties and their attorneys shall be given the opportunity to examine any written reports received by the court. They shall also be given the opportunity to counter any written reports and to cross-examine the individuals making such reports.\textsuperscript{111}
PREDISPOSITION REPORT

A predisposition investigation report shall contain such information about the characteristics, family, environment, and the circumstances affecting the child as the court determines may be helpful in its determination of the need for treatment or rehabilitation and the proper disposition of the case, including but not limited to:

- Summary of the facts of the conduct that led to the adjudication
- The sophistication and maturity of the child
- Summary of the child’s home environment, family relationships and background
- The child’s juvenile history
- Education status, including strengths, abilities, special education needs, and educational and vocational goals
- Summary of the results and recommendations of any significant physical or mental examinations
- Seriousness of the offense to the community
- Nature of the offense
- Whether the offense was against persons or property
- If a risk assessment was ordered, the assessment shall be included

Victim Impact Statement

The victim in a delinquency proceeding is entitled to all of the same rights, notices, and benefits as the victim of a crime committed by an adult. This includes the right to notice of all hearings and the right to express an opinion with respect to the accused’s release.

Prior to the imposition of a disposition, the victim, the victim’s family, and other witnesses with personal knowledge are permitted to testify about the impact of the delinquent act on the victim, the victim’s family, and the community. As a general matter, this testimony is required to be given in front of the child who has been adjudicated for the act, and is subject to cross-examination.
If testifying in front of the child would cause severe physical or emotional distress or trauma, or the witness would not be able to testify in person without showing undue emotion, the evidence may be presented in alternative form, including written statement or pre-recorded statement. The witness must still be subject to cross-examination.\textsuperscript{115}

**No Need for Treatment, Rehabilitation or Supervision**

It is important to remember that to be considered a “delinquent child” the youth has to have committed a delinquent act AND be in need of treatment or rehabilitation.\textsuperscript{116} At disposition, whenever possible, you should argue that your child is not in need of treatment, rehabilitation or supervision.

If the court finds that a child who committed a delinquent act is not in need of treatment, rehabilitation, or supervision, it shall dismiss the proceedings, and release the child from detention or any other restrictions.\textsuperscript{117}

Absent evidence to the contrary, evidence sufficient to warrant a finding that felony acts have been committed shall be sufficient to sustain a finding that the child is in need of treatment or rehabilitation.\textsuperscript{118}

If the court finds that the child is in need of supervision, but not treatment or rehabilitation, it shall find that the child is a child in need of services (CHINS) and may enter any disposition authorized for a child in need of services.\textsuperscript{119}

**Abeyance / Hold Open**

Some prosecutors and judges will consider holding the disposition of a case in abeyance for a period of time, possibly with certain conditions that need to be met. At the satisfactory conclusion of that period of time, the judge will close the case out with a finding that there is no need for treatment, rehabilitation or supervision.

**Informal Adjustment or Other Diversion Programs**

While a defendant is often referred to a diversion program prior to the filing of the petition, such a referral may be made at any time prior to the entry of a disposition order, including after a finding that the child has committed a delinquent act.
Disposition Options for a Delinquent Child

At the conclusion of the disposition hearing, if the child is determined to be in need of treatment or rehabilitation, then the court shall enter the least restrictive disposition order appropriate in view of the seriousness of the delinquent act, the child’s culpability, the age of the child, the child’s prior record, and the child’s strengths and needs.\(^{120}\)

As described in more detail below, depending upon the offense for which the client has been adjudicated delinquent, the continuum of disposition options available to the judge is as follows:

- Dismissal (no need for treatment, rehabilitation or supervision)
- Abeyance or hold open
- Informal Adjustment or other diversion program
- Treatment as CHINS (no need for treatment or rehabilitation, but need for supervision)
- Probation (supervised or unsupervised; possibly with probation management program)
- Placement in a secure residential facility for up to 30 days (felony or misdemeanor (+))
- Commitment to DJJ (2 years, felony or misdemeanor (+))
- Restrictive custody with commitment to DJJ for up to 3 or 5 years (class B or class A designated felony acts).\(^{121}\)

The disposition options will vary depending upon the type of offense for which the child has been adjudicated delinquent. The offenses are broken down into 4 categories: misdemeanors, felonies/misdemeanors (+)\(^{122}\), class B designated felony acts and class A designated felony acts.

**Misdemeanor Offenses**

In general, youth who have been adjudicated delinquent of a misdemeanor offense (unless they fall into the misdemeanor (+) category described below) will be placed on probation with conditions. They may also be
required to complete community service, to pay restitution, and to finish school. It is also possible that their driver’s license will be suspended or that issuance of their license will be delayed.\textsuperscript{123}

**Conditions of Probation**

Note that the probation conditions imposed on a youth in juvenile court often differ from those in an adult court. It is common for youth to have the following conditions: stay away from victim or co-defendant, curfews or home confinement, attend classes assigned to them by probation, write book reports or essays, complete study logs and maintain a certain average in school, and comply with counseling and medication recommendations. Other conditions may be imposed as deemed appropriate by the court.

As a defense attorney, you should object to any conditions that (a) are unrelated to the charges, or at least to a concern that was raised during the disposition hearing, and (b) are unobtainable by your client.

**Probation Management Program**

In addition to any other terms or conditions of probation, the judge may order a child to a probation management program or a secure probation sanctions program.\textsuperscript{124} If a child is ordered to participate in one of these programs, either DJJ (dependent counties) or the probation office (independent counties) shall establish rules and regulations for graduated sanctions as an alternative to judicial modifications or revocations.\textsuperscript{125} The restrictions may not be more restrictive than the maximum sanction set forth by the court.\textsuperscript{126}

The secure probation sanctions program is run by DJJ, and may result in periods of secure confinement equaling 7, 14, or 30 days.\textsuperscript{127} The Code outlines a series of procedural steps (and a requirement that the child has had three or more violations of probation) before a child can be placed in the secure probation sanctions program.\textsuperscript{128} The Code also outlines due process protections relating to the imposition of sanctions for each violation of a condition of probation.\textsuperscript{129}
An overview of the available disposition options is contained in the following chart:

### Felony / Misdemeanor (+)

There are several additional disposition options available for youth who have been adjudicated of a felony offense, or who have been adjudicated delinquent of a misdemeanor offense where the child has had at least one prior adjudication for a felony offense, and at least three other prior adjudications for a delinquent act. Most notably, in addition to those disposition options available for those who have been adjudicated delinquent of a misdemeanor, this category of delinquent child may also be committed to DJJ for a period of 2 years, and may be ordered to serve up to 30 days in a secure residential facility (RYDC).
An overview of the available disposition options is contained in the following chart:

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<table>
<thead>
<tr>
<th>Designated Felony Act</th>
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<tbody>
<tr>
<td><strong>Facility/institution/camp for delinquent children</strong></td>
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<tr>
<td><strong>Commitment to DJJ</strong></td>
</tr>
<tr>
<td><strong>Up to 30 days in secure residential facility or treatment program provided by DJJ or juvenile court</strong></td>
</tr>
<tr>
<td><strong>“Everyone” options</strong></td>
</tr>
</tbody>
</table>
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Applicable for felonies and misdemeanors if child has at least one prior felony adjudication and at least three other prior adjudications for a delinquent act.

**Designated Felony Act**

When a child is adjudicated of committing a Class A or Class B designated felony act, the court must first consider whether restrictive custody is required.

This determination of whether restrictive custody is required is based upon a preponderance of the evidence.\textsuperscript{131} The court shall consider and make specific written findings of fact with respect to each of the restrictive custody factors.\textsuperscript{132}

Prior to ordering a child placed in restrictive custody, the court shall order and give consideration to the results of a behavioral health evaluation, unless the court has considered the results of a prior behavioral health evaluation that had been completed within the last 6 months.\textsuperscript{133}

The disposition order for a child adjudicated delinquent for a class A or class B designated felony must be issued within 20 days of the disposition hearing.\textsuperscript{134}
If restrictive custody is not required, the court may enter any disposition order available for a child who has been adjudicated delinquent of a misdemeanor or felony offense.\textsuperscript{135}

If the court finds that restrictive custody is required, the court may order that the child be committed to DJJ for a period of up to 5 years (Class A) or 3 years (Class B), with a portion of that time to be served in restrictive custody.

An overview of the available restrictive custody options is contained in the following charts.
Credit for Time Served

A child adjudicated to have committed a delinquent act shall be given credit for time served for each day spent in a secure residential facility, a nonsecure residential facility, or any facility for the treatment or examination of a physical or mental disability. This credit applies to dispositions for all offenses.\textsuperscript{136}

Protective Orders

On the application of a party or on the court’s own motion, the court may make an order restraining or otherwise controlling the conduct of a person.\textsuperscript{137} Notice, the grounds for the motion and order, and an opportunity to be heard must be provided to the person against whom the order is entered.\textsuperscript{138} The protective orders may be enforced by contempt of court.\textsuperscript{139} Some of the requirements of the protective order may require the person to:

- Stay away from a person’s home or child;
- Permit a parent to visit his or her child at stated periods;
• Abstain from offensive conduct against the youth;
• Give proper attention to the care of the home;
• Cooperate in good faith with the agency or association to which the youth is referred;
• Refrain from acts or omissions that tend to make the home improper for the youth;
• Ensure the youth attends school;
• Participate in counseling or treatment; and
• Enter a substance abuse program.

Disposition Planning

Disposition planning should begin the moment you start to work on a case. The goal of disposition planning is to present your client to the judge in the most favorable light and to obtain the least restrictive disposition order possible.

From your first meeting, speak with your client about his or her goals and strengths, as well as any weaknesses that may need to be addressed through disposition. Request, either through a signed authorization for release of records or a subpoena, all education and mental health records relating to your client and review these records for information that will be helpful to your client. In the event that school records are less than helpful, be prepared to provide the court with information on what will change going forward. If the client has won any awards or completed any programs (even if in the detention center), collect those documents for presentation to the court. Learn about any individuals who may be willing to speak positively about the client – family
members, teachers, friends, mentors (or potential mentors), coaches, youth ministers at church, etc. If there are any services that can be put into place prior to the disposition hearing, this may help to convince the court that the underlying issues have been resolved and that there is no longer a need for court services. Finally, prepare your client for his or her conversation with the judge.

If your client is facing restrictive custody for a class A or class B designated felony act, you might want to consider providing the court with a written disposition letter or report of your own. This will give you an opportunity to highlight your client’s strengths, present mitigating facts relating to the offense, and provide a description of how alternative community-based disposition options will address any concerns highlighted by the pre-disposition report submitted by probation.

Post Disposition Issues

Disposition does not necessarily conclude the court process; additional proceedings may occur after disposition. Additional proceedings include: appeal of any final order, revocation of probation, extension or termination of disposition orders, a motion to modify or vacate a disposition order, early termination of restrictive custody orders for youth adjudicated of a Class A or Class B designated felony, and sealing of a youth’s records. Each of these is discussed below.

Appeals/New Trials

A youth has the right to appeal all final orders in juvenile court. 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. Adjudicatory orders by themselves are not considered final judgments. In order to be appealable as a final judgment, the adjudicatory order must be accompanied by a disposition order following a disposition hearing. 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.

Because O.C.G.A. §15-11-35 specifies that appeals from juvenile court are taken to the Court of Appeals or Supreme Court “in the same manner
as appeals from the superior court”, Title 5 of the Code governs appeals from juvenile court.\textsuperscript{152} This means that a notice of appeal meeting the requirements of O.C.G.A. §5-6-37 must be filed within 30 days after entry of the appealable decision or judgment.\textsuperscript{153} Note that “entry” of the order occurs only when the signed order is filed with the clerk of court.\textsuperscript{154} It is important, therefore, to apprise the client of the right to appeal as soon as practicable; in many cases, the court announces an order verbally some time before a written order is entered, and in these cases, the extra time should be used to discuss appellate rights with the client.

An appeal from an order of a juvenile court does not automatically trigger supersedeas.\textsuperscript{155} The juvenile court has discretion to allow an appeal to supersede its order, or not.\textsuperscript{156} If the juvenile court does not grant supersedeas, the judgment stands until reversed or modified by the appellate court.\textsuperscript{157} This means that any disposition imposed will continue in effect, and that the court may continue to review the case while the appeal runs.

In some cases, counsel might consider filing a motion for new trial. Since the motion for new trial is usually heard by the same judge who entered the judgment complained of, there must be a very clear, demonstrable ground for new trial or for reconsideration. In the absence of such grounds, appeals are likely to be the appropriate avenue for review. The filing of a motion for new trial suspends the time-frame for appeal, and the notice of appeal following a motion for new trial must be filed within 30 days after the entry of an order granting, overruling, or otherwise disposing of the motion.\textsuperscript{158}

**Probation Revocation**

Probation revocation is distinct from a violation of probation, which is a new delinquent act, requiring a new petition, and which may not be filed after a child has turned 17.\textsuperscript{159}

Any violation of a condition of probation may be reported to the prosecuting attorney, who may file a motion to revoke probation. The motion shall contain specific factual allegations constituting each violation of a condition of probation.\textsuperscript{160} The motion must be served on the child, the child’s attorney, and the child’s parent or guardian.\textsuperscript{161} The revocation
hearing shall be scheduled to be held no later than 30 days after the filing of the motion if the child is not detained, or 10 days from the filing if the child was detained as a result of the motion.\textsuperscript{162}

If the court finds, beyond a reasonable doubt, that the child has violated the terms and conditions of probation, the court may:

\begin{itemize}
  \item Extend probation,
  \item Impose additional conditions of probation, or
  \item Make any disposition that could have been made at the time the probation was imposed.\textsuperscript{163}
\end{itemize}

If the initial offense was a Class A or Class B designated felony act, the judge shall reconsider and make specific findings of fact with respect to each of the criteria relevant to the restrictive custody analysis.\textsuperscript{164} If the court imposes restrictive custody, the child shall receive credit for all time served on probation as well as for any time in pre-adjudicative custody.\textsuperscript{165}

**Extension or Termination of Disposition Order**

With the exception of orders committing a child to DJJ for the commission of a Class A or Class B designated felony act, disposition orders may last up to 2 years.\textsuperscript{166}

DJJ (if the child is committed to DJJ or in a dependent DJJ county), the prosecuting attorney or the court, on its own, may move to extend the duration of the initial disposition order.\textsuperscript{167} The standard for granting such a motion is slightly different depending upon whether the child has been committed to DJJ or placed on probation. For a child committed to DJJ, the motion may be granted if the court finds that the extension is necessary for the treatment or rehabilitation of the child.\textsuperscript{168} For a child placed on probation, the court may extend the disposition order if the court finds that the extension is necessary to accomplish the purposes of the order.\textsuperscript{169} In either case, a hearing must be held, and the child must be afforded the opportunity to be heard.\textsuperscript{170}

A court may terminate an order of disposition, or an extension of such an order, if it appears to the court that the purposes of the order have been accomplished. This can be done either on the court’s own motion, or on the application of a party.\textsuperscript{171}
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, with the exception of restitution orders, terminate.  

**Modification or Vacation of Disposition Order**

Orders for disposition may be vacated if: it was obtained by fraud or mistake, the court lacked jurisdiction over either a party or the subject matter, or newly discovered evidence so requires. Additionally, a disposition order may be changed, modified, or vacated on the ground that changed circumstances so require in the best interests of a child.

Basically, any time 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. This is particularly true if there are specific restrictions on the liberty of your client that no longer seem warranted.

**Motions for Early Release, or Modification or Termination of Restrictive Custody Order**

Youth ordered to serve restrictive custody for a Class A or Class B designated felony act, or DJJ, may file a motion with the court seeking the youth’s release from restrictive custody, modification of the order requiring restrictive custody, or termination of the disposition order. Any motion seeking early release, modification or termination of a restrictive custody order must be accompanied by a written recommendation for such action from the youth’s DJJ counselor or placement supervisor. DJJ has its own internal policies and procedures governing when such a recommendation will be made. While these policies sometimes change, the most important factors are generally the youth’s behavior and disciplinary history while in his or her placement, and the youth’s completion of required therapeutic programming.
The initial motion should be filed in the court that committed the child to DJJ (not the court where the placement is located), and served on the prosecuting attorney for that jurisdiction. At least 14 days before the hearing on the motion, the moving party (either the youth or DJJ) must serve a copy of the motion, by first-class mail, on: the victim at the victim's last known address, the child's attorney, the child's parents or guardian, and the law enforcement agency that investigated the act.

At the hearing itself, the parties to the motion, the prosecuting attorney, and the victim shall all have the right to be heard and to present evidence. Using a preponderance of the evidence standard, the judge is required to find whether or not he child has been rehabilitated.

You should begin planning for a motion for early release as soon as your client receives an order for restrictive custody. At the outset, you should have a conversation with the client about the factors that will be considered, and the progress that needs to be made before a motion can be filed. Prior to filing a motion, you will need to have a conversation with the youth’s DJJ counselor or caseworker, to understand the progress the youth has made, and whether DJJ is willing to file a letter in support of the motion. If not, find out exactly why DJJ believes that the client is not yet eligible for such consideration. If you disagree with this determination, you may need to challenge the determination administratively within DJJ.

Once you have the letter and have filed your motion, you should have a plan for the hearing itself. Gather your client’s records from the facility, including education records, awards or certificates earned and documentation of completed programming. Identify and subpoena staff

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**FACTORS TO BE CONSIDERED:**

- Needs and best interest of the child
- Record and background of the child, including discipline history in placement
- Academic progress during placement
- Victim’s impact statement
- Safety risk to the community
- Child’s acknowledgment to the court and victim of his or her conduct being the cause of harm to others.
members at the facility who will speak positively about the youth. Finally, identify members in the community who will be able to talk about the plan for reintegrating the client back into the community. In particular, the judge will likely want to hear about the plan for where the youth will be living as well as whether the youth will be working or enrolled in school – with either a job or an education program lined up.

