Working with Child Deprivation Cases in Georgia's Juvenile Courts

A Reference Manual for Attorney and Volunteer Guardians Ad Litem

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The Honorable Edward D. Wheeler

This manual was written to provide informal information about the process of child deprivation cases. It is not to be used as the official authority on law and procedure.

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I. Introduction

As a law or volunteer guardian ad litem, you will become heavily involved in the juvenile court process in cases involving the abuse or neglect of children. In the representation of children, the lack of a commonly accepted definition of a guardian ad litem is confusing. The titles include: child advocate attorney, guardian ad litem, volunteer guardian ad litem, etc. In Georgia, volunteer guardians ad litem are trained by Georgia CASA, which stands for Court Appointed Special Advocates. For the sake of this manual, we will be referring to attorney guardians ad litem as law guardians and volunteer guardian ad litems as CASAs. This manual is designed to give you an in-depth understanding of Georgia deprivation law and juvenile court procedures. The manual is written in procedural chronological order and will take the reader through the legal requirements and the expectations of the court in a deprivation case from the first allegations of abuse and neglect, through the removal of the child from the home, up to and including family reunification or termination of parental rights.

Issues discussed in the manual include: the investigation of an allegation by DFCS, Preliminary Custody, 72-hour emergency hearings, the filing of deprivation petitions, adjudicatory and dispositional hearings, judicial review of cases and the termination of parental rights. The Juvenile Code of Georgia can be found at Title 15, Chapter 11 of the Official Code of Georgia Annotated. O.C.G.A. § 15-11-4 provides that the Council of Juvenile Court Judges can promulgate rules and forms governing the procedures and practice of juvenile courts throughout the state. The Council is composed of all juvenile court judges within the state. This mirrors a provision in the state constitution, which allows for the Supreme Court to adopt and publish uniform court rules with the advice and consent of the council of judges in the affected class. Ga. Const. Art. VI, § IX, ¶ I.

The Supreme Court took such action with the publication of the Uniform Rules for the Juvenile Courts of Georgia. We will be referring to the rules periodically throughout this manual.

II. Roles and Responsibilities of the Law Guardian/CASA Team

A. Role Definition

Over the years, defining the role of the guardian ad litem (GAL) has generated much debate. Until recently, there has been little guidance for GALs appointed to represent children in deprivation cases partly due to the lack of a common definition. In 1996, the American Bar Association promulgated its Standards of Practice for Lawyers who Represent Children. These standards state a preference for the traditional attorney/client relationship, but recognize that the GAL is an "officer of the court" appointed to represent the child's interests without being bound by the child's expressed preferences. American Bar Association, Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases (Adopted February 5, 1996).

Guardians ad litem may and should ascertain the child's position in a "developmentally appropriate" manner and present the child's stated wishes in court. However, the GAL's recommendation is ultimately formulated after information has been collected from all sources, such as a CASA, the caseworker, the parents or legal guardian and their attorney, the child, other family members, witnesses and any other evidence to be presented during the hearing. Under this model, the law guardian can remain an independent legal

representative of the child's interests and can make objective recommendations to the court. The law guardian should work to provide the maximum amount of representation and services for each child in the system, focusing on the child's best interests.

The ABA recognizes that even when acting solely as attorney for the child, advocating for the child's preferences should not result in action that would be "seriously injurious to the child." Id. In striving to provide competent, ethical law guardian representation, the attorney must be willing to seek out multidisciplinary training opportunities, particularly in the field of child development. The law guardian has an ethical duty to give voice to the child's stated position, while ultimately rendering to the court a recommendation "in the child's best interest." Sadly, given the realities of the child welfare and judicial systems (too many cases, too few resources), the law guardian may not have any hope of achieving the truly best alternative for his/her client (e.g, "fixing" the abusive or neglectful situation so that the child can return home), and may be forced to seek the "least detrimental alternative." Goldstein, Solnit and Freud, In the Best Interests of the Child (1986).

Further complicating the work for the GAL is the overburdened child welfare system and unrealistic caseloads. Often, law guardians carry prohibitively high caseloads that prevent them from even meeting all of their clients, let alone developing an ongoing advocacy relationship with them. An effective way courts can address this last problem is to team the law guardians with trained CASA volunteers. While we recognize that many courts use either law guardians or CASAs, we strongly urge courts to use both as a team. The law guardian provides a legally trained voice for the child, and can enter the litigation arena with the license and skills to subpoena and examine witnesses (including the CASA), present evidence, formulate legal arguments, and explain to the child client the legal consequences of the court's actions. Again, this assumes that the law guardian has taken the time to become well versed in child development and

skilled in communicating with child clients at various stages of development. Vasquez, Rosemary, L.C.S.W., Interviewing Children (National CASA presentation 1995)(Appendix 4).

The trained CASA, who is generally assigned to one or two cases, will have more time to devote to developing rapport with the child and thoroughly investigating the case. Bringing volunteers into the child welfare system allows the community to see its tax dollars at work, sheds light on the system, and keeps the system honest. It helps the other players rise above the bureaucracy for the sake of a child. In making decisions about the representation, the law guardian/CASA should ask him or herself the following seven questions:

1. Am I seeing the case, as much as I can, from my client's point of view, rather than from an adult's point of view?
2. Does the child understand as much as I can explain about what is happening in his/her case?
3. If my client were an adult, would I be taking the same actions, making the same decisions and treating him/her in the same way?
4. If I decide to treat my client differently from the way I would treat an adult in a similar situation, in what ways will my client concretely benefit from that deviation? Is that benefit one which I can explain to my client?
5. Is it possible that I am making decisions in the case for the gratification of the adults in the case, and not for the child?
6. Is it possible that I am making decisions in the case for my own gratification, and not for that of my client?
7. Does the representation, seen as a whole, reflect what is unique and idiosyncratically characteristic of this child?

Haralambie, Ann M., The Child's Attorney: A Guide to Representing Children in Custody, Adoption and Protection Cases, (Chicago, IL: ABA, 1993), p. 37.

B. The National Trend

Several writers are offering an innovative approach to understanding the roles and responsibilities in representing children. One approach is authored by

Professor Koh Peters who addresses the "wishes/best interest" dichotomy by offering what she calls "contextual/child-centered lawyering." Peters, Jean Koh, Representing Children in Child Protective Proceedings: Ethical and Practical Dimensions at 2.3 (b), n.17 (Michie 1997). Professor Peters argues that the polarizing debate between representing best interests and representing the child's expressed wishes should be set aside. Rather than divided, these two missions are complementary. She asserts that the law guardian is to reflect on the child's point of view by entering and understanding the world of the child client along with respecting him/her as a unique and subjective individual. She calls upon the attorney to maintain this approach from the point of initial client contact until closure of the attorney/client relationship. The "Peters Model" is as follows:

1. Determine the child's unique circumstances through a full and efficient investigation;
2. Assess the child at the moment of determination;
3. Determine the alternative options for the client;
4. Examine each option in light of the 2 child welfare paradigms: psychological parent (primary caretaker) and family network (extended family resources) (NOTE: The 2 paradigms are fully discussed in the Peters article, infra);
5. Utilize mental health and social work experts if the analysis becomes too complex; and
6. Present the best option or options.

The author Marvin Ventrell further endorses this model of the law guardian's role by explaining that, optimally, the law guardian/CASA team should apply a synthesis of beneficence ("best interest") and autonomy (child's expressed position) in advocating for their child clients. See Ventrell, Marvin, “Models of Child Advocacy: Achieving Balance of Beneficence and Autonomy,” in The Development and Direction of Children’s Law in America at 135-142.