If the judge denies the motion, a new motion may only be filed after 6 months have passed.\textsuperscript{182}

**Sealing Juvenile Court Records**

Although many juvenile court records are “confidential,” some records are open to the public,\textsuperscript{183} an adjudication can be used for certain purposes,\textsuperscript{184} and the records do not automatically disappear when a juvenile reaches the age of majority. As a result, it is important that defenders advise their clients about the potential to “seal” a juvenile file. Once sealed, the proceeding shall be treated as though it never occurred.\textsuperscript{185}

**Who is Eligible**

If a complaint or petition alleging delinquency is dismissed, or if a youth successfully completes a diversion program such as informal adjustment, the files and records in the case should be automatically sealed.\textsuperscript{186}

For a youth who has been adjudicated delinquent of an offense, a petition may be filed seeking to seal the records.\textsuperscript{187} The records to be sealed would include court records and all other law enforcement files and records.\textsuperscript{188} Records may be sealed, if after a hearing, the court finds that:

- Two years have elapsed since the final discharge of the person;
- 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 for committing a delinquent act or as a child in need of service, and no proceeding is pending against the person seeking conviction or adjudication; and
- The person has been rehabilitated.\textsuperscript{189}

Additionally, after petition and hearing, if the court finds that a youth has been adjudicated delinquent of a sexual crime, and such crime resulted
from the youth being trafficked for sexual servitude or a victim of sexual exploitation, the judge shall order the records sealed.\textsuperscript{190}

If the records are sealed, the proceedings are treated as though they never occurred and copies of the order will be sent to all relevant agencies.\textsuperscript{191} Once a record has been sealed, access is available only in limited circumstances. The person who is the subject of the records may petition the court for an order granting inspection. Additionally, criminal justice officials may petition the court for inspection of records for criminal justice purposes.\textsuperscript{192}

Clients should be informed of the right to petition the court for an order sealing the records at the end of every case.

\textbf{Logistics}

The logistics of petitioning the court to seal the records vary by jurisdiction. In some juvenile courts, there is a form that must be completed in the clerk’s office to start the process. In others, the youth is permitted to go to intake, and the intake officer will assist the youth in drafting a petition. In still others, the youth (or his or her attorney) may file a petition on his or her own. It is advisable to check in with the clerk of the juvenile court in a particular jurisdiction to identify the local procedure.

In most cases, once the form or petition is completed, someone from juvenile court (the clerk’s office, probation or the ADA) will run a background check on the youth to make sure that the youth is eligible for sealing of his or her records. It is advisable to ensure that someone has assumed responsibility for this process after the filing of the petition.

Once a hearing date has been set, the statute requires that notice be provided to: the prosecuting attorney, DJJ (if appropriate), the authority granting discharge if from an institution or parole, and the law enforcement officers or department having custody of the applicable files.\textsuperscript{193} The statute is silent as to who is responsible for providing such notice. If you represent a youth in a hearing to seal records, it is advisable for you to provide the statutorily required notice, so as to avoid unnecessary delays.
VI. Preparing Your Case
From the outset, each case should be approached as though it will go to trial, rather than end in a negotiated plea. With this mindset, the defender should engage in meaningful discovery and case investigation, should develop a theory of the case, should prepare relevant pre-trial motions, and should develop a trial strategy.

Discovery

Under the Georgia Juvenile Code, the discovery process involves the filing of a motion for discovery with the court and serving a copy of the motion on the prosecuting attorney. Upon the filing of the motion, the child shall have full access to the following for inspection, copying, or photographing:

- A copy of the complaint;
- A copy of the petition for delinquency;
- The names and last known addresses and telephone numbers of each witness to the occurrence which forms the basis for the charge;
- A copy of any written statement made by such child or any witness that relates to the testimony of a person whom the prosecuting attorney intends to call as a witness;
- A copy of any written statement made by any alleged co-participant which the prosecuting attorney intends to use at a hearing;
- Transcriptions, recordings, and summaries of any oral statement of such child or of any witness, except attorney work product;
- Any scientific or other report which is intended to be introduced at the hearing or that pertains to physical evidence which is intended to be introduced;
- Photographs and any physical evidence which are intended to be introduced at the hearing; and
- Copies of the police incident report and supplemental report, if any, regarding the occurrence which forms the basis of the charge.
Additionally, the prosecuting attorney is required to disclose all evidence favorable to the child and material either to guilt or punishment. This information is commonly referred to as “Brady” material or disclosure.197

If a defense request for discovery is complied with, there is a duty to make reciprocal discovery available to the prosecuting attorney. A prosecuting attorney may also submit a written request for discovery related to the intent to offer the defense of alibi.199

All requests for discovery must be responded to promptly, but no later than 48 hours prior to adjudication. If additional information is secured by the district attorney following a request for discovery, it should be promptly presented to defense counsel.201

If a request for discovery is refused, an attorney may apply for an order granting discovery. The motion must certify that the request for discovery was made and refused. 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.

It is a common practice in many public defender offices to rely upon an “open file” agreement with the prosecuting attorney’s office. Through this procedure, rather than filing a motion for discovery, a defense attorney is permitted to view the file maintained by the prosecuting attorney. Such a policy, however, shifts the burden of a continuing production and collection of evidence from the prosecution to the defendant. It is only by opting into the discovery regime that the prosecution is mandated to provide (and obtain from law enforcement) all discovery information. It is also only through such a procedure that the defendant can obtain a court order or sanctions for failure to comply. Accordingly, it is our recommendation that a formal motion for discovery be filed in every delinquency case.

Investigation

Defense attorneys have a constitutional duty to investigate every client’s case and to make reasonable decisions about what investigation is necessary. Any failure to investigate and to file appropriate motions may constitute ineffective assistance of counsel.
The discovery process is not a substitute for independent investigation. Through investigation, the defender may learn that the prosecutor’s case is weaker than the preliminary discovery materials may indicate. Additionally, the defender may learn that the complaining witness is not interested in pursuing the case against the defendant. Finally, the defender may be able to corroborate important parts of the client’s version of events.

**Witnesses**

Try to speak with witnesses as soon as possible. If you have witnesses for the defense, it is important to prepare the witnesses to testify. Remember to review your questions and potential questions the district attorney will ask the witness before the witness reaches the stand.

Keeping in mind reciprocal discovery obligations, if you identify a favorable witness, or if a witness for the state provides you with favorable information, you may wish to lock the witness into a specific version of events through affidavit, signed statement, or recording.

**Developing a Theory of the Case**

A theory of the case is a short written summary of the factual, emotional and legal reasons why the factfinder should return a favorable verdict. It gets at the essence of your client’s story of innocence, reduced culpability, or unfairness. It provides a roadmap for you for all phases of the trial. Finally, it resolves problems or questions the judge may have about returning the verdict you want.

An effective theory of the case tells a logical, compelling story that is consistent with the evidence – both good and bad. It will also sort, organize and simplify all of the information that is being presented. Your theory will likely evolve, or even change completely, as you discover new evidence or analyze alternative legal theories.

A theory of the defense is NOT: the state can’t prove the client beyond a reasonable doubt, self-defense, alibi, etc. Instead, it is an affirmative story on behalf of your client.
Your theory of the case will differ from your theme. A theme is a word, phrase or simple sentence that captures the controlling or dominant emotion and/or reality of the theory of the case. The theme must be brief and easily remembered.

**Motions Practice**

Motions practice is essential to effective juvenile defense representation. The filing of motions is an opportunity to think strategically – and creatively – about your case. Commonly filed motions include:

- Motion to dismiss the petition (sometimes referred to as a demurrer in Georgia)
- Motion to release the client or alter pretrial conditions
- Discovery or investigation motions
- Motion for expert fees
- Motion to review social services file or other records
- Motion to suppress: evidence, statement, identification
- Motion to recuse the judge (bias or conflict of interest)
- Motion in limine
- Motion for informal adjustment
- Motion to remove all shackles/restraints
- Motion to appear in street clothing
- Be Creative!!!!

This is by no means an exhaustive list of the motions that can be filed in any given case.

**WHY FILE A MOTION?**

- May lead to dismissal of the case
- May weaken the prosecution’s case
- May increase bargaining power in plea negotiations
- Offers significant opportunities for discovery
- Locks prosecution witnesses into a specific version of events
- Strengthens the attorney-client relationship
- Preserves issues for appeal
- Challenges the status quo
When contemplating a motion, you should consider whether the motion should be made orally or in writing. You should also consider whether the motion should be filed pre-trial or contemporaneously. While the vast majority of motions should be filed in writing, pre-trial, there may be some strategic considerations favoring a contemporaneous oral motion.

**Motion to Suppress Evidence**

A motion to suppress evidence should be considered in every drug case, every time physical evidence has been collected, and every time your client is detained. You should also consider whether your client’s statement was the result of an unlawful search or seizure.

The 4th Amendment of the U.S. Constitution, along with Article I, Section 1, Paragraph XIII of the Georgia Constitution, protect our clients from “unreasonable searches and seizures.”

When preparing a motion to suppress, you should consider the following questions:

- What are you trying to suppress?
  - Weapons, drugs, photos, fingerprints, statements, etc.

- Does your client have standing?
  - If police action affected the freedom of movement of the client in any way. This can include the passenger of a car, not just the driver.
  - If client had an expectation of privacy in the premises or object to be searched.

- What level of intrusion or seizure was there?
  - The first inquiry is whether there was a seizure, as only seizures trigger 4th amendment protections.
    - The general standard for a seizure is a show of official authority that “has in some way restrained the liberty of a citizen.”
Encounters with law enforcement fall into several categories: encounters or contacts (not a seizure), investigatory or Terry stops, Terry frisks, arrests, and searches.

Always attempt to categorize the encounter as a seizure. The classification (type of seizure) will depend upon the facts of your case.

- Was the seizure justified?
  - Will depend on the level of the seizure, as each level requires a different level of suspicion to be present.

- Was the scope of the search following the seizure justified?
  - A fact-specific inquiry

- Which fruits are the result of the illegality or unlawful seizure?
  - In addition to the tangible evidence obtained, also consider statements, identifications, and any additional derivative evidence.

Keep in mind that while the 4th Amendment standard applies to police officers in a school building, there is a modified standard that applies to searches conducted by school officials. In Georgia, School Resource Officers (SROs) have been considered police officers for purposes of this analysis.

When a search is conducted by a school official, the legality depends on the reasonableness, under all the circumstances, of the search. Reasonableness involves a two-fold inquiry:

- Was the action justified at its inception; and

- Was the search, as conducted, reasonably related in scope to the circumstances justifying the interference in the first place?

In addition to this lowered standard, Georgia Courts have also held that the exclusionary rule does not apply to illegal searches conducted by school officials.
Motions to Suppress Statements

A motion to suppress statements should be filed every time your client says anything to law enforcement. Keep in mind that the statement needs to be voluntary and any waiver of Miranda needs to be knowingly, intelligently and voluntarily made.

Georgia requires that “to make a confession admissible, it must have been made voluntarily, without being induced by another by the slightest hope of benefit or remotest fear of injury.”

While involuntariness may arise in a number of ways (including threats, coercion, etc), the most common allegation of involuntariness will come from the absence of the reading of Miranda warnings during a custodial interrogation. Pursuant to J.D.B., when questioning a child, the child’s age has a bearing on the Miranda analysis if the child’s age was known to the officer, or was objectively apparent to a reasonable officer.

With respect to the waiver of Miranda, the analysis is a subjective one, utilizing a totality of the circumstances test to determine if the individual child knowingly, intelligently, and voluntarily waived his or her Miranda rights.

If you have filed a motion to suppress your client’s statements due to a lack of knowing, intelligent or voluntary waiver of his or her Miranda rights, your client’s school records can be an invaluable resource. Be sure to obtain RILEY FACTORS

- Age
- Education
- Knowledge as to the substance of the charge and the nature of his or her rights to consult with an attorney and remain silent
- Whether incommunicado or allowed to consult with others
- Whether interrogated before or after formal charges filed
- Methods used in interrogation
- Length of interrogations
- Whether he or she refused to voluntarily give statements on prior occasions
- Whether he or she repudiated an extra judicial statement at a later date.
the client’s full education records, including any documents contained in the special education file. If your client has been in special education, the psychological evaluation and IEP will provide information on his or her current academic and cognitive functioning levels. Additionally, your client’s special education teacher or the school psychologist may be a convenient way to obtain expert testimony as to your client’s abilities.
VII. Transfer to Superior Court
While the majority of youth under the age of 17 who commit an offense that would be a crime if committed by an adult will be tried in juvenile court, Georgia permits the trial of certain youth to occur in superior court. In Georgia, there are 3 different methods for bringing a case against a youth in superior court: (1) exclusive jurisdiction over youth between 13 and 17 for any of seven different offenses, (2) concurrent jurisdiction over crimes that are punishable by death, LWOP, or life, and (3) discretionary transfer of jurisdiction.

**Exclusive Jurisdiction**

Georgia’s exclusive jurisdiction (automatic transfer) statute was enacted into law in 1994 pursuant to Senate Bill 440. For this reason, those offenses that are within the exclusive jurisdiction of superior court are commonly referred to as SB440. Alternatively, because there are seven such offenses, they are sometimes referred to as the “Seven Deadlies” or “Seven Deadly Sins.”

Pursuant to Georgia’s Juvenile Code, the superior court has exclusive jurisdiction over any child ages 13 to 17 who is alleged to have committed any of the following:

- Murder or murder in the 2nd degree
- Voluntary manslaughter
- Rape
- Aggravated sodomy
- Aggravated child molestation
- Aggravated sexual battery
- Armed robbery if committed with a firearm\(^{220}\)

**Transfer to Juvenile Court (Reverse Waiver)**

If a child is in the exclusive jurisdiction of the superior court, there are two ways for a case to be transferred to juvenile court.
First, at any time before indictment, the district attorney may, after investigation and for cause, decline prosecution in the superior court. If this happens, the case is transferred to juvenile court, where a petition is to be filed. In juvenile court, the case will be treated as a Class A designated felony act.\(^{221}\)

If the district attorney does not decline prosecution, for some of the SB 440 offenses there is an alternative mechanism for transferring the case to juvenile court. If the youth is charged with voluntary manslaughter, aggravated sodomy, aggravated child molestation, or aggravated sexual battery, the superior court may, after indictment and after investigation, transfer the case to juvenile court.\(^{222}\) In making this decision, the judge must consider the transfer criteria specified in the code.\(^{223}\)

If the superior court orders a case transferred to juvenile court, the State has the right to appeal the order.\(^{224}\) Additionally, any case transferred in this manner shall be treated as a Class A designated felony act.\(^{225}\)
TRANSFER CRITERIA

O.C.G.A. § 15-11-602 sets forth the following criteria to be considered in reverse waiver decisions as well as in decisions to transfer a case to superior court:

• The age of such child;
• The seriousness of the alleged offense, especially if personal injury resulted;
• Whether the protection of the community requires transfer of jurisdiction;
• Whether the alleged offense involved violence or was committed in an aggressive or premeditated manner;
• The impact of the alleged offense on the alleged victim, including the permanence of any physical or emotional injury sustained, health care expenses incurred, and lost earnings suffered;
• The culpability of such child including such child's level of planning and participation in the alleged offense;
• Whether the alleged offense is a part of a repetitive pattern of offenses which indicates that such child may be beyond rehabilitation in the juvenile justice system;
• The record and history of such child, including experience with the juvenile justice system, other courts, supervision, commitments to juvenile institutions, and other placements;
• The sophistication and maturity of such child as determined by consideration of his or her home and environmental situation, emotional condition, and pattern of living;
• The program and facilities available to the juvenile court in considering disposition; and
• Whether or not a child can benefit from the treatment or rehabilitative programs available to the juvenile court.
**Concurrent Jurisdiction**

Juvenile Court and Superior Court have concurrent jurisdiction over any child alleged to have committed a criminal act that, if committed by an adult, would be punishable by loss of life, imprisonment for life without the possibility of parole, or confinement for life in a penal institution.\(^{226}\)

While the concurrent jurisdiction provision is silent with respect to an age range, the criminal code provides that “[a] person shall not be considered or found guilty of a crime unless he has attained the age of 13 years at the time of the act, omission, or negligence constituting the crime.”\(^{227}\) Note that case law has interpreted this provision as an affirmative offense, rather than as a statutory prohibition. Accordingly, the burden is on the defendant to raise the issue of age during the criminal proceedings.\(^{228}\)

When concurrent jurisdiction exists, the forum decision rests with the prosecutor and jurisdiction remains with the court that first takes jurisdiction over the matter.\(^{229}\)

**Discretionary Transfer to Superior Court**

After the filing of a petition, but prior to an adjudication hearing, the judge or prosecuting attorney may move for a hearing to transfer certain cases to superior court.\(^{230}\) A transfer hearing may only be held if there is probable cause to believe that the child committed the alleged offense and the child is not committable to an institution for the developmentally disabled or mentally ill. Further, the child must have been at least 15 years old at the time of the alleged offense if the alleged offense is a felony, or 13 or 14 years old if the alleged offense is punishable by loss of life or confinement for life, or if the alleged offense is aggravated battery resulting in serious bodily injury.\(^{231}\)

In issuing its ruling on decision to transfer a case to superior court, the judge must consider a probation report, a risk assessment, any evidence it deems relevant, including evidence submitted by the child, and the transfer criteria set forth in the code (see inset above).\(^{232}\) The decision for the court to make is whether, because of the seriousness of the offense or the child’s prior record, the welfare of the community requires that criminal proceedings against the child be instituted.\(^{233}\)
The decision of the court with regards to transferring a case to juvenile court is considered an interlocutory judgment, which may be appealed to the Court of Appeals by either the child or the prosecuting attorney.234

**Practice Considerations**

The United State Supreme Court, in *Kent v. United States*, held that transfer to adult court is a “critically important” proceeding, thereby necessitating a series of due process protections.235 Given the extreme disparity of treatment and consequences in the handling of a matter in juvenile court as compared to superior court, it is incumbent upon the defender to do all that is possible to keep a youth’s case out of superior court.