Debate surrounding this "synthesis" approach has suggested that a "hybrid" role may be the best framework within which to advocate for children, however,

current ethical rules (i.e., the ABA Standards) may in fact hinder this approach. The law guardian is cautioned to not perceive the approach as permitting "relaxed representation," but as providing an alternative to serving as a "robotic mouthpiece" for clients who may not be entirely capable of protecting their own best interests.

These three authors, Peters, Haralambie and Ventrell, will assist any child advocate who has struggled with the confusion of role ambiguity. For additional reading on the roles and responsibilities of the GAL, please see: Child Advocacy at a Crossroads: The Development and Direction of Children's Law in America, NACC Children's Law Manual Series (1996 Edition) (can be obtained by contacting the Nat'l Assoc. of Counsel for Children, 1205 Oneida Street, Denver, Colorado 80220; (303)322-2260), Perry and Teply, Interviewing, Counseling and In-Court Examination of Children: Practical Approaches for Attorneys, 18 Creighton L.Rev. 1369 (1985), Walker, Anne Graffam, Ph.D., Handbook on Questioning Children: A Linguistic Perspective (1994); Rich, John, Interviewing Children and Adolescents (1986); Donald Duquette, Advocating for the Child in Protection Proceedings: A Handbook for Lawyers and CASA (1990).

III. Jurisdiction of the Juvenile Court System

A. Jurisdiction of the Court

In Georgia, the juvenile court has exclusive original jurisdiction over a child who is alleged to be deprived; it is the sole court in which a deprivation petition

should be filed. O.C.G.A. § 15-11-28(a)(1)(c). This gives the juvenile court system subject matter jurisdiction over deprivation cases in general as well as personal jurisdiction over the juveniles themselves. Ferreira, McGough's Ga. Juvenile Practice and Procedure (2nd ed.), § 4.2, 4.8. A child is defined by the code for purposes of a deprivation action as anyone under the age of 18. O.C.G.A. § 15-11-2(2)(C). This differs from a situation in which a juvenile is charged with a delinquent act. In delinquency cases, a child is defined as anyone under the age of 17. O.C.G.A. § 15-11-2(2)(B). The Juvenile Court also has exclusive jurisdiction over children alleged to be delinquent, unruly, or in need of treatment or commitment because they are mentally ill, as well as matters involving the Interstate Compact on the Placement of Juveniles. O.C.G.A. § 15-11-28(a)(1)(A, B, D); O.C.G.A. § 15-11-28(a)(2)(B).

In addition, the Juvenile Court has exclusive jurisdiction over petitions for the termination of parental rights outside of those filed in connection with adoption proceedings. With regard to petitions to terminate parental rights filed in connection with an adoption proceeding, the Juvenile Court system has concurrent jurisdiction with Superior Courts. O.C.G.A. § 15-11-28(a)(2)(C). Similarly, the Juvenile Court retains concurrent jurisdiction with the Superior Courts to hear legitimation petitions either transferred to the Juvenile Court from Superior Court or involving a child with respect to whom a deprivation proceeding is pending. O.C.G.A. § 15-11-28(e).

Juvenile Courts are of limited jurisdiction and possess only the powers that are specifically granted by the General Assembly. In re J.O., 191 Ga. App. 520 (1989). Juvenile court judgments must recite the specific facts that formed the basis of the court's determination that it had jurisdiction over the person and subject matter alleged. If a court order fails to recite jurisdictional facts in any court order, the order can be declared void on appeal. Williams v. Dept. of Human Resources, 150 Ga. App.610 (1979).

Under the Georgia Constitution, the Superior Court system has original jurisdiction over divorce actions. Ga. Const. 1983, Art. VI, § IV, ¶ I. The Juvenile

Court has concurrent jurisdiction with the Superior Court of that circuit to determine child support and custody issues only when the case is transferred by a proper order of the Superior Court. O.C.G.A. § 15-11-28(c). The Juvenile Court does not retain jurisdiction to hear a petition for custody filed by a child's paternal grandparents after making a finding that the child is deprived and transferring temporary legal custody of the child to DFCS. This petition was not in the nature of a deprivation petition and did not request a change in custody because the children were deprived. There was no proper transfer of such a case from Superior to Juvenile Court to allow the court to consider this request. In the Interest of C.C., et al., Children, 193 Ga. App. 120 (1989).

Some confusion arises when deprivation is alleged in a custody battle between the child's parents or third parties. It was not the intention of the General Assembly to grant the juvenile courts original jurisdiction over the custody of a child when there is a dispute between the parents. Bartlett v. Bartlett, 99 Ga. App. 770 (1959). Juvenile courts should not accept a deprivation petition filed by one parent against another because it is a prima facie custody matter, and most likely an attempt to gain custody of the child by bypassing a more stringent standard of proof necessary to modify a custody award. In the Interest of W.W.W., 213 Ga. App. 732 (1994). All deprivation proceedings arising between the child's parents should be filed originally in superior court. If the superior court judge determines that the deprivation proceeding is not a custody dispute in disguise, the judge will transfer the deprivation issues to the juvenile court for adjudication. In the Interest of M.A. et al., Children, 218 Ga. App. 433 (1995). Thus, during the investigation of an allegation of deprivation, the law guardian should first and foremost ascertain that the complaint filed with the juvenile court is NOT a custody "battle," disguised as allegations of deprivation. In another case, the Court of Appeals has held that an order of a juvenile court changing the custody of a child was not a modification on a determination that the children were deprived in their current environment. In the Interest of A.L.L., 211 Ga. App. 767 (1994).

In some jurisdictions, a superior court judge holds the dual position of a juvenile court judge for each of the counties within his/her judicial circuit. The Georgia Supreme Court has held that in such situations the trial judge could arguably exercise authority as both a superior and juvenile court judge simultaneously. However, in a final hearing on custody in a divorce action in a superior court, a trial judge may not make a finding that neither parent is fit and transfer custody of the child to DFCS with no notice to the parents that this issue would be raised or that they might possibly come under the jurisdiction of the juvenile court during this hearing. Watkins v. Watkins, 266 Ga. 269 (1996). In that case, no deprivation petition had been filed with the court and no notice was given to the parents about the potential ramifications of this hearing had the judge chosen to exercise his powers as a juvenile court judge during the hearing. While the judge can exercise the power of both courts at once, due process requires the notice and hearing requirements of the juvenile court to be adhered to. Id. at 272, 273. These requirements will be discussed in later chapters.

The authority of the juvenile court to appoint a guardian ad litem, which can be an attorney or volunteer, is provided for in O.C.G.A. § 15-11-9. That section states that the court shall appoint a guardian ad litem (GAL) for a child where there is "no parent, guardian, or custodian appearing on his behalf or if their interests conflict with his or in any other case in which the interests of the child require a guardian." The section further states that the court shall not appoint a party to the proceeding, his employee, or representative as guardian ad litem.

B. Definition of Deprivation

As the law guardian/CASA, your appointment and duties will usually commence once a deprivation petition or complaint has been filed with the juvenile court. You should be aware of the statutory definition of deprivation. The

code lists four circumstances in which a child can be considered deprived. When the child:

1. is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, or emotional health or morals;
2. has been placed for care or adoption in violation of the law;
3. has been abandoned by his or her parents or other legal custodian; or
4. is without a parent, guardian, or custodian.

O.C.G.A. § 15-11-2(8)(A-D).

1. Without Proper Care or Control

The first provision is a general catchall definition of deprivation and most petitions are filed on this basis. You may notice that the statutory definition of deprivation is written in broad, non-specific language. This area of the Code is to be "liberally construed" by the court in order to assist and protect "children whose well-being is threatened." O.C.G.A. § 15-11-1(1). The definition of deprivation is broad enough to allow "sufficient latitude of discretion for the juvenile court." Moss v. Moss, 135 Ga. App. 401 (1975). The Court of Appeals has held that this definition of deprivation is not unconstitutional on the grounds of vagueness. Jones et al. v. Dept. of Human Resources, 168 Ga. App. 915 (1983). The law was meant to be read broadly to allow the state to take action to protect the child in cases of abuse and neglect without restraint by precise definitions that may not be applicable to all situations which could constitute deprivation.