In most cases, your first advocacy efforts in obtaining juvenile court jurisdiction will be with the prosecutor. When a case starts in juvenile court, it is the prosecutor who decides to file a motion for discretionary transfer. Similarly, when a case starts in superior court, the prosecutor has discretion to decline jurisdiction in the superior court and initiate juvenile court proceedings with the filing of a petition.

For your initial meeting with the prosecutor, you should be fully prepared with your mitigation argument. Using the transfer criteria as a guide, this will include information about your client’s culpability in the offense as well as information about your client. It might be helpful to accumulate positive information from those who know your client best, including family members, supportive school personnel, coaches, mentors, youth pastors, DFCS personnel, and mental health personnel who have worked with the client. If there is a school psychological evaluation, see if it is possible to use the information contained therein to highlight your client’s lessened culpability and amenability to treatment. Be mindful that the prosecutor will have information of his or her own, likely including your client’s prior history and school records. You should be aware of this information going into the meeting, and be prepared to address any negative history that your client has.

In the event that you are unable to persuade the prosecutor of the merits of juvenile court jurisdiction, in many cases you will have the opportunity to present your case to a judge (in discretionary hearings, the juvenile court will hear the case, while in reverse waiver proceedings the transfer
hearing will be heard by a superior court judge). Statutorily, a reverse waiver hearing is not currently available in cases of murder, rape, or armed robbery with a firearm.

If you have a transfer hearing, the same individuals identified above will become your primary witnesses. Additionally, you’ll want to consider using expert witnesses. If your client is receiving special education services, there should be a psychological evaluation from the school district. The school psychologist should be able to discuss your client’s intellectual and academic status, as well as the need for continued educational and rehabilitative services. Similarly, someone from the Department of Juvenile Justice will be able to testify as to the rehabilitative programs available in DJJ facilities, including sex offender treatment, drug treatment and counseling, anger management classes, and a full range of educational programming.

While the two experts discussed above are free, other experts will require funds. Consider making a funding request to the court, seeking funds for a psychiatrist or psychologist to specifically assess your client’s amenability to treatment. You may also consider an expert to talk about the negative effects of trying youth in adult court, including the increased risk of physical and psychological harm, the lack of rehabilitative programming, the quality of education services, and the overall recidivism rate for youth tried in adult court as compared to juvenile court.
SECTION VIII: Competency

The purpose of the juvenile competency article in the juvenile code is to set forth procedures for determining whether a child is incompetent to proceed and, where appropriate, to provide a mechanism for the development and implementation of competency remediation services, including treatment, habilitation, support or supervision services.236

When to Seek a Competency Evaluation

A competency evaluation should be considered any time the client’s behavior, mental health condition, or developmental status leads the defender to believe that he or she may not understand the proceedings, comprehend the situation, or be able to assist in his or her defense. Factors to consider will include the client’s age, the client’s ability to provide information about the case, any indication that the client has limited intellectual functioning, or limited verbal or comprehension skills, placement in special education, a history of mental illness, or a history of emotional or behavioral problems.

While competence to proceed is important in all cases, it is even more critical to assess your client’s competence if he or she is being tried as an adult in superior court.

INCOMPETENT TO PROCEED

O.C.G.A. § 15-11-651(3)

Lacking sufficient present ability to:

- Understand the nature and object of the proceedings;
- Comprehend his/her own situation in relation to the proceedings; and
- Assist the defense attorney in the preparation and presentation of the case in all hearings.

Includes consideration of age or immaturity.
Procedure

At any time after the petition is filed, a request for a competency evaluation may be made by the court, the child’s attorney, a GAL for the child, the child’s parent or guardian, or the prosecuting attorney.237 Once such a request is made, the judge shall order a competency evaluation of and report on the child’s mental condition, and the proceedings shall be stayed.238 In addition to the staying of proceedings, all time limits relating to adjudication and disposition are tolled during the competency proceedings.239

A competency evaluation must be ordered in all cases where a child under the age of 13 is alleged to have committed a serious violent felony.240

All motions, notices of hearing or other pleadings relating to incompetency must be served on the child, his or her attorney, a GAL (if applicable), his or her parent or guardian, and the prosecuting attorney.241

Before any evaluation is conducted, the court will appoint an attorney to represent the child, if one has not yet been appointed.242

Upon a showing of good cause by any party, or on the court’s own motion, the court may order additional evaluations by other licensed psychologists or psychiatrists.243

Report

The court is to provide the examiner performing the evaluation and report with any law enforcement and court records necessary to understand the petition. The child’s attorney and the prosecuting attorney are to provide the examiner with any other records that are deemed necessary.244 It is our recommendation that defenders provide the examiner with any special education records that are available, including any IEPs and evaluations for special education services.

Unless the child is in an out-of-home placement, the evaluation is to be performed on an outpatient basis.245

The examiner is to submit his or her written report to the court within 30 days of receiving the court’s order for an evaluation, although the court may grant the examiner an extension of this deadline.246 Copies of the
written report shall be provided by the court to the attorney representing the child, the prosecuting attorney, and the GAL (if one has been appointed) within 5 days of receiving the report.247

The written report is to contain the specific 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. The evaluation will describe the abilities and deficits of the youth under the standard of competence defined above. The evaluation will state an opinion regarding the potential significance of the youth’s mental competency, strengths, and weaknesses. Finally, the report will contain an opinion on whether the youth should be found competent, along with a statement in support of this opinion.248

If the examiner considers the youth to be incompetent, the report should include an opinion on whether the primary cause of incompetency is immaturity, mental illness, developmental disability, or a combination as well as a projection of the probability that competence will be achieved in the foreseeable future. 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.249

**Competency Hearing**

The mental competency hearing will be held within sixty days of the initial order for evaluation, unless continued for good cause shown.250 At least ten days prior to the hearing, notice must be provided to all parties as well as the victim.251 Copies of the court’s findings will be given to the parties within ten days of the issuance of the findings.252

The burden of proving mental incompetence is on the youth.253 The standard of proof is by a preponderance of the evidence.254 At the hearing, defense counsel and the prosecuting attorney have the opportunity to present evidence, call, examine, and cross-examine witnesses, and present arguments.255 The examiner appointed by the court is considered the court’s witness and is subject to cross-examination by both the defense attorney and the prosecuting attorney.256 The court’s findings are based upon any evaluations by court appointed examiners or independent
evaluators hired by defense counsel or prosecuting attorneys, and any additional evidence presented.\textsuperscript{257}

If the child is found competent to proceed, the proceedings which have been suspended shall be resumed, and the time limits for adjudication and disposition will begin to run.\textsuperscript{258}

If the child who is found incompetent to proceed is detained in a secure or non-secure residential facility, within 5 days of making such a finding, the court must issue an order for the child’s immediate release from the facility and to the appropriate parent, guardian or legal custodian.\textsuperscript{259}

\begin{center}
\textbf{Disposition of Child Incompetent to Proceed}
\end{center}

If a child is found incompetent to proceed, the court must make a determination of whether the child’s incompetence can be remediated.

\textbf{Restorably Incompetent}

If the court finds that an alleged delinquent child is currently incompetent to proceed, but that the child’s competence can be remediated, the judge may order that competency remediation services be provided,\textsuperscript{260} or that the petition be dismissed without prejudice.\textsuperscript{261}

In deciding whether to order remediation services, the court will consider: whether there is probable cause, the nature of the incompetency, the child’s age, and the nature of the alleged offense.\textsuperscript{262}

If the court orders remediation services, the order shall contain: the name and location of the service provider, a statement of the arrangements for transportation to/from the program, the length of the program, and a direction concerning the frequency of reports.\textsuperscript{263}

\begin{center}
\textbf{REMEDICATION SERVICES}
\end{center}

O.C.G.A. 15-11-651(2)

Outpatient interventions directed only at facilitating the attainment of competence to proceed. These may include:

- Mental health treatment
- Specialized psychoeducational programming
At least every 6 months, DBHDD or a licensed psychologist or psychiatrist must file a written report with the court giving an opinion as to whether the child’s competency can be remediated in the foreseeable future, whether additional time is needed to remediate competency, and, if a child has attained competency, the effect of any medication or treatment used to remediate competency.\(^{264}\)

In addition to ordering remediation services, under certain circumstances (including that the child meets the requirements for civil commitment) the court may also order that a child be placed in a crisis stabilization unit or a psychiatric residential treatment facility operated by DBHDD.\(^{265}\)

If the court has ordered remediation services and the alleged delinquent act is a felony, the court shall retain jurisdiction for up to 2 years after the order of incompetency, with review hearings every 6 months.\(^{266}\) If the court has ordered remediation services and the alleged delinquent act is a misdemeanor, the court shall retain jurisdiction for up to 120 days after the order of incompetency.\(^{267}\)

If the court finds that a child has attained competency, the suspended proceedings shall resume and the time limits shall begin to run.\(^{268}\)

**Unrestorably Incompetent**

If a child is found to be unrestorably incompetent to proceed – either initially, or after a period of remediation services – the court shall dismiss the petition, appoint a plan manager, and order a comprehensive services plan to be initiated under Article 5 (CHINS) of the juvenile code.\(^{269}\) The court may also order that the child be referred for civil commitment or that a referral be made for appropriate adult services if the child reaches 18 years of age.\(^{270}\)

Upon appointment, the plan manager will convene a meeting of all relevant parties to develop a comprehensive services plan. Those invited to the meeting shall include: the parent or guardian, the child’s attorney, the prosecuting attorney, a GAL (if one has been appointed), mental health or developmental disabilities representatives, the child’s caseworker, a representative from the child’s school, and any family member who has shown an interest. Additional members may also be invited as
appropriate. The plan manager is also responsible for collecting all relevant records relating to the child.

Within 30 days of the order finding the child to be unrestorably incompetent, the plan manager shall submit the comprehensive services plan to the court. The plan shall include: an outline of the plan to provide supervision to the child so as to protect the community and the child; an outline of the plan to provide treatment, habilitation, support, or supervision services in the least restrictive environment, and identification of all parties responsible for each element of the plan.

Within 30 days of submission of the comprehensive services plan, the court shall hold a hearing to approve the plan. Additional review hearings will be held every 6 months thereafter.

The plan manager is responsible for identifying any person who should provide testimony at the comprehensive services plan hearing. These individuals, as well as the victim, shall be provided 10 days’ notice of the hearing, and shall be afforded the right to be heard at the hearing.
IX. Who Are the Clients and What Challenges Do They Face?
As juvenile defenders, we are likely to have had different life circumstances than most of the youth that come into contact with the juvenile justice system, even if just by virtue of our education and opportunities. Because of this, it can sometimes be challenging to understand where our clients are coming from and to address some of their underlying concerns. This section provides some information about the youth who make up the juvenile justice system, and some of the challenges that they face within the system.

**Adolescent Development**

One significant distinction between the representation of adult defendants and juveniles lies in the fundamental differences between the adolescent brain and the adult brain. Adolescence is a time of significant brain development, both in terms of psychosocial functioning and basic cognitive capacity. The adolescent brain does not fully finish maturing until early adulthood, meaning every child that touches the juvenile justice system is affected by a lack of emotional, social, and cognitive maturity. Research has shown that continuing brain development throughout adolescence influences a juvenile’s capacity to assess risk, anticipate long-term consequences, and make reasoned decisions. Therefore, a familiarity with the basic principles of adolescent brain development is crucial both in advocating for a child-client before the court, and in appropriately counseling a child to help him or her understand consequences and make informed and thoughtful decisions.

During the teenage years, the brain undergoes a crucial period of development. Though the brain begins to resemble an adult brain at age sixteen, neurological connections between different parts of the brain continue to form throughout childhood and into early adulthood. These connections, or synapses, multiply rapidly during adolescent years, before the brain undergoes a maturing process called Myelination, which streamlines these synapses and makes them more efficient. Before the brain finalizes this “pruning” process, which allows for increased...
intellectual capacity, adolescents are inherently less capable of balancing their emotions, and are more likely to exhibit risky behaviors.

The ongoing formation of neurological connections in the brain is especially relevant for the high number of juvenile clients who have experienced childhood trauma. Traumatic stress during childhood can become biologically encoded in the brain as the brain forms connections, which in turn impairs brain development. Children who are consistently exposed to extreme stress experience near-constant activation of neural systems involved in the stress response. This chronic activation can alter key neurochemical systems in the brain, which can affect brain functions such as memory and emotional processing, and can cause heightened anxiety, depression, and aggression in a juvenile. Research has linked the experience of childhood trauma with the likeliness of engaging in high-risk behaviors.

One of the last parts of the brain to fully develop is the prefrontal lobe or prefrontal cortex, and is sometimes referred to as the “control center” or the “CEO” of the body. The prefrontal cortex provides humans with advanced cognition, endowing people with capacities such as prioritizing, assessing risk, anticipating consequences, and controlling impulses such as aggression – some of the most important capacities involved in decision-making. By contrast, the limbic system, which regulates hormonal processing, is overactive during adolescence. Because the frontal lobe is underdeveloped, juveniles rely heavily on the emotional centers of the brain in decision-making, resulting in reactionary and emotional decisions. Adolescents are also more present-focused and tend to engage in risky behaviors, given the lack of capacity to evaluate risk and anticipate consequences.

In the last decade, the United States Supreme Court has consistently affirmed the distinctive cognitive and psychosocial capacities of youth. Most recently, while abolishing mandatory life without parole sentences for juveniles in Miller v. Alabama, the Court referenced the immaturity, impetuosity, and lack of ability to appreciate risk and consequences as some unique qualities of youth, and acknowledged the capacity for change and the lessened culpability in juvenile defendants. The Miller Court identified three distinct qualities of adolescence warranting a different
approach to sentencing: a lack of maturity and underdeveloped sense of responsibility, greater vulnerability to negative influences, and lack of formation in a child’s character.\textsuperscript{284}

Ongoing brain development throughout adolescence is particularly relevant to the juvenile justice system, and an understanding of the implications of the unique features of the adolescent is crucial to the practice of juvenile defense. Because juveniles coming into the system have not reached psychosocial maturity, delinquent acts are not necessarily reflective of future delinquent patterns of behavior. In other words, juveniles have a greater capacity for rehabilitation, which can be argued in court during the disposition stage of a delinquency proceeding. Further, the overreliance on emotional reactions in juvenile clients creates a compelling argument for a lack of requisite intent for the crime charged, especially for juvenile clients with a history of trauma. Additionally, because juveniles tend to be very present-focused as a result of the lack of ability to use reasoned judgment and assess long-term consequences, they are especially vulnerable to police pressure.

**Mental Health in Juvenile Justice**

Youth involved in the juvenile justice system exhibit significantly higher rates of mental health disorders than youth in the general population. Many of these youth may come into contact with the juvenile justice system because their conditions are unidentified, or there are insufficient supports in place for meeting the needs of these children. Lack of treatment for a mental health disorder after a youth enters the juvenile justice system can lead to further adjudications of delinquency, and have a serious impact on a child’s life. An understanding of mental health disorders of juveniles in the justice system is relevant both in advocating for a particular client, and in assessing the child-client’s competency to participate in the adjudicatory process.

It has been estimated that up to 70% of youth in the juvenile justice system meet the criteria for one or more mental health disorder.\textsuperscript{285} One in five youth within the juvenile justice system has a mental health disorder that is severe enough to impair functioning and merit immediate and significant treatment, including schizophrenia, major depression, and bipolar
Mental health disorders among juveniles in the justice system take all forms, including psychiatric, behavioral, mood, anxiety, and substance abuse disorders.

Anxiety and stress disorders, including post-traumatic stress disorder, are especially prevalent among juvenile offenders. As many as “seventy-five percent of violent juvenile offenders suffered severe abuse by a family member, eighty percent witnessed physical violence from beatings and killings, fifty percent were raised in one parent households, and over twenty-five percent had a parent who abused drugs or alcohol.”287

Studies have shown that at least 75 percent of youth in the juvenile justice system have experienced traumatic victimization, such as sexual abuse, physical abuse, domestic violence, or traumatic neglect.288 Juveniles who suffer from PTSD or other stress disorders as a result of these traumatic experiences may be prone to engaging in violent or aggressive behavior with little or no provocation.289

Coupled with the inherent susceptibilities of the adolescent brain, court-involved children with mental health disorders are extremely vulnerable. Mental health disorders such as PTSD, especially when left untreated, may be driving factors in a youth’s offending behavior. Even where a child’s disorder is less central to a delinquent act, mental health issues can still create unique vulnerabilities for a child in the court process. For instance, detention could be especially harmful to a child already suffering from depression or PTSD. Alternatively, a child with a mental health disorder may be particularly susceptible to police questioning, or lack competence to understand and participate in delinquency proceedings.

Throughout the course of representation, it may become essential for you to learn more about your client’s mental health status and to share this knowledge with the court through psychiatric evaluations and expert witnesses.
### Learning and Developmental Disabilities

Youth with learning and developmental disabilities, like youth with mental health disorders, are overrepresented in the juvenile justice system. Learning and developmental disabilities do not only contribute to a child’s likelihood of being arrested and incarcerated, but also to the obstacles that a child may face at every stage of delinquency proceedings. These disabilities may affect a youth’s ability to understand the juvenile process, to communicate with counsel, and to comply with terms of probation.

Though the reason for the overrepresentation of youth with these disabilities in the juvenile justice system is unclear, these children are at increased vulnerability for a number of risk factors that predict contact with the juvenile justice system. For instance, these children are at increased risk for dropping out of school – a very strong risk factor for children becoming involved with the juvenile justice system. School failure is often accompanied by other risk factors, such as feelings of rejection and low self-esteem. School dropout may also lead to increased involvement with other delinquent youth. Further, these children often present poorly in court as a result of their disabilities, making them more likely to be detained.

### Race, Ethnicity, and Culture

In 2013, 82 percent of the youth served by the Department of Juvenile Justice identified as non-white. Black and Hispanic youth are significantly more likely to be committed to DJJ than White youth. Disproportionate juvenile minority representation in most jurisdictions is not only apparent in secure detention and confinement; it is evident at nearly all stages of the juvenile justice system. The contributing factors to the disproportionate minority contact (DMC) within the juvenile justice system are numerous and complex. Therefore, reducing DMC requires comprehensive and multilayered efforts, aimed at programmatic and systemic change. Defenders play an important role in reducing this disproportionality, in helping our clients overcome implicit biases and negative perceptions (because of race, ethnicity, culture, or other factors), and in helping youth access justice.
A juvenile defender should:

1. **Become culturally competent.**

   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.\(^{297}\)

   Keep in mind that many youth or their families may not speak English as a first language or may come from countries where the justice is very different. These language barriers and cultural differences may affect the client’s comprehension of *Miranda*, of court procedure, or what is required of them.

2. **Educate stakeholders.**

   You may have to provide education to court or DJJ personnel who have implicit cultural, racial, or other biases. For example, the defender should help stakeholders understand that some children in other cultures may appear more developmentally mature than they actually are (e.g., life experiences have led to forced self-reliance and adult work and responsibilities).

   You may also have to help others understand the potential influence of the client’s culture or race on the client’s behavior or on the behavior of others around them. For example, the defender might consider whether racial and ethnic differences provide a theory of the defense case (e.g., cross-racial eyewitness identifications or bias-based fabrications).
3. **Facilitate communication.**

Make sure that court and DJJ personnel can and do communicate with the client and the client’s family in their first language and make sure there are no cultural miscommunications between the personnel and the family.

4. **Provide monitoring and support of youth in detention.**

Monitor the youth’s safety, access to relevant services, opportunity to practice his or her religion and ability to understand and communicate with other youth and staff and take remedial steps if necessary.

### Gender

Historically, female offenders were less frequently charged with serious law violations as law enforcement and the judiciary instead focused on girls’ sexual behavior and morality. However, in the early 1990s, because of a shift in juvenile justice policy and practices, the percentage of girls entering the juvenile justice system began to rise.

Currently, approximately one third of Georgia youth served by DJJ are girls. They have significant needs that differ in both degree and kind from those of boys. Many girls involved with the system have a history of trauma and sexual abuse. A study of 1000 girls in detention in California found that 88 percent had a serious mental health issue. Health needs related to pregnancy and childbirth are also common: 29 percent of the girls in this same study had been pregnant at least once and 16 percent had been pregnant while incarcerated.

There is also evidence that the juvenile justice process differs for boys and girls. For example, girls are far more likely than boys to be detained for non-serious offenses. In 2006, technical probation violations and status offenses accounted for 25 percent of boys’ detentions, but 41 percent of girls’ detentions.

It is important, especially when creating a dispositional plan, to identify programs, mentors or resources that are responsive not only to gender but also to that individual client.
Sexual Orientation and Gender Identity

To date there is not a precise statistical picture of the numbers of lesbian, gay, bi-sexual, transgender, intersex or questioning (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.\(^{302}\)

A youth’s sexual orientation or gender identity 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 youth’s sexual orientation or gender identity may be an underlying factor or directly related to the alleged delinquent behavior. A youth’s sexual orientation or gender identity will also be an important consideration during disposition planning and it may affect the client’s success or progress in a placement or program.

Charges and LGBTIQ Youth

In some instances, charges against LGBTIQ youth may be directly related to their sexual orientation or gender identity. LGBTIQ youth may be charged with sex offenses for age-appropriate, consensual same-sex activities after parents discover the youths exploring their sexuality. Parents also may find youth to be incorrigible based entirely on their LGBTIQ identity and bring forward complaints. For some youth, strife at home due to sexual orientation or gender identity may lead to runaway charges or homelessness.\(^ {303}\) Once on the streets, homelessness often leads to “survival crimes,” like theft or prostitution.\(^ {304}\)

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.\(^ {305}\) 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.

**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.

**Immigration Status**

The United States Supreme Court held, in *Padilla v. Kentucky*,\(^\text{306}\) that defenders have a constitutional duty to provide affirmative, competent advice regarding the immigration consequences of a guilty plea to a non-citizen defendant. This is because deportation (removal) is a penalty, and not a collateral consequence of a criminal proceeding. Failure to perform this duty constitutes ineffective assistance of counsel under the Sixth Amendment.\(^\text{307}\)

Immigration law is a specialty area. 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 your client is not a U.S. citizen.

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. Juvenile dispositions will serve as strong evidence of those “bad acts”, even though they are not convictions for immigration purposes. Conduct-based offenses to be on the look-out for 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 having been a drug trafficker, drug addict or drug “abuser,” behavior showing a mental condition that poses a current threat to self or others, and being found by a civil court to have violated a domestic temporary restraining order. Additionally, if a juvenile is tried and convicted as an adult, then the conviction will count for immigration purposes.

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.

There are several forms of relief available to non-citizen youth, each of which is explained briefly below.

**DACA**

**Deferred Action for Childhood Arrivals (DACA)** is a relief available to individuals who (A) were under the age of 31 as of June 15, 2012; (B) came to the United States before reaching their 16th birthday; (C) have continuously resided in the United States since June 15, 2007 until the present; (D) were physically present in the United States on June 15, 2012, and at the time of applying for DACA with USCIS; (E) had no lawful status on June 15, 2012; (F) are currently in school, have graduated or obtained a certificate of completion from high school, have obtained a GED certificate, or are an honorable discharged veteran of the Coast Guard or Armed Forces of the United States; and (F) have not been convicted of
a felony, significant misdemeanor, or three or more other misdemeanors, and do not otherwise pose a threat to national security or public safety. Individuals who meet these requirements should file an application for consideration of DACA with USCIS, along with supporting documents demonstrating their eligibility. Deferred action does not provide legal status in the United States, but rather is an exercise of prosecutorial discretion to defer removal action against an individual. DACA is granted for a period of two years, subject to renewal. Individuals who are approved for DACA are eligible for work authorization.

On 11/20/2014, President Obama announced an expansion of DACA that, once implemented, will (A) remove the requirement that an individual have been under the age of 31 on June 15, 2012; and (B) require continuous presence since January 1, 2010, rather than June 15, 2007. The expanded DACA program will be granted for a period of 3 years. Expanded DACA has not been implemented yet as a result of an injunction issued by a federal district court in Texas, temporarily delaying implementation of expanded DACA and DAPA.

**DAPA**

**Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA)** is relief available to individuals who (A) are the parent of a U.S. citizen or lawful permanent resident; (B) have continuously resided in the United States since January 1, 2010; (C) were present in the United States on November 20, 2014; (D) did not have lawful status in the United States on November 20, 2014; (E) have not been convicted of certain criminal offenses, including felonies and misdemeanors. As with DACA, deferred action does not provide legal status in the United States, and is rather an exercise of prosecutorial discretion to defer removal action against an individual. DAPA will be granted for 3 years, subject to renewal. Individuals who are approved for DAPA will be eligible for work authorization.

*Implementation of DAPA has been temporarily delayed by an injunction issued by a federal district court in Texas.*
**SIJS**

Special Immigrant Juvenile Status (SIJS) is a legal status available to alien children who have suffered abuse, abandonment, or neglect and sometimes those children who have been delinquent. Minor children applying for SIJS status may simultaneously apply for legal permanent residence and work authorization. SIJS Status is mandated to be determined by USCIS in no more than 180 days. Within 90 days of application, the child will receive a work permit and can apply for a Social Security Number. This is particularly vital because if the child is in State care Federal Reimbursements can be applied for immediately after obtaining the Social Security Number.

For a child to be eligible for SIJS, a state juvenile (or in some states probate, district or circuit) court in the United States must first (A) the child is unmarried and under the age of 21 years old; (B) declare the child was born in __________ [country] on _______[date] (C) declare that the child is in need of the protection of the Court and is dependent upon the court or placed with a state agency, private agency, or private person; (D) find it is not in the best interest of the child to be returned to her previous country of nationality or country of last habitual residence; and (D) reunification with 1 or both of the immigrant’s parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law.

Once the appropriate court has made the required findings and issued an order, an individual is eligible to apply for SIJS with USCIS if he or she meets the following requirements: (A) the individual is under 21 years old on the date of filing; (B) the juvenile court order is valid and in effect on the date of filing, and on the date USCIS makes a decision on the application, unless the individual aged out of the court’s jurisdiction by no fault of his or her own; (C) the individual is not married on the date of filing and on the date USCIS makes a decision on the application; and (D) the individual is present in the United States at the time of filing. *Children who are in immigration detention must request permission from the U.S. Department of Health and Human Services (HHS) to be legally placed somewhere else by a state court.*

Individuals who are approved for SIJS are immediately eligible to apply for legal permanent residence. However, even after being approved for SIJS,
an individual child will never be able to petition for his or her parents to have legal status—there is a lifetime bar.

**U Visa**

**U Nonimmigrant Status (U Visa)** is available to victims of particular qualifying crimes, who have suffered physical or mental harm as a result, and who have assisted in either the investigation or prosecution of the crime. An individual may be eligible for a U Visa if (A) he or she has been the victim in the United States of a qualifying criminal activity; (B) he or she has suffered substantial physical or mental harm as a result of the crime; (C) he or she has information about the criminal activity; (D) he or she was, is, or is likely to be helpful to law enforcement in the investigation or prosecution of the crime; (E) the crime occurred in the United States or violated United States law; and (F) he or she is admissible to the United States. U Visas are granted for a period of four years. Extensions are available in certain limited circumstances.

To apply for a U Visa with USCIS, an individual must submit a U Nonimmigrant Status Certification (U Visa Certification) signed by an authorized official of the certifying law enforcement agency, confirming that the individual was helpful, is being helpful, or will likely be helpful in the investigation or prosecution of the case. If an individual is not admissible to the United States, due to immigration violations or criminal convictions for example, then he or she may still apply for a U Visa by also filing an Application for Advance Permission to Enter as Nonimmigrant to request a waiver of the inadmissibility. U Visa applicants may also file derivative applications for qualifying family members.

Individuals who have been approved for a U Visa have legal status in the United States for four years. U Visa recipients and derivative family members are eligible for work authorization during that time. U Visa recipients and derivative family members are eligible to apply for legal permanent residence after three years.

**T Visa**

**T Nonimmigrant Status (T Visa)** is available to victims of severe forms of human trafficking. The T Visa was created to protect victims of human trafficking and allow them to remain in the United States in order to assist
in the investigation and/or prosecution of the crime. “Severe forms of trafficking in persons” is defined as sex trafficking in which commercial sex is induced by force, fraud, or coercion, or in which the victim is under the age of 18 years old; or the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

An individual qualifies for a T Visa by demonstrating that he or she (A) has been a victim of a severe form of trafficking in persons; (B) is physically present in the United States or at a port of entry as a result of trafficking; (C) has complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking in persons, unless he or she is under 18 years old; and (D) would suffer extreme hardship involving unusual and severe harm upon removal.

As with the U Visa, a Declaration of Law Enforcement Officer for Victim of Trafficking in Persons (I-914, Supplement B) is primary evidence that an individual has been a victim of a severe form of human trafficking and has assisted in the investigation or prosecution of the crime. The Declaration is not required, but strongly advised. If an individual applies for a T Visa without the Declaration, he or she should explain why it is not included.
The following is an overview of some of the DJJ policies and procedures that are most likely to impact you as a juvenile defender. 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.  

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**Health and Medical Services**  
All youth admitted to a DJJ facility will receive a comprehensive physical examination. 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 known to have a chronic condition or is taking prescribed medications, then the comprehensive physical must be completed within three days of admission.

If one of these factors is not present, then the physical must be completed within seven days of admission. Additionally, DJJ staff will provide an HIV test if requested by the youth or if clinically indicated and testing for sexually transmitted infections will be performed for all admissions and transfers.

All youth remaining at a secure facility over one year will receive an annual physical. Youth have the opportunity to request health services daily.

Youth and his or her parent or guardian have the right to refuse treatment or medication, unless the proposed intervention is essential to the youth’s welfare and/or cannot be deferred without substantial risk.

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.
**Behavioral Health Services**

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

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.

**Education**

DJJ operates as its own special school district, subject to all applicable rules and regulations of the State Board of Education. As such, DJJ is required to adhere to the curriculum and instructional standards set by the Georgia Department of Education. Instruction within the DJJ school system is provided through the use of Curriculum Activity Packets (CAPs).

The school attended by youth in either an RYDC or a YDC is called Georgia Preparatory Academy.

The Georgia Preparatory Academy is required to maintain records on behalf of each student, and to assign numerical grades in all classes where credits are earned. Further, progress reports are to be issued every 9 weeks during the school year. If requested, the student will be provided with a copy of his or her transcript and withdrawal forms at the time of release from a facility.

DJJ-Georgia Preparatory Academy is required to follow all mandates of the Individuals with Disabilities Act (IDEA), to identify all students with a disability, and to provide all students with a disability with a Free Appropriate Public Education in the Least Restrictive Environment.

Youth who are at least 16 years old may request entry into a GED program. To gain entry, the youth must obtain a qualifying score on the TABE test (9.0 level in reading and math for GED or 6.0 in reading and math for pre-
GED). If a student enters either the GED or pre-GED program, he or she is withdrawn from the high school curriculum, and is also removed from the special education program.

### 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 the most appropriate, least restrictive placement that will meet the needs of the youth and public safety. A formal screening will be held for all youth committed to DJJ either as a 2 year commitment or as a commitment pursuant to a Designated Felony order. The screening committee meeting must be held within 10 business days of the disposition order committing the youth. The youth and his or her parent or legal guardian have the right to appear before the screening committee to share relevant facts and to make recommendations regarding placement. The youth’s attorney may be present at the meeting by invitation of the parent or legal guardian.

When determining placement and services, the screening committee should take the following factors into consideration, as available: Legal history, home study report, social summary, pre-disposition risk assessment (PDRA) results, current comprehensive risk and needs assessment (CRN) results, discharge summaries from prior residential, psychiatric and shelter placements, mental health screening results, prior and current JTS alerts, placement history, educational records and status, psychological report, sexually abusive youth assessments, mental health history, and medical history.

The screening is tasked with determining the best placement for the youth, based on the youth’s needs and public safety, and will ultimately make a recommendation for 3 placements. The best placement must be included on the list regardless of availability. Further, there is a separate set of criteria that must be met if a YDC will be recommended as one of the 3 placement recommendations. Youth and their parents or guardians will be informed, in writing, of the screening recommendations as well as their right to appeal the placement recommendations. Appeals must be made within 5 business days of this notification.
For Class A and Class B designated felony commitments where restrictive custody has been ordered, the YDC will be listed as the best placement and the first placement. The remaining two recommendations will be recommendations for services or placement following the restrictive services time.  

**Graduated Sanctions**

DJJ defines graduated sanctions as “a structured, decision-making process with a continuum of services and consequences for youth who are placed at home and violate the terms of their probation or commitment…” 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. Upon knowledge of a violation, the youth’s case manager will determine the sanction based upon the seriousness of the violation and the youth’s level of supervision. Sanctions can range from a warning, to electronic monitoring, to increased reporting, to non-secure detention alternatives.  

**Electronic Monitoring**

Electronic monitoring may be used by DJJ to enhance the community supervision of certain youth. As a short-term supervision tool, electronic monitoring should not be used for longer than 30 days. Extensions of this timeframe may be authorized by certain DJJ officials.

**Rights of Youth**

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 or the courts will not be infringed upon regardless of their disciplinary status within a facility or program. 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:
• To be free from discrimination or harassment because of race, religion, color, sex, age, national origin or disability, pregnancy, childbirth or related medical conditions;

• To be free from bullying;

• To send and receive mail, make and receive phone calls, and receive visitors;

• To file a grievance;

• To be treated respectfully, impartially and fairly and to be addressed by name in a dignified, conversational form;

• To be informed of the rules, procedures and schedules of the facility;

• To be free from corporal punishment, physical abuse, assault, personal injury, or disease;

• To be free from interference with eating, sleeping or bathroom functions;

• To be free from mental or verbal abuse, intimidation, threats, humiliation or property damage;

• To be free from sexual abuse;

• To practice religious faith and to participate in religious services and religious counseling on a voluntary basis;

• To vote if eligible;

• To review his/her case file;

• To freedom of expression (so long as it does not interfere with the right of others or the safety and security of the facility or program);

• To due process in disciplinary proceedings;

• To equal access to programs and services; and

• To exercise on a daily basis. 346
XI. Other Areas of Client Advocacy
SECTION XI: Other Areas of Client Advocacy

During the course of representation, it may become apparent that the client has needs beyond the delinquency charges that led to juvenile court involvement. For the purposes of preparing a defense or disposition planning it may be worthwhile to consider the client’s education, housing situation, medical concerns, benefits, 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.