The Attorney General has interpreted this definition to include children who are abused, neglected, and exploited as defined in other sections of the Georgia Code. 1976 Op. Att'y Gen. No. 76-131. O.C.G.A. § 19-7-5(b)(3)(A) defines "Child Abuse" as physical injury or death inflicted upon a child by a parent...by other than accidental means; provided, however, physical forms of discipline may be used as long as there is no physical injury to the child. The definition also includes the neglect or exploitation of such a child. O.C.G.A. § 19-7-5(b)(3)(B-D).

One large restriction to the catchall provision is that a child should not be declared "deprived" simply because the child might be considered "better off" in a different environment. Ferreira, McGough's, supra, § 4-3. "While the state may not sit idly by as a child suffers an unconscionable hardship, neither may it blithely intercede simply because the child's lot is substandard. A mother's failure to live up to societal norms of productivity, morality, cleanliness, and responsibility does not rob her of her right to raise her own children...." R.C.N. v. State of Georgia, 141 Ga. App. 490 (1977). In that case, the record indicates that the trailer in which the mother was living was "on occasion unclean." In addition, the mother was heard using profanity, lived at several different addresses in a short period of time leading up to the hearing, had no reliable source of income, and recently aided and abetted in the escape of a prisoner. Id. at 491. In contrast, the court again addressed this issue in Vermilyea v. Dept. of Human Resources, 155 Ga. App. 746 (1980). The court held that "unfortunate economic and personal circumstances" are not an excuse for parents to ignore the basic hygiene and medical needs of their children. The condition of the subjects of the petition in this case shocked the conscience of the court. "Even the poorest of the poor can be expected to maintain reasonably clean and hygienic living conditions." Id. at 750. Given the broad range of interpretation in this area, the law guardian/CASA should be mindful of the need to ensure presentation of clear, specific, tangible evidence in neglect cases (e.g., photographs, eyewitnesses giving vivid descriptions based on direct, continuous observation).

Many cases not only combine moral unfitness, physical abuse and abandonment, but also reflect the belief that frequent moves from home to home can prevent the successful formation of a parent-child relationship. A child can thus be deprived of a sound environment built upon love and nurture. There can be a substantial danger that the child will suffer emotional as well as physical, mental, and moral harm. Elrod v. Dept. of Family and Children Services, 136 Ga. App. 251 (1975). Again, because emotional abuse cases are among the most difficult to prove, the law guardian should ensure that comprehensive evidence is presented on behalf of the child, including expert testimony based on evaluation

of the child and his/her parent(s). Haralambie, The Child's Attorney, supra at pp. 183-184.

The Georgia Court of Appeals has held that a finding of deprivation is not a finding of some sort of "fault" upon the abilities and actions of that child's parents. The definition of a deprived child focuses on the needs of the child regardless of whether the behavior of the child's parents either caused the child's deprivation or could have prevented it. Brown v. Fulton Co. Dept. of Family and Children Services, 136 Ga. App. 308 (1975) In a situation where a child has been sexually abused by her father, the Court of Appeals has held that a juvenile court does not abuse its discretion by removing a child from the care and custody of her mother as well if her mother did not believe that the abuse was occurring and was unwilling to shield the child from danger by leaving the home of the father. In the Interest of B.H., 190 Ga. App.131 (1989).

The general rule is that a finding of deprivation must be based upon the present condition of the child as opposed to any alleged past deprivation or potential deprivation in the future. The juvenile court system only has jurisdiction over cases in which a child is alleged "to be" deprived as opposed to cases in which a parent alleges that the child was deprived and potentially will be deprived again if returned to the child's other custodial parent. Lewis v. Winzenreid, 263 Ga. 459 (1993).

The reader should note, however, that once allegations of deprivation exist for one child in the home, other siblings may be removed simultaneously from the home, even without a showing that these other children were actually harmed, neglected or themselves personally deprived. A line of cases has been relied upon by the Juvenile Courts which state that past acts of deprivation are certainly stronger proof and more convincing evidence upon which to decide the issue. But there is no reason why a determination of deprivation may not be made on proof that the conditions under which the child would be raised in the parent's home strongly indicated that the deprivation will occur in the future. Roberts v. State of Georgia , 141 Ga. App. 268 (1977) and Jones v. Dept. of

Human Resources, 155 Ga. App. 371 (1980). Essentially, one need not wait for a child to be harmed before removing that child, if conditions of deprivation already exist in the home, or if another child in the home has already been personally harmed.

Many cases involve the filing of deprivation petitions when one or both of the child's parents are incarcerated. The Court of Appeals has previously rejected an argument by a father in jail for killing his wife that his children cannot be considered deprived because they are living with temporary guardians. The statutory definition of deprivation is based upon an absence of proper *parental* care and control. In the Interest of J.L.M. et al., Children, 204 Ga. App. 46 (1992).

2. Illegal Adoption

The General Assembly has established three other very specific areas in which a child can be considered deprived. Private adoptions are legal in Georgia so long as the appropriate procedural requirements are followed. O.C.G.A. § 19-8-4, O.C.G.A. § 19-8-5, Ferreira, McGough's, supra, 4-4. Several acts are clearly prohibited by law, the violation of which might be grounds to consider the child deprived under this definition. Id. at § 4-4. Any contract in which a mother agrees to the adoption of her child by another in exchange for monetary consideration is void on the grounds of public policy. Here, the mother agreed to the adoption of her child in exchange for an airline ticket to another state. Her consent to the adoption was not freely and voluntarily given and she was allowed to withdraw from the agreement. Downs et al. v. Wortman et al., 288 Ga. 315 (1971). However, if the monetary consideration goes to the child instead of the parent, any such agreement is not void for public policy reasons and is presumably enforceable. Id. at 317. The Georgia Adoption Code also prohibits any individual or organization from directly or indirectly holding out inducements to parents to part with their children. O.C.G.A. § 19-8-24(a)(2). Offering a child's services as payment for a debt of the parents is also illegal. The Georgia Supreme Court

ruled another contract void on the grounds of public policy because it attempted to transfer the custody of the child to a creditor of the parents, who was to use the services of the child until the debt was paid. The creditor was given full control over their son as though he was the child's parent and could hire the boy out to whomever he chose. Kidd v. Brown, et al., 136 Ga. 85 (1911). The Georgia Juvenile Code also forbids any form of advertising that a person or organization will adopt or will arrange for a child to be adopted or placed for adoption. O.C.G.A. § 19-8-24(a)(1). There are no appellate court decisions interpreting this section of the Juvenile Code due to its lack of use at the trial court level. Given the recent proliferation of just this type of advertising in the print media and over the Internet, some judicial interpretation of this statutory provision may be expected in the near future.

3. Abandonment

Abandonment clearly seems to cover intentional parental desertion. Ferreira, McGough's, supra, § 4-6. Abandonment is also used as a basis for the termination of parental rights. In termination hearings, the question of abandonment is settled by a finding of clear and convincing evidence of "actual desertion, accompanied by the intention to sever entirely, so far as possible to do so, the parental relation and throw off all obligations growing out of the same, and forego all parental duties and claims." Thrasher v. Glynn Co. Dept of Family and Children Services, 162 Ga. App. 702 (1982). Since a finding of deprivation can at worst only suspend a parent's rights to custody and control of his/her child as opposed to a motion to terminate where those rights can be severed, presumably the standard of proof necessary for a finding of abandonment in a deprivation case would be lower. Ferreira, McGough's, supra, § 4-6.