Education for Students with a Disability

There are two statutes that govern the provision of services to students with disabilities – the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act of 1973. While each provide for the provision of a Free Appropriate Public Education in the Least Restrictive Environment, the mechanisms by which such services are provided varies depending on the applicable statute.347

Individuals with Disabilities Education Act (IDEA)

The Individuals with Disabilities Education Act (IDEA)348 is the main federal statute that authorizes federal aid for the education of children with disabilities. The stated purpose of the IDEA is “to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living; to ensure that the rights of children with disabilities and parents of such children are protected; and to assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities.”349
This purpose is achieved through detailed due process provisions to ensure parental rights and participation, as well as a federal funding scheme to ensure that each child with a disability receives a “free appropriate public education” in the “least restrictive environment.”

Under the IDEA, a student is disabled if he or she falls into one of thirteen disability categories, and the disability has a negative impact on educational performance such that special education and related services are required.350

Prior to making a determination of whether a child is a child with a disability, the school district must evaluate the child in all areas of suspected disability.351 The request for such an evaluation can come from the school system, pursuant to its child find obligations, or a request for evaluation can be made by the child’s parent or guardian.352 While others, such as a doctor, teacher, judge, or social worker, may place the school system on notice that a child is suspected of having a disability, they cannot directly make the request for an evaluation. Accordingly, professionals writing letters on behalf of a parent should have the parent sign each copy whenever possible, in addition to their own signature, to make sure the referral is accepted.

Prior to conducting an evaluation, the district must receive informed consent from the child’s parent or guardian.353 Once a student is found eligible for special education services, the district must abide by a series of procedural steps, including the creation of an IEP.354 The IDEA requires that

### IDEA DISABILITY CATEGORIES

- Autism
- Deafness
- Deaf-blindness
- Hearing impairments
- Mental retardation (commonly referred to as intellectual disability)
- Multiple disabilities
- Orthopedic impairments
- Other health impairments (OHI): this can include ADHD
- Serious emotional disturbance
- Specific learning disabilities
- Speech or language impairments
- Traumatic brain injury
- Visual impairments
students with disabilities be placed in the least restrictive environment. On other words, to the maximum extent appropriate, children with disabilities must be educated with children who are nondisabled.\textsuperscript{355}

Students with disabilities also receive protections with respect to discipline. For all disciplinary actions removing a student from school for 10 days or more (or shorter-term disciplinary actions that add up to 10 days if there’s a pattern or practice), the district must hold a manifestation determination review to determine if the behavior in question was a manifestation of the disability. The behavior is a manifestation if the conduct in question (1) was caused by, or had a direct and substantial relationship to, the child’s disability, or (2) was the direct result of the district’s failure to implement the child’s IEP. If the behavior is a manifestation, the child should not be disciplined further (some exception apply for seriously dangerous behavior, weapons, and drugs). If the behavior is not a manifestation, the child may be disciplined, but must continue to receive FAPE.\textsuperscript{356}

To receive the services and protections afforded by the IDEA, it is recommended that you assist the parent in seeking a special education evaluation whenever the child exhibits poor academic performance, long-standing behavioral difficulties, school avoidance, or a diagnosis of a medical or psychiatric condition.

**Section 504 of the Rehabilitation Act of 1973**

Section 504 of the Rehabilitation Act (Section 504)\textsuperscript{357} is a federal civil rights law that prohibits discrimination by school districts receiving federal financial assistance against persons with disabilities. Included in the U.S. Department of Education regulations for Section 504 is the requirement that students with disabilities be provided with a “free appropriate public education” in the “least restrictive environment.”

A student is eligible for Section 504 services if he or she (1) has a physical or mental impairment that substantially limits one or more major life activities, (2) has a record of such an impairment or (3) is regarded as having such an impairment. Major life activities include walking, seeing, hearing, speaking, breathing, learning, working, caring for oneself, and performing manual tasks.\textsuperscript{358} Section 504 has a broader definition of a
disability than IDEA. As a result, a child who does not qualify for an IEP might still be eligible for a 504 plan.

While there are many fewer procedures in place under Section 504, the statute and corresponding regulations still provide for the basic requirements of the provision of FAPE in the least restrictive environment. Additionally, case law and federal guidance with respect to Section 504 interprets the statute as mandating a manifestation review under the same circumstances as those included in the IDEA.

**Disability Services While in Detention and Correctional Facilities**

Students do not lose their rights under the IDEA and Section 504 when they are placed in RYDCs, YDCs or even jails and prisons.

In December 2014, the Office of Special Education Programs (OSEP) and the Office of Special Education and Rehabilitative Services (OSERS) issued a “Dear Colleague” letter outlining the responsibilities of states and public agencies with respect to their responsibilities to students with disabilities in correctional facilities. For purposes of the letter, correctional facilities refers to juvenile justice facilities, detention facilities, jails and prisons. As outlined in the letter, absent specific exceptions, all provisions of the IDEA apply to students in correctional facilities and their parents.

The only exceptions that are written into the IDEA apply to certain provisions for children in adult prisons. If a youth is convicted as an adult and incarcerated in an adult prison, the provisions of the IDEA relating to participation in general assessments, transition planning (if the child will age out of the IDEA protections before the end of their sentence), and certain aspects of LRE (if there are bona fide security or penological interests that cannot otherwise be accommodated) do not apply. Further, the obligation to provide FAPE does not apply to children aged 18-21 in adult correctional facilities if the child was not identified as a child with a disability or did not have an IEP in his or her last educational placement before incarceration.

Notably, except as indicated above for students above the age of 18 in adult facilities, the state’s child find and evaluation obligations remain in place when youth are placed in correctional facilities. If a student
transfers between a district school and a correctional facility while in the midst of an evaluation, the agencies must coordinate to make sure that timely evaluation occurs. Similarly, discipline protections apply, and a manifestation determination must be made if the child is removed from the educational environment for more than 10 days.

Pursuant to the guidance, states must have interagency agreements or other methods for ensuring interagency coordination in place so that it is clear which agency or agencies are responsible for providing or paying for services necessary to ensure FAPE. Ultimately, it is the State that is responsible for ensuring that FAPE is provided to all students with disabilities in all juvenile and adult correctional facilities.

School Discipline

Under the Georgia Code, each local school board is required to have in place policies designed to improve the student learning environment by improving student behavior and discipline. The policies, or student codes of conduct, are required to be age appropriate and include a progressive discipline process. The code of conduct must be distributed to each student upon enrollment. The local school board determines the disciplinary action that will be taken for violation of the code of conduct.

Students facing school disciplinary action of longer than 10 days have the right to notice, a hearing, legal representation, and to present and respond to evidence during a disciplinary hearing. These hearings may be held in front of a disciplinary hearing officer, a panel, or a tribunal of school officials. After hearing all of the evidence, the disciplinary hearing officer, panel or tribunal of school officials shall determine what, if any, disciplinary action shall be taken. Such action may include short-term suspension, long-term suspension or expulsion. Youth may appeal within twenty days of the decision of the hearing officer, panel or tribunal to the local school board.

Should a suspended or expelled 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.
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. The school board has the authority to modify expulsion on a case-by-case basis. The hearing officer, tribunal, panel, superintendent, or local board of education may place a student in an alternative educational setting.

Disciplinary Policy for Students Committing Physical Acts of Violence against a School Official or Employee

Georgia law mandates that the districts adopt specific discipline policies for students who commit an act of physical violence against a school official, school employee, or school bus driver. The term “physical violence” is defined to establish two categories, with differing consequences: (1) intentionally making physical contact of an insulting or provoking nature with the person of another; or (2) intentionally making physical contact which causes physical harm to another unless the student can make a valid self-defense claim.

The law requires that a student accused of either category of physical violence must be suspended pending a disciplinary hearing.

If a student is found to have committed Category 1 physical violence then the student may be disciplined by expulsion, long-term suspension, or short-term suspension.

If a student is found to have committed Category 2 physical violence, then the student must be expelled from the public school system for the remainder of that student’s eligibility to attend public school. The district may, but is not required to, allow the student to attend an alternative education program for the period of expulsion. If the student is in kindergarten through eighth grade at the time of the offense, the district may allow the student to return to public school for the ninth through twelfth grade if the tribunal holding the hearing so recommends.

Any student who is found to have committed Category 2 physical violence against a teacher, school bus driver, school official, or school employee must be referred to juvenile court with a request for a petition alleging delinquent behavior.
Disrupting Public Schools

Georgia Code section 20-2-1181 makes it “unlawful for any person to knowingly, intentionally, or recklessly disrupt or interfere with the operation of any public school, public school bus, or public school bus stop.”

Because of its broad definition, this statute is often used as a tack-on charge to other school-based offenses. Although the statute was narrowed somewhat in 2010, with the addition of a requirement that the acts be done knowingly, intentionally or recklessly, there are still concerns that this statute is overbroad and vague.

Housing

Housing Authorities

Housing authorities are governed by O.C.G.A. section 8-3-1, also known as the “Housing Authorities Law.” 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. The applicable housing authority determines whether a particular family/person meets the “low income” standard. 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. 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. Importantly, “disability” does not include alcoholism or drug addiction under the FHA. The statute of limitations on a discriminatory housing complaint is one year.
Public Housing

Public housing is funded and governed by federal law and regulations but built and operated by cities. Under the public housing program, rent is based primarily on family size and income. The legal issues involved in public housing generally relate to leases and eviction. Many housing authorities have set a minimum rent requirement that must be paid regardless of the tenant’s income, a tenant can apply for an exemption. Once an exemption is requested, the minimum rent payment is suspended until the housing authority makes a decision on the request. 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, whenever a housing authority seeks to evict a tenant it must provide written notice terminating the tenancy, demand possession of the unit, and only then can it file an eviction action in court to regain possession of the unit. As to notice, a housing authority 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.

Housing Choice Program (Formerly Section 8)

The Georgia Department of Community Affairs provides many of the Housing Choice Vouchers outside of the Atlanta area. Within the Atlanta area and in the cities of Savannah, Augusta, Columbus, Brunswick, Macon, and Americus the local housing authority administers the Housing Choice Voucher Program. The Housing Choice Voucher Program is a type of rental assistance which allows participants to rent from private landlords. The landlord than receives direct rental payments from the housing authority administering the tenant’s housing voucher. Program participants normally pay approximately 30 percent of their adjusted income toward rent. The landlord’s subsidy is paid monthly by the housing authority or 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.
Health Coverage

Health Coverage for Young Georgians

Almost all Georgia children and youth under age 19 should be eligible for health coverage if they are citizens or are legal permanent residents who have been in the U.S. at least five years. (Certain other children who are refugees, asylees or other lawful entrants may qualify without a wait, and even undocumented children may qualify for Medicaid to pay for emergency care they have received.) Most children should be able to get coverage through Medicaid, PeachCare for Kids, or the Affordable Care Act, if not through a parent’s or their own employment. Children and youth who cannot qualify for coverage because of immigration status may be able to get care through federally qualified health centers in their communities. Medicaid and PeachCare cover 40% of all Georgia children, but not all who qualify are enrolled, so it is important to check and to help with an application if there is no current coverage.

Medicaid

Medicaid is a federal/state medical assistance program, run by the Georgia Department of Community Health, designed to help eligible people obtain medical care who would not otherwise be able to afford it. Medicaid covers roughly 1 million Georgia children and youth. Among those eligible are low-income children under age 19 and pregnant women. Some disabled children get Medicaid because they receive Supplemental Security Income or qualify without regard to parental income through a program called Katie Beckett. Children who are in foster care at age 18 can continue getting Medicaid until they reach age 26. There are no monthly premiums and no copayments for enrollees under age 21, for pregnant women, or for those aging out of foster care. Medicaid pays participating doctors, pharmacies, hospitals, dentists, psychologists or other providers directly and also pays for non-emergency transportation. See the chart for Right from the Start Medicaid and PeachCare income limits based on the age of the child. There are no limits on assets for this coverage.
Critical to helping children and youth succeed is the fact that those with Medicaid have a right to screenings and to all treatment that is necessary to correct or ameliorate any physical, dental, mental health, or addictive conditions that are discovered whether or not the services are usually covered by Medicaid. This Medicaid EPSDT (Early and Periodic Screening, Diagnosis and Treatment) benefit is a powerful tool; however, it often requires advocacy by parents, teachers, court officials or others to make sure the children are properly screened and treated. Anyone working with the child can trigger a screening to determine whether and what types of conditions need further diagnosis and treatment.

Note also that otherwise-eligible children can qualify for Medicaid even if they have insurance through a parent’s employer. Often such plans are not designed for children’s special needs, so Medicaid/EPSDT can fill in the gaps.

Non-disabled children with Medicaid are generally required to enroll in a care management organization (CMO): currently they are Amerigroup, Peach State (not to be confused with the PeachCare program discussed below), and WellCare. Children in foster care or adoption assistance or in the custody of Juvenile Justice enroll in a special CMO, Georgia Families
It is equipped to provide special services to these populations and coordinates with the Department of Behavioral Health and Developmental Disabilities, the Department of Education and others.

**Medicaid Application Process**

The easiest way to apply is online at [www.compass.ga.gov](http://www.compass.ga.gov). People can also apply at the County Department of Family and Children’s Services. A minor living on her/his own may apply on his/her own behalf. If the client is pregnant, she may be eligible for immediate coverage, as opposed to waiting through the application process. 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.

**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. 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 applicants have a right to:

- A timely determination of eligibility (45 days or less if not applying on the basis of disability). As noted above, pregnant women can get Medicaid presumptively. In addition, some hospitals are qualified to determine Medicaid eligibility presumptively for children and some others.

- Written notice of the specific reasons for denial and citation to the applicable regulations.

- A fair hearing through the Office of State Administrative Hearings (OSAH) if the applicant disagrees with the decision.

Medicaid recipients have a right to:

- Timely and adequate notice in writing before any action is taken to terminate eligibility or to delay, deny or reduce services.

- A fair hearing through OSAH if the recipient disagrees with a termination of eligibility.
• A fair hearing through OSAH if medical needs are not properly being served, although it is necessary to exhaust the CMO’s process first. Expedited appeals are available. 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.

Medicaid applicants and recipients have a responsibility to:

• Provide true and complete information about their circumstances.
• Report changes in circumstances.
• Cooperate with annual renewals to make sure Medicaid coverage is continuous.

**PeachCare for Kids**

Under the Balanced Budget Act of 1997, as amended, the federal government created and funded a new children’s health insurance program (CHIP) 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 under age 19 whose family income is too high for Medicaid, but who lack health insurance. Again, see the chart for the income limits. Like Medicaid, it is operated by the Department of Community Health. PeachCare covers roughly 200,000 Georgia children and youth. For more information, call 1-877-427-3224. There is an online application and information about the program at [http://www.peachcare.org](http://www.peachcare.org). PeachCare members are enrolled in the same care management organizations as most of those with Medicaid and can get most of the same services.

PeachCare is known as a Medicaid “look-alike,” but there are a few differences between the programs:

• While Medicaid is an entitlement, PeachCare funding is a block grant to the state with even more latitude for states to design it, and thus fewer protections.
• Eligibility is determined through a private vendor rather than through DFCS. Although income is considered in exactly the same way for children’s Medicaid and PeachCare, applicants sometimes get bounced
between the two because of differences in verification or other issues. Processes are being improved somewhat because of changes in the system due to the Affordable Care Act.

- Medicaid enrollees are entitled to three months’ retroactive coverage if they would have been eligible before they applied, but PeachCare eligibility begins the month a complete application is submitted.

- Georgia decided not to cover non-emergency transportation or targeted case management under PeachCare. Otherwise, the CMO contracts treat Medicaid and PeachCare substantially the same regarding services. See the link to the services manuals in the Medicaid section, above.

- Unlike Medicaid, PeachCare requires monthly premiums and service copayments for children over age five.

- Disputes about eligibility and about provision of service (after exhausting the CMO process for the latter) are handled through a Department of Community Health appeals process rather than through OSAH fair hearings.

- While children with Medicaid can have other insurance, PeachCare generally requires that applicants must have been uninsured for two months; however, there are many exceptions, such as when employer coverage terminates, insurance cost-sharing is more than 5% of income, a family loses coverage by reducing working hours or quitting a job, or the child’s has special needs.

**Affordable Care Act Coverage through the Insurance Marketplace**

Georgians whose income is between 100-400% FPL may be eligible for federal tax credits that help pay for health insurance premiums. If their income is between 100-250% FPL, they may also qualify for cost sharing reduction for assistance with out of pocket costs associated with health insurance. For assistance, consumers can contact a Navigator who provides unbiased, free assistance with the application and enrollment process.
ACA Application Process

In order to apply for ACA coverage, consumers must visit www.healthcare.gov or call the Insurance Marketplace at 1-800-318-2596. They can also contact a state and federally certified Navigator for unbiased and free assistance. Usually, consumers will need to apply during the Open Enrollment Period, which runs from November until January. During this time, they can complete an application for the Premium Tax Credits and get an immediate determination of how much assistance they will receive. At this point they can compare health care plans and choose the one that works best for themselves and their families. The rest of the year is known as the Special Enrollment Period, which means a consumer can only enroll if they have a special circumstance, a life change, such as getting married, having a baby, moving, getting a job, or losing healthcare coverage. They would still need to apply through www.healthcare.gov, over the phone at 1-800-318-2596, or with the help of a Navigator.

How ACA Coverage Works

ACA coverage works the same as traditional health insurance. The plans are divided along what is called Metal Tier Levels. These plans are broken down into metals: bronze, silver, gold, platinum, and catastrophic:

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<tbody>
<tr>
<td>Bronze</td>
<td>Health plan pays 60% on average. Consumer pays about 40%.</td>
</tr>
<tr>
<td>Silver</td>
<td>Health plan pays 70% on average. Consumer pays about 30%.</td>
</tr>
<tr>
<td>Gold</td>
<td>Health plan pays 80% on average. Consumer pays about 20%.</td>
</tr>
<tr>
<td>Platinum</td>
<td>Health plan pays 90% on average. Consumer pays about 10%.</td>
</tr>
<tr>
<td>Catastrophic</td>
<td>Catastrophic coverage plans pay less than 60% of the total average cost of care on average. They’re available only to people who are under 30 years old or have a hardship exemption. <a href="https://www.healthcare.gov/choose-a-plan/plans-categories/">https://www.healthcare.gov/choose-a-plan/plans-categories/</a></td>
</tr>
</tbody>
</table>

Plans are also required to provide Minimum Essential Coverage, which means they MUST provide the following ten essential health benefits:

- Ambulatory patient services (outpatient care you get without being admitted to a hospital)
- Emergency services
• Hospitalization (such as surgery)

• Pregnancy, maternity, and newborn care (care before and after your baby is born)

• Mental health and substance use disorder services, including behavioral health treatment (this includes counseling and psychotherapy)

• Prescription drugs

• Rehabilitative and habilitative services and devices (services and devices to help people with injuries, disabilities, or chronic conditions gain or recover mental and physical skills)

• Laboratory services

• Preventive and wellness services and chronic disease management

• Pediatric services, including oral and vision care

Thanks to the Affordable Care Act, all health insurance plans, not just those offered on the marketplace, must offer these benefits.

Changes for All Insurers Due to the ACA

No insurance company can charge a consumer more for health insurance because of a pre-existing condition after the establishment of the ACA. The only factors insurance companies may consider when determining the price of a plan is zip code, age, and smoking status. Insurance plans must cover children on their parents’ plan up to age 26.

Individual Responsibility Mandate and Exceptions:

Individuals who choose not to get health insurance but who could afford to get it will have to pay the individual responsibility mandate with their taxes. For 2015, this will be either 2% of your yearly income or $325 per person ($162.50 per child) without coverage, whichever is higher. There are many exceptions to having insurance or paying the penalty. For example, individuals who are below 100% FPL but who cannot receive Medicaid in states that chose not to expand the Medicaid program will qualify for an exemption. There are hardship exemptions which can include exemptions pertaining to recent domestic violence, recent utility shut
off, homelessness, etc. For more information on exemptions, visit [https://www.healthcare.gov/fees-exemptions/exemptions-from-the-fee/](https://www.healthcare.gov/fees-exemptions/exemptions-from-the-fee/).

**Indigent Care Trust Fund and Other Free or Discounted Hospital Care**

Georgians without other coverage may be able to get free or discounted hospital care. Most hospitals participate at some level in the state’s Indigent Care Trust Fund through which they receive enhanced payments for Medicaid patients. The rules for participation require that they provide a certain amount of free or discounted care to other people with incomes below 200% of the federal poverty level. The amounts vary by hospital, but there are certain rules facilities must follow such as publishing notices; accepting written applications; making written eligibility determinations, giving reasons for any denial; and providing an appeals process. Some people apply in advance to qualify for free care to gain access to the hospital. More commonly, patients apply upon or after discharge. The doctor bills usually are not covered.

Even if a hospital has exhausted its ICTF obligation for the year or does not participate in the ICTF, it may have another “charity” program of its own. Both for-profit and not-for-profit hospitals may have such programs, but some do not mention them without being asked. New Treasury/Internal Revenue Service regulations require 501(c)(3) facilities to adopt and publicize a Financial Assistance Policy (FAP), although the regulations specify very little about the substance. They do require these hospitals to bill patients who meet their FAP guidelines no more than Amounts Generally Billed (AGB) and to publish information on how they calculate AGB. This provision is meant to stop the practice of billing uninsured patients at full charges even though no insurer pays the full price.

**Other Free or Low-Cost Health Services**

Federally Qualified Community Health Centers, of which there are dozens around Georgia in otherwise underserved areas operate as nonprofit organizations with community boards and employ doctors, nurses, and sometimes dentists to provide health care on a sliding scale fee basis. They are open at regular hours, and many provide a comprehensive array of primary care services. They serve patients without discrimination,
including those who are undocumented. Some county health departments provide primary care services. Also, there are free clinics in many counties that provide some level of service using physician, nurse and sometimes dentist volunteers, mainly to people with chronic health conditions like hypertension or diabetes. Each has its own policies, and may be open from a few hours to a few days per week.

**Public Benefits**

**Supplemental Nutrition Assistance Program (SNAP) (Food Stamps)**

SNAP/Food Stamps is a monthly amount for individuals or families that can be used to purchase food and is paid out through an EBT card. Applications for SNAP/Food Stamps can be filed in writing through the local Department of Family and Children’s Services office in your county or online at [www.COMPASS.ga.gov](http://www.COMPASS.ga.gov).

**SNAP Eligibility**

A client and his or her family may be eligible for SNAP benefits if:

- He / she is a citizen of the United States or have a certain legal alien status
- He / she provides all of the required documents as proof of the household’s situation
- Household members comply with work requirements
- The household’s monthly income does not exceed the income limits based on the number of people who live in the household,
  - The rent or mortgage payment, utility bills, and in some cases medical, child care and child support expenses are considered in the eligibility determination process if proof of these expenses are provided.
How Long Does it Take to Get Benefits?

The application must be processed and benefits available within 30 days from the date the application is filed. If the household has little or no income and meets specific criteria, the application must be processed and benefits available within 7 days. A notice is sent to each household stating whether the household is eligible for food stamp benefits. If eligible, the notice states the amount of benefits the household will receive and how long the household will receive benefits before having to reapply.

What Amount of Benefits will the Family Receive?

The amount of benefits the household receives depends upon the number of individuals in the food stamp household, the amount of household income and the amount of the deductions used in the budgeting process. The date of application affects the amount of benefits received by the household in the first month. As long as the household remains eligible, benefits are provided each month. Benefits remaining in the EBT account can be obtained until they are used up even if the food stamp case closes.

How to Contest a Determination.

Families have the right to a fair hearing if they believe that the decision made on their case is not fair. A fair hearing can be requested by writing or calling the local county department. The local county department should be contacted within 10 days of receiving the notice of eligibility.

What Can be Purchased with SNAP Benefits?

Benefits may only be used to buy food and plants or seeds that grow food, for the household to eat. Certain food supplements, such as Ensure, may also be purchased with food stamp benefits. Additionally, ice, water, and cold or room temperature foods, which are not designed to be consumed in the store, may be purchased with food stamp benefits.

Temporary Assistance to Needy Families (TANF)

TANF is a federal program resulting in a small cash amount paid monthly to families with children and very low or no incomes. States receive block grants to design and operate programs that accomplish one of the purposes of the TANF program.
The four purposes of the TANF program are to:

- Provide assistance to needy families so that children can be cared for in their own homes
- Reduce the dependency of needy parents by promoting job preparation, work and marriage
- Prevent and reduce the incidence of out-of-wedlock pregnancies
- Encourage the formation and maintenance of two-parent families

Applications for TANF can be filed in writing through the local Department of Family and Children's Services office in the county of residence, or online at www.COMPASS.ga.gov.

**Eligibility**

To be determined eligible to receive TANF benefits, the following criteria must be met by the members of the assistance unit (family):

- **Age:** A child must be less than 18 years of age (19 years if s/he is a full-time student).

- **Application for other benefits:** A TANF applicant/recipient must apply for and accept other benefits (Unemployment Compensation, Workman’s Compensation, Supplemental Security Insurance (SSI), Child Support, etc) for which s/he may be eligible.

- **Citizenship:** A recipient must be a citizen of the U.S. or a lawful resident alien.

- **Deprivation:** A child must be deprived due to:
  - Continued absence from the home of at least one parent
  - Physical or mental incapacity of at least one parent
  - Death of a parent
  - In a two parent family in which both parents are able-bodied, deprivation is established if one parent has a “recent connection to the workforce.”
• Enumeration: All assistance unit members must have or apply for a Social Security number.

• School Attendance: All children ages 6 through 17 who have not graduated from high school or who have not received a certificate of high school equivalency must attend school and have satisfactory attendance.

• Immunization: All preschool children must be immunized.

• Income: An assistance unit’s countable net income must be below certain established limits that are adjusted for the number of persons in the AU. A family must meet the financial criteria to receive TANF. For example, in 2015 a family of three (mother and two children) must have a gross income below $784 a month and countable assets of less than $1,000.

• Lifetime Limits: Receipt of cash assistance is limited to 48 months in a lifetime. The limit may be extended if it is determined that an extension is justified due to certain hardships, including domestic violence and physical or mental incapacity.

• Paternity: The AU must cooperate in the establishment of paternity. The paternity of a child must be established at application and whenever a child is added to an active case.

• Work Requirement: All adult recipients have a work requirement, and are required to participate in work activities and training for at least 30 hours weekly. These work activities help recipients gain the experience needed to find a job and become self-sufficient.

• Cooperation with Office of Child Support Services is a requirement for receiving TANF benefits.

• The TANF Program has a Family Violence Option to waive, in accordance with a determination of good cause, certain program requirements where compliance with such requirements would make it more difficult for individual receiving cash assistance to escape domestic violence.
**Employment**

The minimum age for employment in Georgia is twelve years of age.\(^{403}\) One exception to this minimum age requirement arises when a minor under age twelve works for his/her parent or a person standing in the place of his/her parent.\(^{404}\) Furthermore, the age requirement does not apply to the employment of a minor in agriculture or domestic service in private homes.\(^{405}\) If a minor is between the ages of twelve and sixteen, he/she must obtain an employment certificate issued by his/her school superintendent.\(^{406}\) 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.\(^{407}\) 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.\(^{408}\) Finally, minors under 16 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.\(^{409}\)

Studies suggest that “work experience can promote the healthy development of some young people, especially when it is moderate in intensity and steady in duration—attributes that assure that employment does not interfere with other important elements in a teen’s life, and instead foster an appropriate balance between school and work.”\(^{410}\) For court-involved youth, employment may look good to the judge at disposition, and can help to pay restitution if necessary. Employment may occupy a youth’s time or provide income that might minimize the likelihood of further court involvement.

At the same time, Georgia’s teen unemployment rate is the third highest in the United States and more than three times higher than the overall unemployment rate in Georgia.\(^{411}\) This leaves many youth without practical employment options. There are, however, things an advocate can do to help the client find employment:

- Help clients brainstorm job options. Fast food restaurants, grocery stores, malls, and movie theatres are great places for clients to look for part-time employment as these types of employers are generally responsive to the needs and circumstances of part-time teen workers.
In hard economic times, many of these jobs are being filled with adult workers. Youth may have more luck working for neighbors babysitting, doing yard work, or completing odd jobs.

- If a youth cannot find work, suggest 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.

- Help youth through the application process. Emphasize the importance of filling out an application even if a particular employer is not hiring at the time. Emphasize the need for follow through with a potential employer and to wear appropriate attire when applying.

- 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.

### Abuse/Neglect

The Division of Children and Family Services (DFCS) is the agency responsible in Georgia for investigating cases of child abuse and neglect. If allegations of abuse or neglect also involve criminal conduct, law enforcement agencies may investigate as well, but be aware that the specific aim of DFCS is not the prosecution of criminal acts, but the protection of children. DFCS is required by statute to provide for the protection of children in abuse and neglect cases in such a way that the abuse or neglect can be remedied and the family reunited, if possible.  

Youth are legally “dependent” if a juvenile court has found that they have been:

- Abused or neglected and in need of the protection of the court;
- Placed for care or adoption in violation of the law; or
- Without a parent, guardian, or legal custodian.

There is sometimes a close interplay between circumstances leading to dependency and circumstances leading to delinquency. The Juvenile
Code acknowledges this reality by authorizing, after an adjudication of delinquency, “[a]ny order authorized for the disposition of a dependent child other than placement in the temporary custody of DFCS unless such child is also adjudicated as a dependent child”. 414

Defenders should note from the foregoing statutory language that it is possible for a child to be “dually committed” – placed both in the custody of DFCS due to a dependency adjudication and in the custody of DJJ due to a delinquency commitment. This situation is not uncommon, and draws attention to the fact that defenders should be aware of family dynamics and potential issues of abuse and neglect in the family which may have given rise to the alleged delinquent behavior. Because orders authorized for dependency dispositions are available to the court in delinquency cases, defenders should be familiar with the dependency disposition statute (O.C.G.A. §15-11-212). In many cases, transfer of custody to a relative or other individual authorized by the statute may serve as a viable alternative to restrictive custody. Similarly, implementation of family counseling requirements may serve a rehabilitative and preventive role in delinquency dispositions.

It is not uncommon for defenders in juvenile court to learn of abuse or neglect in a client’s home. When deciding how to handle such revelations, it is important to always keep in mind your ethical obligations towards your client, including the requirement that you maintain your client’s confidences.

**Reproductive Rights**

Youth face a variety of reproductive health issues but often are afraid or do not know how to seek services. During the course of representation of youth, attorneys are likely to encounter a client who is pregnant or has another reproductive health issue. Therefore, it is important to understand the law in this area in order to appropriately counsel the client, if necessary.

**Confidential Services and Parental Consent** 415

Healthcare providers are supposed to provide certain reproductive health services to youth confidentially. Confidential services means that the
doctor or nurse can provide a health service to youth without needing permission from their parent or caregiver and without telling the parent about the services. Unfortunately, not all providers keep services to minors confidential. You should advise youth to be sure to ask the clinic or doctor if they will share the results with parents or guardians afterwards.

**Contraceptives**

A healthcare professional can speak with youth about which birth control would be the best match for them and write a prescription without permission from their parent or caregiver. Many public health clinics provide at least one free form of contraception. All insurance plans, including Medicaid, must cover contraceptives at no cost to the consumer. Additionally, youth of any age can purchase condoms at a pharmacy. Many clinics and service centers provide free condoms.

**Emergency Contraception (a.k.a. “Morning After Pill” or “EC”)**

Emergency contraception is a pill that reduces the chance that a woman will get pregnant after having unprotected sex. Teens 17 and older (both girls and boys) can purchase EC without a prescription. Teens 16 and younger will need a prescription to get EC at the pharmacy.

**STD Testing and Treatment**

In Georgia, youth have confidential access to STD testing and treatment. A doctor or nurse can also test for HIV without parent/caregiver permission.

**Pregnancy**

Girls of any age may consent to medical procedures or treatment in connection with pregnancy, prevention of pregnancy, or childbirth. Consent is limited by whether the treatment being offered is, in fact, being given in conjunction with pregnancy or childbirth. Doctors and nurses can also administer pregnancy tests and discuss pregnancy options with youth without parent/caregiver permission.

**Abortion**

Under the Parental Notification Act a pregnant un-emancipated minor must comply with certain requirements in order to obtain an abortion.
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. 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.

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 (sometimes called a judicial bypass). 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. The youth can get a volunteer attorney to represent her at these hearings. Judicial bypass is rarely granted in Georgia.

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 involvement with the court system. In 2010, 10% of all juvenile arrests were for a drug-related crime. The juvenile arrest rate for drug possession or use declined 20% from 1997 to 2010, but is still 147% above its 1990 level.

It is worthwhile to be mindful of indications that the client has a substance abuse problem as drugs often play a destructive role even for youth who were not detained specifically on drug charges. 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:
• Drug or alcohol related charges
• A series of positive drug screens
• Withdrawal symptoms while in detention
• Possession of drug paraphernalia
• Extreme behavioral fluctuations or moodiness not otherwise explained
• Inability to sit still not otherwise explained
• The smell of drugs or alcohol on the client’s breath, body, or clothes
• Red eyes or pupils larger or smaller than normal
• Slurred, incoherent speech
• Unexplained need for money

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:

• Does the juvenile need inpatient or outpatient treatment?
• Is the juvenile simply being a rebellious teenager or are there addiction issues?
• 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.
Appendix A: Glossary

The following is a list of terms commonly heard in the juvenile court. This is not a complete list.

ADJUDICATION

Analogous to an adult “conviction,” it is a formal finding by the juvenile court, after an adjudication hearing or an admission, that the juvenile has committed the act with which he or she is charged.

ADJUDICATION HEARING

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 exactly as the act is set forth in the petition, 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.

BEHAVIORAL HEALTH EVALUATION

A court-ordered evaluation of a child so as to provide the juvenile court with information and recommendations relevant to the behavioral health status and mental health treatment needs of the child. It must be completed by a licensed psychologist or psychiatrist.

CHILD

For purposes of delinquency, a child is a person under the age of 17 when alleged to have committed a delinquent act. For purposes of CHINS, a child is a person under the age of 18.
CHILD IN NEED OF SERVICES

A child adjudicated to be in need of care, guidance, counseling, structure, supervision, treatment, or rehabilitation, and is adjudicated: truant, ungovernable, a runaway, to have violated curfew, to patronize a bar or possess alcohol, or to commit any offense applicable only to a child. Alternatively, a child who has committed a delinquent act and is adjudicated to be in need of supervision but not in need of treatment or rehabilitation.

CLASS A DESIGNATED FELONY ACT

A delinquent act committed by a child 13 years of age or older which, if committed by an adult, would be one or more of the following crimes:

- Aggravated assault or assault with a deadly weapon that resulted in serious injury;
- Aggravated battery;
- Armed robbery (no firearm);
- Arson (first degree);
- Attempted murder;
- Escape if previously Class A or B;
- Hijacking a motor vehicle;
- Kidnapping;
- Criminal gang activity (most types);
- Trafficking of substances; or
- Fourth felony adjudication if one was a felony crime against a person or a sexual offense.