4. Without a Parent, Guardian, or Custodian

A child is also deprived if he/she is without a parent, guardian, or custodian. This ground for deprivation is also rarely used, so its precise meaning is unclear. Presumably, it means something other than abandonment, such as lack of parent or guardian to care for the child due to illness or death. One instance when a child might be alleged to be deprived because he/she is without a parent, guardian, or custodian would be when a child is informally placed in the jurisdiction with a relative and his/her parent is outside of the jurisdiction. If a petition is filed on such a child, it should be filed under this Code section. Under such circumstances, a child can be returned to the parent or if such placement is found to be inappropriate a petition for custody can be filed. There is also some indication that this standard can include situations in which one parent is deceased and another is incarcerated. In re J.R.T., a Child, 233 Ga. 204 (1974). However, the larger number of deprivation cases involving incarcerated parents are filed under the general category of "lack of proper parental care or control," thus it seems clear that this category is rarely used for this purpose.

One important exception to the four deprivation categories is specifically listed in the Code. "No child who in good faith is being treated solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof, shall, for that reason alone, be considered to be a deprived child." O.C.G.A. § 15-11-2 (8). The Juvenile Code seems to allow for the refusal of traditional medical treatments based upon the religious beliefs of that child's parents. A child cannot be classified as deprived solely because his parents choose to forego a standard medical treatment recommended by a child's physician. Although no court has defined the exact boundaries of this statutory exception, some commentators have suggested that if a child's life or long-term health is endangered due to a lack of medical care, state intervention is still appropriate regardless of the justification posed by the parents. Ferreira, McGough's, supra, § 4-7. This issue has yet to be resolved. However, it is clear

that when a parent's refusal is not based upon his/her religious beliefs, the state is authorized to intervene in cases of medical neglect. Bendiburg v. Dempsey, 909 F.2d 463 (11th Cir. 1990).

In Jefferson v. Griffin Spalding Co. Hospital Authority, et al., 247 Ga. 86 (1981), the Supreme Court denied an appeal from a combined order of the Butts County Juvenile and Superior Courts transferring temporary custody of an unborn child to the Department of Human Resources. Here, the court also ordered the mother to undergo an emergency cesarean section after she had refused to do so on religious grounds in a situation where the child and quite possibly the mother would have died during natural delivery. Id. at 87. The mother was due to give birth at any moment. Id. at 88. Testimony given during the hearing indicated that both the mother and unborn child had a possibility of survival at nearly 100% if the cesarean were performed. Id. at 86.

One of Georgia's Juvenile Court judges has commented on the subject, in a precedent setting ruling that has become a standard by which to measure the state's interests against the parents' First Amendment rights, regarding religious decisions for their minor children. In a case involving the juvenile court's authorization to a hospital to perform a life saving blood transfusion to a child whose parents refused the treatment on religious grounds, Judge Edward D. Wheeler held that "the state has a vital interest in preserving the lives and health of its citizens." He also recognized, however, that "The First Amendment right to freedom of religion must be recognized and respected when its practice is not contrary to the best interests of the citizens of the State." In authorizing the blood transfusion over the objections of the natural parents, the Court cited a Supreme Court case on the subject, which held beyond limitation:

> Acting to guard the general interest in a youth's well being, the State as parens patriae may restrict the parent's control...the right to practice religion freely does not include liberty to expose the ...child to ill health or death. Prince v. Massachusetts, 321 U.S. 158 (1944).

Finally, the Court held that O.C.G.A. § 15-11-1 itself must be construed to allow such state intervention:

> 15-11-1. Construction and Purpose. This chapter shall be liberally construed to the end: (3) That when a child is removed from the control of his parents, the court shall secure for him care as nearly as possible equivalent to that which his parents should have given him.

In the blood transfusion case, the Court ruled that the parents refused to give their child the care they *should* have given him, and because the court granted consent for the procedure, the child's life was saved. In the Interest of L.O.L. (DeKalb County Juvenile Court, April 19, 1984).

C. Venue

A deprivation proceeding may be commenced in the county in which the child resides or in any county where the child is present when the proceeding in commenced. O.C.G.A. § 15-11-29(a). In Georgia civil cases, proper venue exists in the county in which the defendant resides. However, the Georgia Constitution specifically allows the General Assembly to adopt differing venue rules in the Juvenile Code of Georgia. Ga. Const. 1983, Art VI, §II, ¶ VI. The "presence" option allowing the filing of a petition in any county in which the child is present was specifically upheld by the Georgia Court of Appeals. In the Interest of C.R., 160 Ga. App. 873 (1982). If the county has either a full or part-time juvenile court judge to hear deprivation cases, the hearing should occur in that county since that will be where the child either resides or was present when the action was commenced. If the county has a superior court judge who hears juvenile court cases, the superior court judge can choose to hear the case in any county within that judicial circuit. O.C.G.A. § 15-11-29(b). In such situations, it may be necessary to travel to another county within the judicial circuit to appear in a deprivation hearing.

A party to the proceeding can waive an objection to a particular venue if venue was changed pursuant to a motion filed by that party. In the Interest of M.J.G. et al, Children, 203 Ga. App. 452 (1992). The court found that the child's father was estopped from raising the issue of improper venue when the venue was changed per his request from one county to another. Id. at 454.

IV. Removing A Deprived Child From the Home

As stated previously, the responsibilities of the law guardian/CASA will begin after appointment and a deprivation complaint is filed. Nevertheless, some familiarity with the procedures for removal is helpful.

A. Protective Custody

The Georgia Juvenile Code allows a law enforcement officer or a duly authorized officer of the court to take a child into custody "if there are reasonable grounds to believe that the child is suffering from illness or injury or is in immediate danger from his or her surroundings and that his or her removal is necessary." O.C.G.A. § 15-11-45(a)(4). This can be done without a warrant, summons, or other judicial authorization prior to detaining the child. Ferreira, McGough's, supra, § 4-10. Law enforcement officers often encounter situations of child abuse and neglect during their daily interactions with the public. This law

allows such an officer to immediately remove a child from the home so that the court can later determine whether the removal was necessary for the child's protection. Whether a "duly authorized officer of the court" includes a DFCS caseworker is unclear. However, one commentator has suggested that a caseworker might not be authorized by law to remove a child from the home without first obtaining a preliminary protective custody order. Id. at § 4-10.

B. Preliminary Protective Custody Orders

Often DFCS will be contacted directly by school officials or other concerned citizens regarding the possibility of abuse or neglect of a child without the involvement of law enforcement. DFCS caseworkers do not necessarily need to remove the child from the home themselves; they can do so with the assistance of law enforcement personnel. If, after an investigation, the caseworker finds that there is a sufficient basis to remove the child from the home, a complaint and deprivation petition may be filed with a juvenile court judge. The contents of this petition will be discussed later in this manual. If the judge agrees that the circumstances warrant removal of the child, a summons will be issued authorizing a law enforcement officer to immediately take the child into custody. O.C.G.A. § 15-11-49.1. This decision should be based upon an affidavit or sworn testimony that:

1. the conduct, condition, or surroundings of the child are endangering his health or welfare or those of others, or
2. he/she may abscond or be removed from the jurisdiction of the court or that he will not be brought before the court notwithstanding the service of the summons.

   O.C.G.A. § 15-11-49.1

If the judge finds that immediate removal is unnecessary in a given case, the court may simply issue a summons directing the parents, guardian, or other custodian of the child to appear at the adjudicatory hearing and to bring the child with him/her. O.C.G.A. § 15-11-39(c). If the parent willfully fails to appear or fails to bring the child before the court at the designated time, the court is authorized

to punish such a person for contempt of court pursuant to O.C.G.A. § 15-11-5. O.C.G.A. § 15-11-39(c). Some Georgia courts do not require the filing of a petition but will issue a summons upon the filing of a complaint or affidavit. These cases can initially be heard ex parte if the circumstances require immediate action by the court.

Preliminary protective custody orders authorized by a juvenile court are not entitled to enforcement outside of the state of Georgia. The Georgia Court of Appeals has refused to reverse an order of a juvenile court when a social worker traveled to a hospital in Chattanooga, Tennessee to take custody of the child after the judge authorized the petition. Sanchez v. Walker Co. Dept.. of Fam. and Child. Serv., 138 Ga. App. 49 (1976), rev'd on other grounds 237 Ga. 406 (1976). There was no order from a court of competent jurisdiction in Tennessee allowing the caseworker to take custody of the child. The mother was a resident of Georgia and service upon her there was valid. Since jurisdiction over the child was otherwise completely proper, the Court of Appeals declined to reverse the order on that basis.

Any private citizen or government employee may report a case of suspected abuse, neglect, or exploitation to DFCS, law enforcement personnel, or the district attorney's office. O.C.G.A. § 19-7-5(d) and (e). Some individuals are required by law to make these reports if they have reasonable cause to believe that the child has been abused, neglected, or exploited. O.C.G.A. § 19-7-5(c)(1). Such individuals include physicians, hospital and medical personnel, dentists, psychologists, podiatrists, nurses, counselors, social workers, school teachers, administrators and guidance counselors, child welfare agency personnel, and law enforcement personnel. (The Mandated Reporting Statutes) O.C.G.A. § 19-7-5(c)(1)(A-N). Any individual or organization reporting in good faith under this article, will be immune for any civil or criminal liability regardless of whether the report was required. O.C.G.A. § 19-7-5(f).

C. Procedures for Taking the Child into Custody

After removing the child from the home, a law enforcement officer or an appropriate officer of the court should immediately bring the child before the juvenile court or promptly contact the juvenile court intake officer. O.C.G.A. § 15-11-47(a)(3). If the child is suffering from a serious physical condition or illness requiring medical treatment, the law enforcement officer may take the child to a medical facility prior to contacting the juvenile court intake officer. O.C.G.A. § 15-11-47(a)(2). The person taking the child into custody shall promptly notify the parent, guardian or other custodian and the court that the child has been detained and must state the reasons for doing so. URJC, 8.2.

After the child's removal from the home, the intake officer should immediately begin an investigation to determine whether it is necessary to detain the child or if the child can be released to his/her parents. O.C.G.A. § 15-11-49(a). The purpose of this review is "to make certain that a juvenile's rights are protected when he/she is taken into custody or placed in detention." Paxton v. State, 159 Ga. App. 175 (1981). Each juvenile court judge must appoint one individual to serve in this capacity during each twenty-four hour period. This individual may be the judge him or herself, an associate juvenile court judge, court service worker, juvenile probation officer or intake officer designated by the court. O.C.G.A. § 15-11-2(10). In some of the larger jurisdictions, the juvenile court may have an "intake section," staffed by personnel familiar with the drafting of complaints. Protective and/or holding orders are then routed to the judge for signature.

The Georgia Constitution requires that the legislative, judicial, and executive powers shall "forever remain separate and distinct, and no person discharging the duties of one shall at the same time exercise the functions of either of the others..." Ga. Const. Art. 1, § 2, ¶ 3. The Attorney General's office has unofficially interpreted this to mean that an officer of the Sheriff's department is not statutorily permitted to serve in the capacity of intake officer if a county has not provided for such a position. Op. Att'y Gen. U83-66 (1983). The Georgia Supreme Court recently addressed the issue holding that police officers are per

se disqualified from acting as intake officers for the juvenile court since the police department is part of the executive branch and the role of intake officer is judicial in nature. Brown v. Scott, 266 Ga. 44 (1995). This presumably means that the juvenile court must provide separately for the appointment of intake officers from outside of the county's law enforcement community. Uniform Rule for the Juvenile Courts of Georgia 2.5 requires that intake officers shall only be court-employed intake or probation officers, court service workers, or other Department of Children and Youth Services (now Department of Juvenile Justice) staff designated by the judge exercising juvenile court jurisdiction.

A child can be detained or placed in shelter care prior to an informal detention hearing in four situations. When:

1. the child's detention or care is required to protect the person or property of others or of the child;
2. the child may abscond or be removed from the jurisdiction of the court;
3. the child has no parent, guardian, or custodian or other person able to provide supervision and care for him and return him to the court when required; or
4. an order for the child's detention or shelter care has been made by the court. O.C.G.A. § 15-11-46(1-4).

Situation 4 occurs when the court already ordered an order for detention and the law enforcement officer was ordered to simply pick up the child as required by the summons.

If the intake officer determines it is not necessary to detain the child under these standards, the child will be released to his parents or legal guardian. O.C.G.A. § 15-11-49(a). If the DFCS caseworker, represented by the Special Assistant Attorney General (SAAG), wishes to pursue the matter further regardless of the intake officer's decision, a deprivation petition should be filed with the court within 30 days of the child's release. O.C.G.A. § 15-11-49(b). If the intake officer determines that the detention or shelter care placement of the child is necessary, an informal detention hearing before a juvenile court should be scheduled and held within 72 hours of removing the child from the parents'

custody. O.C.G.A. § 15-11-49(c)(3). If the child is not released prior to an informal detention hearing, he/she can only be placed in:

1. a licensed foster home or a home approved by the court which may be a public or private home or the home of the noncustodial parent or of a relative;
2. a facility operated by a licensed child welfare agency; or
3. a shelter care facility operated by the court.

   O.C.G.A. § 15-11-48(a)(1 and 2), and O.C.G.A. § 15-11-48(f).

The term "shelter care" is used frequently throughout the Juvenile Code. The term is defined in the detentional section of the Juvenile Code at O.C.G.A. § 15-11-2(10.1) as "a licensed foster home or home approved by the court which may be a public or private home or the home of the non-custodial parent or relative, or a facility operated by a licensed child welfare agency." The temporary physical placement of the child anywhere other than in one of these facilities or foster care homes requires the approval of the juvenile court judge or his/her designated appointee.

D. Responsibilities of the Law Guardian/CASA Team When a Deprivation Complaint Has Been Filed

Once a child has been removed from the home and a deprivation complaint has been filed, that child's case should immediately come to the attention of the Child Advocacy Unit, (if one operates in your jurisdiction) or to the law guardian/CASA appointed to the case. A law guardian, like an attorney representing a private client, should not wait until the first court hearing to begin advocating for the child or investigating the case. Just as a private attorney handling a criminal or civil matter begins to represent the client as soon as any kind of notice of potential legal action is served, so too should the law guardian

begin to represent the child either when he/she is removed from the home, or when a deprivation complaint is filed. Although there may be difficulties locating the child at such an early stage in the proceedings, the law guardian/CASA should be prepared to go to the place where the child is located as soon a possible after removal and interview the child. An early interview with the child is in the best interest of that child as well as the family, as it allows for the development of a positive relationship between the law guardian/CASA and the child.

At the initial interview, the law guardian/CASA should attempt to "ascertain the wishes of the child, to determine the psychological state of the child and the reaction of the child to the incidents that have occurred, and to develop some feeling for the appropriateness or inappropriateness of the current placement." These concerns must be addressed in the context of considering and understanding child development issues related to separation. Lawyers for Children ABA Center for Children and the Law (1990) at 296-304. The law guardian/CASA should also attempt to meet with or talk to members of the family from which the child was removed, the social worker or workers responsible for the case, and any other parties who may have important information about the case. This will help the law guardian/CASA determine what course of action is in the child's best interest and will also facilitate the development of a strategy for any future hearings.