CLASS B DESIGNATED FELONY ACT:

A Class B designated felony is a delinquent act committed by a child 13 years of age or older which, if committed by an adult, would be one or more of the following crimes:
• Aggravated assault or assault with a deadly weapon that did not result in serious injury;
• Arson (second degree);
• Attempted kidnapping;
• Battery against school personnel;
• Racketeering;
• Robbery;
• Gang related graffiti;
• Smash and grab burglary;
• Destructive device and hoax device crimes;
• Second car theft;
• Second possession of a handgun;
• School weapons violations; or
• Fourth felony adjudication.

**COLLATERAL CONSEQUENCES**

Consequences for the youth beyond the immediate court case. These may include, but are not limited to, loss of driving privileges, the requirement to register as a sex offender, the loss or restriction of a professional license, eviction from public housing, ineligibility for public funds including welfare benefits and student loans, prohibitions against owning a firearm, limitations on joining the military, and immigration consequences.

**COMMITMENT (TO DJJ)**

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, three or five years depending upon the offense for which the youth was adjudicated.
COMPLAINT
The initial document setting out the circumstances that resulted in a child being brought before the court.

DELIQUENT 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.

DELIQUENT CHILD
A child who has committed a delinquent act and is in need of treatment or rehabilitation.

DEPARTMENT OF BEHAVIORAL HEALTH AND DEVELOPMENTAL DISABILITIES (DBHDD)
The state agency that focuses solely on policies, programs, and services for people with mental illness, substance use disorders, and developmental disabilities. DBHDD operates state hospitals and provides community-based services across the state through contracted providers.

DEPARTMENT OF HUMAN SERVICES (DHS)
DHS delivers a wide range of human services designed to promote self-sufficiency, safety and well-being for all Georgians. Its mission is to provide Georgia with customer-focused human services that promote child and adult protection, child welfare, stronger families and self-sufficiency. DHS includes the Division of Aging Services, the Division of Child Support Services, and the Division of Family and Children Services.

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. DJJ also provides assistance or delinquency prevention services for at-risk youth through collaborative efforts with other public and private entities.
DEPENDENT CHILD

A child who: has been abused or neglected and is in need of the protection of the court, has been placed for care or adoption in violation of law, or is without his or her parent, guardian, or legal custodian.

DEPENDENT COURT

Court in which DJJ handles intake services and case management and oversees probation services. There are 134 dependent juvenile courts.

DETENTION

The temporary custody of juveniles who are accused of a delinquent offense in a secure environment for their own or the community’s protection or to make sure they appear at their next court appearance while awaiting a final court disposition. In some circumstances, detention may also be used as a sanction for probation violations or as a disposition option.

DETENTION ASSESSMENT

An actuarial tool, approved by the board of DJJ and validated on a targeted population, used to make detention decisions and that identifies and calculates specific factors that are likely to indicate a child’s risk to public safety pending adjudication and the likelihood that such child will appear for juvenile proceedings for the act causing the detention decision to be made.

DEVELOPMENTAL IMMATUREY

A term used to refer to deficits in adolescents’ thinking, reasoning, and/or decision-making that are a result of normative developmental processes. As adolescents mature, their thinking, reasoning, and decision-making begins to resemble that of adults.

DIVISION OF FAMILY AND CHILDREN SERVICES (DFCS or DFACS)

The Division of Family and Children Services (DFCS) is the division of the Department of Human Services (DHS) 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 support services and programs to help troubled families.
DISPOSITION

The phase of delinquency proceeding similar to the “sentencing” phase of an adult trial. The judge should order the least restrictive disposition appropriate in light of the seriousness of the delinquent act, the child’s culpability, the child’s age, the child’s prior record, and the child’s strengths and needs.

DIVERSION

A system of procedures and programs designed to channel certain youth away from the formal juvenile court process. Diversion officially stops or suspends a case prior to court adjudication and refers the youth into a community education or treatment program in lieu of adjudication. Successful completion of a diversion program results in the dismissal or withdrawal of formal charges. Those who fail to comply with the diversion terms and conditions are subject to formal processing.

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

A comprehensive and preventive child health program for all Medicaid eligible children up to age 21. EPSDT includes periodic screening, vision, dental and hearing services. Under EPSDT, each state must screen children regularly and provide all necessary medical and mental health treatment for any problem discovered through screening.

GRADUATED SANCTIONS

A set of integrated intervention strategies designed to operate in unison to enhance accountability, ensure public safety, and reduce recidivism by preventing future delinquent behavior. The term graduated sanctions implies that the penalties for delinquent activity should move from limited interventions to more restrictive (i.e., graduated) penalties. Graduated sanctions include verbal and written warnings, increased restrictions and reporting requirements, community service, referral to treatment and counseling programs in the community, weekend programming, electronic monitoring, curfew, intensive supervision, or home confinement.
GROUP HOME

A community-based non-secure residential placement for youth. When placed in a group home operated by DJJ, this is often used as an alternative to detention. Dependent children may also be placed in group homes operated by DFCS.

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. The role of the GAL is different from defense counsel’s role to represent the expressed interest of the child in delinquency cases.

INDEPENDENT COURTS

Courts in which court employees handle the intake, case management, and probation services. Independent courts also manage their own information systems, many of which are separate from the system used by the dependent counties. There are 17 independent juvenile courts.

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 a “free and appropriate public education” in the “least restrictive environment” 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 to be provided to the child.

INFORMAL ADJUSTMENT

The disposition of a case other than by formal adjudication and disposition. Informal adjustment is a form of diversion program.
INTAKE

The process following arrest or referral to the juvenile court in which court personnel or the juvenile probation department investigates a youth’s charges and background and decides whether to release the youth, refer the youth to a diversion program, or formally proceed against him/her in juvenile court.

INTENSIVE SUPERVISION

The monitoring of a child’s activities on a more frequent basis than regular aftercare supervision.

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.

INTERSTATE COMPACT ON JUVENILES

The Interstate Compact on Juveniles provides for the transfer of juvenile probation and parole supervision across state lines in order to assure the accountability of the juvenile and provide a measure of community safety in the receiving state. It also provides for the return of juveniles who have run away, absconded or escaped from supervision or control or have been accused of an offense to the state requesting their return.

NON-SECURE RESIDENTIAL FACILITY

Community residential locations operated by or on behalf of DJJ. These may include group homes, emergency shelters, wilderness or outdoor therapeutic programs, or other facilities that provide 24 hour care in a residential setting.

PLEA

A youth’s formal response before a judge of “guilty” or “not guilty” to a delinquency or criminal charge. In juvenile court, instead of answering “guilty” or “not guilty,” the youth will either “admit” or “deny” the charges. A denial will move the case to adjudication, while an admission will result in waiver of the right to trial.
PROBATION

A disposition involving the supervision of a delinquent youth in the community rather than in a secure confinement facility. When a youth is placed on probation, he or she must comply with any conditions specified in the judge's order, including submission to routine drug tests, payment of restitution to a particular victim or to a crime victims’ fund, participation in treatment or educational programs, and/or completion of community service.

PROBATION MANAGEMENT PROGRAM

A special condition of probation that includes graduated sanctions.

REGIONAL YOUTH DETENTION CENTER (RYDC)

Regional Youth Detention Centers provide temporary, secure care and supervision to youth who have been charged with offenses and are awaiting adjudication, or have been adjudicated delinquent and are awaiting disposition. In addition, youth who have been committed to the custody of DJJ are sometimes placed in an RYDC while awaiting treatment in a community program or a long-term facility. Finally, youth may be placed in an RYDC for a period of up to 30 days as part of a disposition or for up to 14 days as part of secure probation management program. An RYDC can be compared in function to an adult jail.

RESTITUTION

Payments that a judge may order a youth to make to a particular victim. Restitution is part of the disposition order and is generally based on the amount of damages demonstrated by the victim. The judge is also required to take into account how much a defendant is capable of paying. Unlike the rest of a juvenile order, restitution can last beyond the child’s 21st birthday if it hasn’t been paid.

RESTRICTIVE CUSTODY

In the custody of DJJ for purposes of housing in a secure residential facility or nonsecure residential facility. Applicable to youth who have been adjudicated delinquent of a designated felony act.
RISK ASSESSMENT
An actuarial tool, approved by the board of DJJ and validated on a targeted population, which identifies and calculates specific factors that predict a child’s likelihood of recidivating.

RISK AND NEEDS ASSESSMENT
An actuarial tool, approved by the board of DJJ and validated on a targeted population, that identifies and calculates specific factors that predict a child’s likelihood of recidivating and identifies criminal risk factors that, when properly addressed, can reduce such child’s likelihood of recidivating.

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.

SCREENING (DJJ)
A multidisciplinary meeting for all youth committed to DJJ to determine the most appropriate, least restrictive placement that will meet the needs of the youth and public safety.

SECURE PROBATION SANCTIONS PROGRAM
A special condition of the probation management program that permits confinement in a secure residential facility or nonsecure residential facility for 7, 14, or 30 days if a child has not succeeded even with the imposition of graduated sanctions.

SECURE RESIDENTIAL FACILITY
A hardware secure residential institution operated by or on behalf of DJJ. Includes a Youth Development Center (YDC) or a Regional Youth Detention Center (RYDC).

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 (including murder in the 2nd degree), rape, voluntary manslaughter, or armed robbery with a firearm.

**SHARED COURTS**

Courts that share operations between DJJ and the county. There are eight shared juvenile courts.

**SHORT TERM TREATMENT PROGRAM (STTP)**

A term formerly used to refer to the disposition option of placing an adjudicated child in a secure residential facility or in a treatment program for up to 30 days as permitted pursuant to O.C.G.A. § 15-11-601. This has also been referred to as boot camp. Many practitioners still use these terms to refer to such a disposition.

**STATUS OFFENDER**

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

**TRANSFER / WAIVER OF JURISDICTION**

The legal procedure for determining whether the juvenile court will retain jurisdiction over a juvenile case or whether the matter will be sent to adult criminal court.

**YOUTH DEVELOPMENT CAMPUS OR YOUTH DEVELOPMENT CENTER (YDC)**

Department of Juvenile Justice long-term secure detention facilities for committed youth. These can be compared in function to an adult prison.
Appendix B: Resources

The following is a list of resources that may be able to provide further assistance if needed.

**Juvenile Justice**

CAMPAIGN FOR THE FAIR SENTENCING OF YOUTH

http://fairsentencingofyouth.org/

CAMPAIGN FOR YOUTH JUSTICE

http://www.campaignforyouthjustice.org/

GEORGIA DEPARTMENT OF JUVENILE JUSTICE

http://www.djj.state.ga.us/

GIRLS’ JUSTICE INITIATIVE

http://www.girlsjusticeinitiative.org/

HAYWOOD BURNS INSTITUTE

http://www.burnsinstitute.org/

MODELS FOR CHANGE

http://www.modelsforchange.net/index.html

NATIONAL CENTER FOR JUVENILE JUSTICE

http://www.ncjj.org/

NATIONAL CENTER FOR MENTAL HEALTH AND JUVENILE JUSTICE

http://www.ncmhjj.com/

NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES

http://www.ncjfcj.org/

NATIONAL JUVENILE DEFENDER CENTER

http://njdc.info/
NATIONAL JUVENILE JUSTICE NETWORK
http://www.njjn.org/

OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION
http://www.ojjdp.gov/

SOUTHERN JUVENILE DEFENDER CENTER
http://njdc.info/southern/

**Education**

ADVANCEMENT PROJECT – ENDING THE SCHOOLHOUSE TO JAILHOUSE TRACK
http://safequalityschools.org/

CENTER FOR LAW AND EDUCATION
http://www.cleweb.org/

COUNCIL OF PARENTS ATTORNEYS AND ADVOCATES
http://www.copaa.org/

DIGNITY IN SCHOOLS
http://www.dignityinschools.org/

GEORGIA APPLESEED – EFFECTIVE STUDENT DISCIPLINE INITIATIVE
https://gaappleseed.org/initiatives/esd

GEORGIA DEPARTMENT OF EDUCATION – DECISIONS

GEORGIA DEPARTMENT OF EDUCATION – RULES
Mental Health

AMERICAN ACADEMY OF CHILD & ADOLESCENT PSYCHIATRY
http://www.aacap.org/

AMERICAN ACADEMY OF CHILD & ADOLESCENT PSYCHIATRY: GLOSSARY OF SYMPTOMS AND ILLNESSES

CETPA (provides mental health and substance abuse services to the Hispanic population, even if they are lacking insurance)
http://www.cetpa.org/

DEPARTMENT OF BEHAVIORAL HEALTH AND DEVELOPMENTAL DISABILITIES (DBHDD)
http://dbhdd.georgia.gov/

MENTAL HEALTH AMERICA
http://www.mentalhealthamerica.net/

NATIONAL ALLIANCE ON MENTAL ILLNESS (NAMI)
http://www.nami.org/

NATIONAL CENTER FOR MENTAL HEALTH AND JUVENILE JUSTICE
http://www.ncmhjj.com/

SUBSTANCE ABUSE & MENTAL HEALTH SERVICES ADMINISTRATION
http://www.samhsa.gov/
Adolescent Development

AMICUS BRIEF FILED BY AMERICAN PSYCHOLOGICAL ASSOCIATION, ET AL, IN GRAHAM V. FLORIDA

https://www.apa.org/about/offices/ogc/amicus/graham-v-florida-sullivan.pdf

Disability

NATIONAL DISABILITY RIGHTS NETWORK

http://www.ndrn.org/index.php

SOCIAL SECURITY BENEFITS FOR PEOPLE WITH DISABILITIES

http://www.ssa.gov/disability/

Substance Abuse

GEORGIA DEPARTMENT OF BEHAVIORAL HEALTH AND DEVELOPMENTAL DISABILITIES (DBHDD) – ADDICTIVE DISEASES

http://dbhdd.georgia.gov/child-and-adolescent-services

GEORGIA SUBSTANCE ABUSE HELPLINE

1-800-338-6745.

METRO ATLANTA COUNCIL ON DRUGS AND ALCOHOL

http://www.livedrugfree.org/

SUBSTANCE ABUSE & MENTAL HEALTH SERVICES ADMINISTRATION

http://www.samhsa.gov/
**Immigrant Youth**

**ACCESS TO LAW**

http://accesstolawfoundation.org/

**CATHOLIC CHARITIES OF ATLANTA**

http://www.catholiccharitiesatlanta.org/

**CETPA LATINO YOUTH CLUBHOUSE**

http://www.cetpa.org/CETPA_ENG_2Clubhouse.html

**THE LATIN AMERICAN ASSOCIATION**

http://thelaa.org/

**NATIONAL IMMIGRATION LAW CENTER**

http://www.nilc.org/

**IMMIGRANT LEGAL RESOURCE CENTER**

http://www.ilrc.org/

**NATIONAL IMMIGRATION PROJECT OF THE NATIONAL LAWYERS GUILD**

http://www.nationalimmigrationproject.org/

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**Healthcare**

**AFFORDABLE CARE ACT**

https://www.healthcare.gov/

**GEORGIA DEPARTMENT OF COMMUNITY HEALTH**

https://dch.georgia.gov/

404-656-4507

**GEORGIA HEALTHY FAMILIES**

GEORGIA MEDICAID PHONE NUMBERS:

- Peachcare for Kids®: 877-427-3224
- Eligibility: 404-651-9982
- Member Services: 866-211-0950
- Provider Services: 800-766-4456
- Customer Service/Claims Resolution: 404-657-5468
- Medical Policy: 404-651-9606
- Hospital Services: 404-651-9606
- Long-Term Care: 404-656-6862

GEORGIA MEDICAID – STATE POLICIES


For detailed policies on Georgia Medicaid services: [https://www.mmis.georgia.gov/portal/PubAccess.Provider%20Information/Provider%20Manuals/tabId/54/Default.aspx](https://www.mmis.georgia.gov/portal/PubAccess.Provider%20Information/Provider%20Manuals/tabId/54/Default.aspx) (and click on the manual for the type of service)

INDIGENT CARE TRUST FUND


COUNTY HEALTH CENTERS AND CLINICS

[http://freeclinicdirectory.org/georgia_care.html](http://freeclinicdirectory.org/georgia_care.html)

FREE OR DISCOUNTED DENTAL SERVICES

[http://www.freedentalcare.us/st/georgia](http://www.freedentalcare.us/st/georgia)
Public Benefits

OFFICE OF FAMILY ASSISTANCE: TANF

http://www.acf.hhs.gov/programs/ofa/programs/tanf

SNAP/FOOD STAMP ELIGIBILITY AND MANAGEMENT POLICIES


USDA FOOD AND NUTRITION SERVICES: SNAP

http://www.fns.usda.gov/snap/supplemental-nutrition-assistance-program-snap

Other Services

THE UNITED WAY – 211 COMMUNITY RESOURCE GUIDE

Dial 2-1-1 (Outside metro Atlanta, call 404-614-1000)

www.211.org or www.unitedwayatl.org
Appendix C: Selected Provisions - Georgia Rules of Professional Conduct
The following are some selected rules and comments that are implicated in the representation of youth in the juvenile justice system. The full rules can be found on the State Bar of Georgia website. Further, the State Bar of Georgia runs an ethics hotline in the event that you need assistance in interpreting any of the rules.

**Rule 1.1: COMPETENCE**

A lawyer shall provide competent representation to a client. Competent representation as used in this Rule means that a lawyer shall not handle a matter which the lawyer knows or should know to be beyond the lawyer’s level of competence without associating another lawyer who the original lawyer reasonably believes to be competent to handle the matter in question. Competence requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

**Comments:**

Thoroughness and Preparation

[5] Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more elaborate treatment than matters of lesser consequence.