V. 72-Hour Informal Detention Hearing

A. When Is the Hearing Required? What Must Be Shown?

An informal detention hearing within 72 hours of the child's removal from the home is required when the juvenile court intake officer has determined that the child should not be released to the custody of his or her parents. This hearing serves two purposes. One is to determine whether a child who has been taken into custody shall be released or detained pending further court proceedings, and the second is to determine if reasonable grounds exist to believe that the allegations in the complaint or petition are true. Uniform Rules for the Juvenile Courts of Georgia 8.1. The rules also provide that the hearing shall be of an informal nature in which hearsay testimony will be allowed. URJC, 8.1. If the 72-hour period expires on a Saturday, Sunday, or legal holiday, the hearing must be held on the next day of business which is not a Saturday, Sunday, or legal holiday. O.C.G.A. § 15-11-49(c)(3). However, URJC, 8.6 allows the court to grant a continuance in a detention hearing for a "reasonable period" to obtain reports and other evidence bearing on the need to detain the child. During the continuance, the judge may order that the child remain detained or release him/her to the custody of his/her parent(s). URJC, 8.6.

Courts have interpreted this time frame to be mandatory and if the hearing is not scheduled within 72 hours of the child's removal, the deprivation action will be dismissed "without prejudice." Sanchez v. Walker Co. Dept. of Fam. and Child. Serv., 237 Ga. 406 (1976). This means that the department may refile a deprivation petition without delay if it has reason to believe that the child is abused or neglected. Id. at 411. It would seem that a dismissal of a petition would require returning a child to the custody of his/her parent(s). However, given the court's authority to issue preliminary protective custody orders based on allegations contained in a petition, there seems to be nothing to prevent a juvenile court judge from issuing another "pick up" order to again detain the child should the court feel that the situation warrants such action. While these procedures allow the case to go forward, the delay associated with beginning the process over again is burdensome for the DFCS caseworker, and may needlessly extend the time a child must spend in shelter care. If a parent fails to make a timely objection during the informal detention hearing based on

noncompliance with statutory time limits, the objection is effectively waived and cannot be raised on appeal. Irvin v. Dept. of Human Resources, 159 Ga. App. 101 (1981).

At the 72-hour hearing the judge will determine if the child's detention is required under the standards set forth in O.C.G.A. § 15-11-46(1-4). The hearing provides the child's parents with judicial review of the actions taken by the juvenile court intake officer. Most juvenile courts have interpreted 72-hour hearings as the equivalent of a "probable cause" hearing which uses a standard of proof known as "preponderance of the evidence." Kipling Louise McVay, Deprivation and Termination, Children in Court: A Systems Approach. (1989), p. 14,15. The petitioner, who more often than not will be the county division of DFCS, sometimes represented by a Special Assistant Attorney General (SAAG), must show through evidence that it is "more likely than not" that the child is deprived. This is a much lower burden of proof than will be required at the formal adjudicatory hearing (trial) on the merits of the deprivation petition. Not all agree on the proper standard of proof in the 72-hour hearing since the statute is silent on the issue. The 1996 Georgia Juvenile Court Benchbook notes that "the burden is on the petitioner to prove the need for detention; there is no indication from the code that a 'probable cause' standard is all that is necessary."

B. Notice to Parties

The court is required to provide "reasonable notice" of the informal detention hearing either orally or in writing, stating the time, place, and purpose of the hearing to the child and to his/her parents, guardian, or other custodian if they can be found. O.C.G.A. § 15-11-49(c)(4). The Sanchez case also makes notice to the parent of the child mandatory and failure to do so can again result in a dismissal without prejudice. Sanchez v. Walker Co. Dept. of Fam. and Child. Serv., 237 Ga. 406 (1976). If a parent is not notified of the hearing because he/she could not be located and did not waive his/her right to appear at this

hearing, the parent can file a motion with the court which will require the rehearing of the matter without unnecessary delay. In such situations, the child shall be released unless it appears that the child's detention or shelter care is required under the standards set forth above. O.C.G.A. § 15-11-49(d). A parent who has not received notice of the hearing may file an affidavit with the court stating these facts to cause a 72-hour hearing to be reheld. This places additional procedural burdens on the SAAG and DFCS caseworker, and creates further delays for the child prior to the adjudication of his/her case. During the investigation, it is critical to find the parents of the child so that the court may provide notice of the proceedings as soon as possible.

C. Right to Counsel

A participant is entitled to legal representation at all stages of any proceeding alleging deprivation. If a party is indigent and cannot afford a lawyer, the court will provide that party with counsel. O.C.G.A. § 15-11-6(b). An "indigent person" is defined under the Code as one who is "unable without undue financial hardship to provide for full payment of legal counsel and all other necessary expenses for representation." O.C.G.A. § 15-11-6(a). Prior to commencement of the informal detention hearing, the judge is required to inform all parties of their right to counsel. O.C.G.A. § 15-11-49(c)(4). The court may grant a continuance (postpone the proceeding) so that a party can obtain a lawyer. O.C.G.A. § 15-11-6(b).

The juvenile court *will* appoint a guardian ad litem to represent the interest of a child who is a party to all deprivation proceedings, and in cases where the interests of the child and his/her parents conflict. O.C.G.A. § 15-11-49(c)(4) and O.C.G.A. § 15-11-9. In interpreting § 15-11-9, the Attorney General has issued the opinion that in deprivation hearings brought between a child and his/her parent or guardian, an inherent conflict of interest arises which requires the appointment of a guardian ad litem. Op. Att'y Gen. 76-131 (1976). The O.C.G.A.

§ 15-11-6(b) also requires the appointment of representation for the child in these two situations but uses the term "counsel" instead of guardian ad litem.

The Georgia Court of Appeals has held that all parties to a deprivation proceeding, including the child and his/her parents should be represented individually by counsel. In addition, a parent in a deprivation action cannot waive the child's right to independent legal counsel. The court held that a deprivation action is one in which the interests of the child and her parents are adverse and that the juvenile court could have appointed a guardian ad litem to protect the interests of the child and should have done so. McBurrough v. Dept. of Human Resources, 150 Ga. App. 130 (1978).

The person who represents the petitioner in the 72-hour informal detention hearing varies from jurisdiction to jurisdiction. In some counties, the petitioner, usually DFCS, is represented by the SAAG assigned to that county. In other counties, it is common practice to allow a law guardian for the child or the DFCS caseworker to represent the department's case at the 72-hour hearing. This would appear to be an obvious conflict of interest given specific statutory and judicial mandates that the guardian ad litem not be a party to the proceedings. See O.C.G.A. § 15-11-9; In re J.S.C., 182 Ga. App. 721 at 723 (1987). In all other deprivation hearings, the petitioner, who again is usually DFCS, is represented by an attorney.

In 1974, Congress passed the Child Abuse Prevention and Treatment Act (CAPTA), P.L. 93-247, which required that all states receiving federal funds appoint a guardian ad litem (GAL) to represent the interest of the child in abuse or neglect cases which result in a judicial proceeding. 42 U.S.C. § 5106(b)(6). The act does not require that the guardian ad litem be an attorney, and is mostly silent on the roles and responsibilities of the GAL in judicial proceedings, mandating only that the GAL is charged with representing the rights and best interest of the child. 45 C.F.R. Ch. XIII, § 1340.14(g)(10-1-96 ed.). However, CAPTA was recently amended to require that the GAL appointed, whether it is a CASA or an attorney, must have received training "appropriate" to the role. 42

U.S.C. § 5106(b)(2)(4)(xiii). The law does not elaborate as to what type of training constitutes "appropriate."