**Rule 1.2: SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER**

a. Subject to paragraphs (c) and (d), a lawyer shall abide by a client’s decisions concerning the scope and objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client’s decision
whether to settle a matter. In a criminal case, the lawyer shall abide by the client’s decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

Comments (selected)

Allocation of Authority between Client and Lawyer

[1] Paragraph (a) confers upon the client the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer’s professional obligations. The decisions specified in paragraph (a), such as whether to settle a civil matter, must also be made by the client. See Rule 1.4(a)(1) for the lawyer’s duty to communicate with the client about such decisions. With respect to the means by which the client’s objectives are to be pursued, the lawyer shall consult with the client as required by Rule 1.4(a)(2) and may take such action as is impliedly authorized to carry out the representation.

[2] On occasion, however, a lawyer and a client may disagree about the means to be used to accomplish the client’s objectives. Clients normally defer to the special knowledge and skill of their lawyer with respect to the means to be used to accomplish their objectives, particularly with respect to technical, legal and tactical matters. Conversely, lawyers usually defer to the client regarding such questions as the expense to be incurred and concern for third persons who might be adversely affected.

Rule 1.4: COMMUNICATION

a. A lawyer shall:

   1. promptly inform the client of any decision or circumstance with respect to which the client’s informed consent, as defined in Rule 1.0(h), is required by these Rules;
   2. reasonably consult with the client about the means by which the client’s objectives are to be accomplished;
3. keep the client reasonably informed about the status of the matter;

4. promptly comply with reasonable requests for information; and

5. consult with the client about any relevant limitation on the lawyer’s conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

b. A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Rule 1.6: CONFIDENTIALITY OF INFORMATION

a. A lawyer shall maintain in confidence all information gained in the professional relationship with a client, including information which the client has requested to be held inviolate or the disclosure of which would be embarrassing or would likely be detrimental to the client, unless the client gives informed consent, except for disclosures that are impliedly authorized in order to carry out the representation, or are required by these Rules or other law, or by order of the Court.

1. A lawyer may reveal information covered by paragraph (a) which the lawyer reasonably believes necessary:

   i. to avoid or prevent harm or substantial financial loss to another as a result of client criminal conduct or third party criminal conduct clearly in violation of the law;

   ii. to prevent serious injury or death not otherwise covered by subparagraph (i) above;

   iii. to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved,
or to respond to allegations in any proceeding concerning the lawyer’s representation of the client;

iv. to secure legal advice about the lawyer’s compliance with these Rules.

Rule 1.14: CLIENT WITH DIMINISHED CAPACITY

a. When a client’s capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

b. When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client’s own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.

c. Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client’s interests.

Comment (selected)

[1] The normal client-lawyer relationship is based on the assumption that the client, when properly advised and assisted, is capable of making decisions about important matters. When the client is a minor or suffers from a diminished mental capacity, however, maintaining the ordinary client-lawyer relationship may not be possible in all respects. In particular, a severely incapacitated person may have no power to make legally
binding decisions. Nevertheless, a client with diminished mental capacity often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client’s own well-being. For example, children as young as five or six years of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody. So also, it is recognized that some persons of advanced age can be quite capable of handling routine financial matters while needing special legal protection concerning major transactions.

[2] The fact that a client suffers a disability does not diminish the lawyer's obligation to treat the client with attention and respect. Even if the person does have a legal representative, the lawyer should as far as possible accord the represented person the status of client, particularly in maintaining communication.

[3] The client may wish to have family members or other persons participate in discussions with the lawyer. When necessary to assist in the representation, the lawyer should consider such participation in terms of its effect on the applicability of the attorney-client evidentiary privilege. Nevertheless, the lawyer must keep the client’s interests foremost and, except for protective action authorized under paragraph (b), must look to the client, and not family members, to make decisions on the client’s behalf.

[4] If a legal representative has already been appointed for the client, the lawyer should ordinarily look to the representative for decisions on behalf of the client. In matters involving a minor, whether the lawyer should look to the parents as natural guardians may depend on the type of proceeding or matter in which the lawyer is representing the minor. If the lawyer represents the guardian as distinct from the ward, and is aware that the guardian is acting adversely to the ward’s interest, the lawyer may have an obligation to prevent or rectify the guardian’s misconduct. See Rule 1.2(d).

Rule 2.1: ADVISOR

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. A lawyer should not be deterred from
giving candid advice by the prospect that the advice will be unpalatable to the client.

Comment

Scope of Advice

[1] A client is entitled to straightforward advice expressing the lawyer’s honest assessment. Legal advice often involves unpleasant facts and alternatives that a client may be disinclined to confront. In presenting advice, a lawyer endeavors to sustain the client’s morale and may put advice in a form as acceptable as honesty permits. However, a lawyer should not be deterred from giving candid advice by the prospect that the advice will be unpalatable to the client.

[2] In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors that may be relevant to the client’s situation. Advice couched in narrowly legal terms may be of little value to a client, especially where practical considerations, such as cost or effects on other people, are predominant. Purely technical legal advice, therefore, can sometimes be inadequate. It is proper for a lawyer to refer to relevant moral and ethical considerations in giving advice.

[3] A client may expressly or impliedly ask the lawyer for purely technical advice. When such a request is made by a client experienced in legal matters, the lawyer may accept it at face value. When such a request is made by a client inexperienced in legal matters, however, the lawyer’s responsibility as advisor may include indicating that more may be involved than strictly legal considerations.

[4] Matters that go beyond strictly legal questions may also be in the domain of another profession. Family matters can involve problems within the professional competence of psychiatry, clinical psychology or social work; business matters can involve problems within the competence of the accounting profession or of financial specialists. Where consultation with a professional in another field is itself something a competent lawyer
would recommend, the lawyer should make such a recommendation. At the same time, a lawyer’s advice at its best often consists of recommending a course of action in the face of conflicting recommendations of experts.

Offering Advice

[5] In general, a lawyer is not expected to give advice until asked by the client. However, when a lawyer knows that a client proposes a course of action that is likely to result in substantial adverse legal consequences to the client, duty to the client under Rule 1.4: Communication may require that the lawyer act if the client’s course of action is related to the representation. A lawyer ordinarily has no duty to initiate investigation of a client’s affairs or to give advice that the client has indicated is unwanted, but a lawyer may initiate advice to a client when doing so appears to be in the client’s interest.
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 behavior. Georgia law generally refers to “child” or “children.” Both terms will be used throughout this manual.

1 O.C.G.A. §15-11-1.
2 Id. (emphasis added).
4 In re Gault, 387 U.S. 1, 16 (1967).
5 Id. See also, Martin R. Gardner, Understanding Juvenile Law 179, 182-86 (1999).
7 Id.
8 Id.
9 Id.
11 Id.
12 Id.
13 Gault, 387 U.S. at 20.
14 Id. at 20.
15 Id. at 33-34, 41-42, 49-50, 57.
16 Id. at 30.
17 Id. at 26-27.
18 Id. at 26.
20 Id. at 545.
22 Those seven offenses are murder (now, including 2nd degree murder), voluntary manslaughter, rape, armed robbery with a firearm, aggravated sexual battery, aggravated sodomy and aggravated child molestation. See O.C.G.A. § 15-11-560.
24 Id. at 569-70.
Georgia courts have interpreted this provision not as a statutory bar to prosecution for acts that occur prior to 13 years of age, but as an affirmative offense, which must be raised by the defendant. See Adams v. State, 288 Ga. 695 at 697 (2011).


44  Id.
51  Id.
52  Id.
56  GA Bar Rules of Prof’l Conduct R. 1.6(b).
58  Id.
60  O.C.G.A. § 15-11-510(c).
61  O.C.G.A. § 15-11-505.
62  O.C.G.A. § 15-11-515 (b).
64  O.C.G.A. § 15-11-505.
65  O.C.G.A. § 49-4A-1(6).
66  O.C.G.A. § 15-11-504.
67  O.C.G.A. § 15-11-504(b).
O.C.G.A. § 15-11-506(b). Pursuant to O.C.G.A. § 15-11-5, weekends and legal holidays are excluded from the calculation of days in this provision.

See O.C.G.A. § 15-11-475.

O.C.G.A. § 15-11-503(a).

O.C.G.A. § 15-11-503(a).

O.C.G.A. § 15-11-503(c).

O.C.G.A. § 15-11-503(d).

O.C.G.A. § 15-11-503(f).


O.C.G.A. § 15-11-507(e).

O.C.G.A. § 15-11-520.

O.C.G.A. § 15-11-521(a).

O.C.G.A. § 15-11-521(b).


O.C.G.A. § 15-11-530.

O.C.G.A. § 15-11-531.

O.C.G.A. § 15-11-531(c).

O.C.G.A. § 15-11-532.


Id.

O.C.G.A. § 15-11-582(a).


See GA Bar Rules of Prof’l Conduct R. 1.2 (2001) (stating that “in a criminal case, the lawyer shall abide by the client’s decision, after consultation with the lawyer, as to a plea to be entered”).


O.C.G.A. § 15-11-584.

O.C.G.A. § 15-11-582(d).


O.C.G.A. § 24-6-615.


O.C.G.A. § 17-17-9; O.C.G.A. § 24-6-616.

O.C.G.A § 15-11-600(a)(1).


O.C.G.A. § 15-11-600(b).

Id.

O.C.G.A. § 15-11-600(f).

O.C.G.A. § 15-11-590(a).

O.C.G.A. § 15-11-590(f).

O.C.G.A. § 15-11-477(a).

O.C.G.A. § 15-11-600(g).

O.C.G.A. § 15-11-481(a).

O.C.G.A. § 17-17-7.

O.C.G.A. § 15-11-481(d).

O.C.G.A. § 15-11-481(f).


O.C.G.A. § 15-11-600(d).

O.C.G.A. § 15-11-600(c).

O.C.G.A. § 15-11-600(e).


Id.

Misdemeanor (+) is a term that we have ascribed to the following: An offense that would be a misdemeanor if committed by an adult and such child has had at least one prior adjudication for an offense that would be a felony if committed by an adult, and at least three other prior adjudications for a delinquent act. See O.C.G.A. § 15-11-601(a)(10); O.C.G.A. § 15-11-601(a)(11); and O.C.G.A. § 15-11-601(b).


O.C.G.A. § 15-11-605(a).

O.C.G.A. § 15-11-605(c).

O.C.G.A. § 15-11-605(d).

O.C.G.A. § 15-11-605(e), (f).

O.C.G.A. § 15-11-605(f).

O.C.G.A. § 15-11-605(g).


O.C.G.A. § 15-11-602(b).

Id.

O.C.G.A. § 15-11-477(b).


Id.

O.C.G.A. § 15-11-29(a).

Id.

O.C.G.A. § 15-11-29(c).

O.C.G.A. § 15-11-29(a).


O.C.G.A. § 15-11-35.


Id.


O.C.G.A. §5-6-34(a).

O.C.G.A. §5-6-38(a).

O.C.G.A. §5-6-31.

O.C.G.A. §15-11-35.

Id.

Id.

O.C.G.A. §5-6-38(a).


O.C.G.A. § 15-11-608(b).

O.C.G.A. § 15-11-608(c).

O.C.G.A. § 15-11-608(e).

O.C.G.A. § 15-11-608(f).

O.C.G.A. § 15-11-608(g).

O.C.G.A. § 15-11-608(h).

O.C.G.A. § 15-11-607(a), (b).

Id.


O.C.G.A. § 15-11-607(b).

O.C.G.A. § 15-11-607(a), (b).

O.C.G.A. § 15-11-607(c).

O.C.G.A. § 15-11-607(d).

O.C.G.A. § 15-11-32(a).
O.C.G.A. § 15-11-32(b).
Id.
See O.C.G.A. § 15-11-700(b).
O.C.G.A. § 15-11-703.
O.C.G.A. § 15-11-701(e).
O.C.G.A. § 15-11-701(a).
O.C.G.A. § 15-11-701(b).
O.C.G.A. § 15-11-701(b).
O.C.G.A. § 15-11-701(c).
O.C.G.A. § 15-11-701(e).
Id.
O.C.G.A. § 15-11-701(d).
O.C.G.A. § 15-11-541.
O.C.G.A. § 15-11-541(a).
O.C.G.A. § 15-11-541(b).
O.C.G.A. § 15-11-541(c).
O.C.G.A. § 15-11-543(a).
O.C.G.A. § 15-11-541(d).
O.C.G.A. § 15-11-542(a).
O.C.G.A. § 15-11-542(b).


*Boyd v. State*, 315 Ga.App. 256 (2012) (finding that the State failed to show that incriminating custodial statement by the defendant was made voluntarily after a knowing and intelligent waiver of the right against self incrimination, and that the trial court erred in admitting his statement). See also *Riley v. State*, 237 Ga. 124 (1976) (holding that the State has a heavy burden to show that the juvenile did understand and voluntarily waive his constitutional rights).

O.C.G.A. § 24-8-824.


O.C.G.A. § 15-11-560(b).

O.C.G.A. § 15-11-560(d).

O.C.G.A. § 15-11-560(f).


Id.

Id.

O.C.G.A. § 15-11-560(a).

O.C.G.A. § 16-3-1.


O.C.G.A. § 15-11-561(a).

Id.

O.C.G.A. § 15-11-561(c).

Id.

O.C.G.A. § 15-11-564.


Id.

O.C.G.A. § 15-11-652(e).

O.C.G.A. § 15-11-652(b).

O.C.G.A. § 15-11-652(c).
Representing the Whole Child: A Juvenile Defender Training Manual, 2nd Edition

243 O.C.G.A. § 15-11-653(g).
244 O.C.G.A. § 15-11-653(a).
245 O.C.G.A. § 15-11-653(b).
246 O.C.G.A. § 15-11-653(c).
248 O.C.G.A. § 15-11-653(c).
249 O.C.G.A. § 15-11-653(d).
250 O.C.G.A. § 15-11-655(a).
251 O.G.G.A. § 15-11-655(b).
252 Id.
253 O.G.G.A. § 15-11-655(c).
254 Id.
255 O.C.G.A. § 15-11-655(d).
256 O.C.G.A. § 15-11-655(e).
258 O.C.G.A. § 15-11-655(g).
259 O.C.G.A. § 15-11-656(g).
261 O.C.G.A. § 15-11-656(f).
262 O.C.G.A. § 15-11-656(b).
263 O.C.G.A. § 15-11-657(a).
264 O.C.G.A. § 15-11-657(b), (c).
265 O.C.G.A. § 15-11-656(d).
266 O.C.G.A. § 15-11-656(c)(1).
267 O.C.G.A. § 15-11-656(c)(2).
268 O.C.G.A. § 15-11-660(b).
270 Id.
271 O.C.G.A. § 15-11-450(b), (c).
272 O.C.G.A. § 15-11-450(d).
273 O.C.G.A. § 15-11-450(e).
274 Id.
276 O.C.G.A. § 15-11-450(f).
279 Id.


Id.


*Id.* at 17.

*Id.* at 18.


*Id.* at 373.


8 U.S.C. § 1182(a) (2004); 8 U.S.C. 1227(a) (2004); See also, Katherine Brady, *Special Immigrant Juvenile Status for Children under Juvenile Court Jurisdiction*, 27 IMMIGRANT LEGAL RES. CTR. (2001); Angie Junck, et al., *Special Immigrant Juvenile Status and Other Immigration Options for Children and Youth*, 16 IMMIGRANT LEGAL RES. CTR. 1-41 (3d ed. 2010).


*Id.*

*Id.*

*Id.*

*Id.*


Id.


Id.


Id.


Id.


352 34 C.F.R. § 300.301.
353 34 C.F.R. § 300.300.
354 34 C.F.R. §§ 300.320 - 300.324.
355 34 C.F.R. § 300.114.
356 34 C.F.R. § 300.530.
358 34 C.F.R. § 104.3.
359 34 C.F.R. § 104.33.
360 34 C.F.R. § 104.34.
361 See *S-1 v. Turlington*, 635 F.2d 342, 346 (5th Cir. 1985) (holding, under Section 504, that a student cannot be expelled for conduct that results from his handicapping condition); *Broward County (Fla) School District*, 36 IDELR 159 (OCR Nov. 19, 2001) (stating “it is OCR’s policy that when the exclusion of a child with a disability is permanent (expulsion), or for an indefinite period, or for more than 10 consecutive school days, the exclusion constitutes a significant change in placement”); *Springfield School District # 186*, 55 IDELR 206 (OCR June 29, 2010) (holding that school district violated Section 504 when it expelled an ADHD student without holding a manifestation determination).
363 *Id.* at f.n. 1.
364 34 C.F.R. § 300.324(d).
365 34 C.F.R. § 300.102(a).
367 *Id.* at 4.
368 *Id.* at 2.
369 *Id.* at 4.
370 O.C.G.A. § 20-2-735.
371 O.C.G.A. § 20-2-735(a).
373 O.C.G.A. § 20-2-736(b).
374 O.C.G.A. § 20-2-754(b)(1).
375 O.C.G.A. § 20-2-753(a).
377 O.C.G.A. § 20-2-754(c).
378 O.C.G.A. § 20-2-751.2(b).
380 *Id.*
381 O.C.G.A. § 20-2-751.1(b).
382 O.C.G.A. § 20-2-751.6.
383 O.C.G.A. § 20-2-751.6(a).
O.C.G.A. § 20-2-751.6(b).
O.C.G.A. § 20-2-751.6(c)(3).
O.C.G.A. § 20-2-751.6(c)(1).
O.C.G.A. § 20-2-751.6(c)(2).
O.C.G.A. § 20-2-1181.
O.C.G.A. § 8-3-1.
See O.C.G.A. § 8-3-2.
O.C.G.A. § 8-3-3.1.
O.C.G.A. § 8-3-36.
O.C.G.A. § 8-3-201(7)(C).
O.C.G.A. § 8-3-208(a).


Id.
Id.


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”).

O.C.G.A. § 15-11-682.


O.C.G.A. § 15-11-682(b).