The purpose of the guardian ad litem is to protect the interests of the child in all matters relating to the litigation. In re J.S.C., Ga. App. 721 (1987). The type of representation offered to children in deprivation proceedings varies from jurisdiction to jurisdiction, and it has long been a goal of child welfare professionals and concerned members of the bar to develop a greater sense of uniformity in representation, one of the primary goals of this manual. In some counties, attorneys in private practice are appointed to serve as a guardian ad litem while in others, staff attorneys are hired as advocates for the child. Other counties have volunteer guardian ad litem and CASA programs to provide representation for children. These volunteers are often not attorneys and lack standing to make legal arguments and motions on behalf of the child.

In recent decades, child welfare professionals and the public have become increasingly determined that existing child protective procedures be improved. Pursuant to CAPTA, states began adopting legislation that required representation for the child's best interests during judicial proceedings. In 1996, CAPTA was reauthorized and now reads: "...a guardian ad litem, who may be an attorney or a court appointed special advocate (or the preferred model of both), shall be appointed" to represent children in abuse and neglect cases. Georgia CASA Publications: Legal Proceedings in the Juvenile Court, at 5.

The appointment of both a volunteer and an attorney to juvenile deprivation cases ensures a stronger form of representation for abused and neglected children. CASA volunteers have the time and commitment to familiarize themselves with the facts of each case, establish a relationship with the child and monitor the case until permanency is achieved (e.g., family reunification or termination and adoption). The attorneys' legal expertise is essential to move cases through the system, and to ensure that a child's interests are promoted and legal rights protected throughout the duration of the case. A national study commissioned by the U.S. Department of Health and Human Services found that

the "team approach" of using law guardians teamed with lay or CASA volunteers was "highly recommended." The study found that this model tended to promote:

1. thorough case investigation,
2. highly involved advocates for the child,
3. frequent child contact,
4. extensive post-dispositional monitoring,
5. the more likely obtaining of appropriate services for the child,
6. more frequent case reviews, and
7. improved monitoring of the child's case plan.

Under such a model, the study found, children whose original case goal was reunification with their natural families were more likely to have this goal maintained, than when they were represented by a lay guardian or CASA alone. Lawyers For Children, supra, at 21, 22.

In jurisdictions where an attorney/CASA team program has been implemented, the co-appointment process works as follows:

1. Community volunteers are recruited, screened and trained in accordance with nationally promulgated standards, and are sworn in as Court Appointed Special Advocates (CASAs).
2. The CASA program director keeps judges and/or law guardians informed about the availability of CASA volunteers.
3. The law guardian, child advocacy unit, or in some smaller jurisdictions, the judge evaluates the complexity of each deprivation case and, on the basis of availability, may decide to assign a CASA volunteer to work with the law guardian. A court order is prepared, usually at the 72 hour hearing, which co-appoints a volunteer and an attorney to the case. The program director assigns the case to an individual CASA volunteer.
4. The CASA, working with the law guardian, makes a thorough assessment of the circumstances surrounding the case, by interviewing the child and all involved parties, reviewing records, etc. The law guardian is continually consulted for advice on legal issues. With guidance from the law guardian and the CASA program director, the CASA formulates tentative recommendations.
5. Prior to court hearings, the law guardian and CASA meet to share information and discuss recommendations. The CASA also prepares a written report for presentation to the judge, summarizing the facts of the

case and making recommendations. In most cases, there will be an agreement on what constitutes the best interests of the child. However, in the event that there is a disagreement, two sets of recommendations should be presented to the judge.

6. Both the CASA and the law guardian are present for all court hearings. The law guardian directs the case and is responsible for protecting the legal rights of the child. The CASA may be called upon to testify by the law guardian.
7. After the judge's ruling at the various stages of the proceedings, the CASA is responsible for monitoring the case, with guidance from the law guardian and the program director, for its duration in the system. The CASA may also prepare a written report for presentation to the judge summarizing the facts of the case and making recommendations. Georgia CASA Publications, supra.

Another helpful tool for law guardians is use of student interns. Student interns from various disciplines (e.g., social work, law, psychology, nursing, pediatrics, education) can bring a unique and invaluable perspective to the law guardian's caseload, often providing additional levels of case investigation, preparation and assistance. Representation of children is inherently multidisciplinary in character. The students get the opportunity to learn skills not taught in classrooms or by reading textbooks, while gaining respect for one another's professional perspectives. Forming a relationship with a school can offer a student credit hours, stipends, or both. All interns should receive training and direct law guardian supervision, and can be sworn in as officers of the court. In Georgia, the Supreme Court has expanded the Third Year Practice Act enabling law students who have completed their second year to present evidence and arguments in court under the direct supervision of the attorney. Utilizing students can also potentially recruit needed attorneys as law guardians.

A list of the role of the law guardian/CASA, summarized from the Roles and Responsibilities section of this manual, is as follows:

1. Fact Finder/Investigator

As fact finder, the law guardian/CASA must independently investigate the allegations of deprivation, apart from any investigation conducted by DFCS or the defense attorneys. Proficient investigative skills are a must for the law guardian, so that he or she may obtain important information concerning the child's well-being. Duquette, Advocating for the Child in Protection Proceedings, (1990) at 38.

2. Legal Representative

As legal representative, the law guardian counsels child clients regarding the legal process, advises them of recommendations for court action, and provides them with legal representation in court Id. at 36.

3. Case Monitor

"As case monitor, the [law guardian] takes active steps to ensure that the case is moving swiftly through the court process while properly serving the best interests of the child" Duquette, supra at 36. The law guardian should make sure that parties are given timely notice, documents are filed, hearings fall within statutory limits and all information pertinent to the case has been filed. If the child is adjudicated deprived, the law guardian should track until permanency is achieved.

4. Mediator/Conciliator

"As mediator-conciliator, the [law guardian] facilitates a collaborative working relationship among all parties so that problems can be resolved and a generally acceptable agreement can be presented to the court." Duquette, at 36. Serving in this capacity, the law guardian/CASA team attempts to resolve a case as soon as possible, even before the adjudicatory hearing; common thought is that although it is a parent/guardian's right to contest the petition alleging deprivation, and have a full hearing on the allegations, a full-blown trial may not always be in the best interest of the child. Often these hearings require that a

child testify against a parent, (not the best of situations for eventual reunification where the parent-child relationship may already be strained), or may require a child to be in the courtroom with the alleged perpetrator, causing further trauma to the child. But see ABA Standards, infra. In order to resolve the case, the law guardian/CASA should hold conferences with parties based on independently gained information, interviews, viewing of videotaped testimony, and other information the team has gathered, and may encourage pre-trial amendment of a deprivation petition in order to facilitate settlement. The CASA coordinator, CASA volunteers, and legal interns play a crucial role in pre-trial negotiations, by providing information regarding home evaluations, psychological/psychiatric reports, relative placement analyses and proposed testimony from witnesses - all invaluable to the law guardian if there is to be a positive resolution. The parents' attorneys must be included in pre-trial discussions. Many of these hearings are unique and quite unlike typical adversarial trials in State or Superior Courts. These civil cases do not necessarily look towards an assignation of blame or culpability. While the law guardian is certainly mindful that parent/guardian's attorneys are required to zealously represent their clients, the law guardian should seek to work with them in order to reach a resolution that serves the best interest of the child. Parents' attorneys and law guardians should explore options other than full hearings, and should openly discuss placement recommendations. They should consider formulating consent orders that may more expeditiously facilitate family reunification, following the completion of realistic and appropriate goals by parents.

5. Information and Resource Broker

"[A]s information and resource broker, the [law guardian/CASA] identifies resource people and support services available in the community to assist the child and family in assessing problems, resolving conflicts, and strengthening family relationships." Duquette, supra at 36.

VI. Filing of a Deprivation Petition

A. When Must The Petition Be Filed?

In cases where the juvenile court intake officer has chosen to release the child into the custody of his/her parents, a deprivation petition has to be filed with the court within 30 days of the child's release if DFCS wishes to pursue the case further. O.C.G.A. § 15-11-49(b). If the child has not been released by either the intake officer after the child's removal or the juvenile court judge in the 72-hour hearing, a deprivation petition must be submitted within five days of that hearing. O.C.G.A. § 15-11-49(e). The petition may have already been filed if DFCS has gone directly to the juvenile court judge asking that the child be taken into protective custody. O.C.G.A. § 15-11-49(d).

The filing of the petition starts the time table for scheduling the formal adjudicatory hearing on the deprivation petition's merits. This period is shortened considerably when the child is in detention or shelter care. Under these circumstances, the petition must be filed within five (5) days of the detention hearing and the adjudicatory hearing must be held within ten (10) days after the petition is filed. O.C.G.A. § 15-11-39(a). Therefore, if the child is not released, there is a possible fifteen day wait between the informal detention hearing and the adjudicatory hearing on the petition. If the child has been released to his/her parents, the hearing must be held within sixty (60) days of the filing of the deprivation petition. O.C.G.A. § 15-11-39(a). Thus, if the intake officer or the juvenile court judge determines that the child's detention is not warranted and the child is released to his/her parent(s), there is a potential ninety day wait between the detention hearing and the adjudicatory hearing. In addition, a judge can continue such a proceeding for good cause. URJC, 11.3. As a law

guardian/CASA, it is likely that the majority of your cases will be those in which a 72 hour detention hearing has been held, the judge has found "probable cause" that deprivation exists, and has ordered a petition to be filed by DFCS within 5 days.

In all proceedings over which the juvenile court has jurisdiction (including deprivation cases), proceedings can only be initiated upon receipt of a written complaint form or a petition. The intake officer does not have the authority to refuse a complaint, which only the judge can do. However, the intake officer must screen the complaint before a petition is filed and make a recommendation to the court for:

Dismissal;

1. Referral to another agency for services;
2. Informal adjustment (not available in deprivation cases);
3. Approval to file a petition, or "other appropriate action." URJC, 4.2.

In screening the complaint, the intake officer should consider:

1. Whether the complaint is one over which the court has jurisdiction;
2. Whether the complaint is frivolous;
3. Whether the child should be detained pending a hearing, and if so where;
4. Whether the child's case can be informally adjusted (not available in deprivation actions);
5. Whether the child should he diverted to an agency that meets his or her needs; and
6. If a petition should be filed with the court.

   URJC, 4.2.

Before a petition alleging deprivation may be filed with the court, the juvenile court judge or a person authorized by the court must determine and endorse upon the petition that the filing is in the best interest of both the public and the child. O.C.G.A. § 15-11-37; URJC, 4.2. A failure at the trial court level to make such an endorsement is not reversible error when the juvenile court judge has impliedly endorsed the filing of the petition by issuing an order to detain the

juvenile to protect both the child and society. J.G.B., et al. v. State of Georgia, 136 Ga. App. 75 (1975).

The court does not officially take jurisdiction over the case until the petition has been filed. The petition itself is what officially commences a deprivation proceeding. Even though the judge may have already issued a detention order in a previous hearing, the deprivation case does not officially begin until this document is accepted and filed. Longshore v. State, 239 Ga. 437 (1977). The petition alleging deprivation may be made by any person, including a law enforcement officer, who has knowledge of the facts alleged and believes that they are true. O.C.G.A. § 15-11-38. This person is called the petitioner and is usually the DFCS caseworker represented by the SAAG. If the petitioner is a private party without the benefit of counsel, the juvenile court judge may request the assistance of the District Attorney or a member of his/her staff to represent the petitioner. If for any reason the District Attorney is unable to assist, the judge is authorized to appoint legal counsel to represent the petitioner. O.C.G.A. § 15-11-41(c).

B. What Must The Petition Contain?

The Georgia Juvenile Code provides that a deprivation petition must plainly set forth:

1. the facts which bring the child within the jurisdiction of the court, with a statement that it is in the best interest of the child and the public that the proceeding be brought...;
2. the name, age, and residence address, if any, of the child on whose behalf the petition is brought;
3. the names and residence addresses, if known to petitioner, of the parents, guardian, or custodian of the child and of the child's parents, or if neither his parents, his guardian, nor his custodian reside or can be found within the state or if their respective places of residence addresses are unknown, the name of any known adult relative residing within the county, or if there is none, the known adult relative residing nearest to the location of the court; and

4. if the child is in custody, and if so, the place of his detention and the time he was taken into custody.

   O.C.G.A. § 15-11-38.1(1-4).

The information contained in the petition must satisfy the due process requirement of the right of an accused to know the nature of the allegations filed against him/her. This means that the petition must provide the parent in "ordinary and concise language the facts demonstrating the nature of the parent's alleged failure to provide proper parental care or control in order to enable the parent to have sufficient information to prepare a defense." In re D.R.C., 191 Ga. App. 278 (1989). The court held that a petition that simply stated that the parent had violated the standards set forth in law without providing any details violated the parent's due process rights. Id. at 278. The petition must be specific enough so that the parent will have at least some idea of what he/she is being accused of.

The petition can be amended at any time prior to the adjudication provided that the court shall grant all other parties the necessary additional time to prepare to ensure a full and fair hearing. URJC, 6.6. If a child is detained, the amendments shall not delay the hearing more than ten (10) days beyond the time originally set for the hearing unless a continuance is requested by the child or his/her attorney. URJC, 6.6.

Once a petition has been filed, it should immediately come to the attention of the appointed law guardian/CASA. At this stage of the deprivation proceeding, the law guardian/CASA should read and review the petition and ensure that all of the information that has been gathered (e.g., police reports, interview notes, affidavits of effort), and is accurately reflected in the allegations enumerated in the petition. The law guardian/CASA should begin an independent investigation of the complaint, formulating preliminary position as to what is in the child's best interest. Questions that should be answered at this stage include the following:

1. Should the court authorize or deny the filling of a petition or delay for a period of time?
2. Where should the child be placed?

3. What visitation should be arranged or ordered?
4. Are additional medical and psychological exams necessary?
5. What other matters can be dealt with at this hearing?

Realistically, time does not always permit a thorough investigation at such an early stage of the proceeding. Thus, the law guardian/CASA should be mindful that, at this stage, all facts may not have been presented to the court, and one should make recommendations accordingly, even if they are tentative ones. In fact, throughout the entire process, the law guardian/CASA will constantly refine his/her perspective on the case. It may be appropriate to ask that the detention hearing be continued if crucial data has not been provided and an extension of time would permit a thorough and exhaustive compilation of relevant evidence. However, continuances can delay the process of permanency for a child.

Finally, a law guardian/CASA should take the time to thoroughly think through a case in order to effectively present it. For example, if a child has pending delinquent charges, contact with the child's probation officer and/or public defender is necessary. Remember, each case will have a different set of facts and players that will require careful consideration in order to determine the best course of action to take on the child's behalf.

VII. Adjudicatory Hearing on the Deprivation Petition

There are two distinct parts to a hearing on the merits of a deprivation petition - the adjudicatory hearing and the dispositional hearing. The first part, the adjudicatory hearing, is used to determine whether the allegations contained in the complaint are true. This is basically a review of the evidence to determine

whether or not the child is currently deprived under the standards set forth in the Georgia Juvenile Code. The adjudicatory hearing must be held within ten (10) days of the filing of the deprivation petition if the child is in shelter care and within sixty days (60) of the filing of the petition if the child was released to the custody of his/her parents by the juvenile court intake officer or the judge at the 72-hour hearing. O.C.G.A. § 15-11-39(a).

The courts have held that the time frame for this hearing is mandatory like the time frame for the 72-hour hearing, the violation of which can result in dismissal without prejudice. Sanchez v. Walker Co. Dept. of Family and Children Services, 237 Ga. 406 (1976). This practice was specifically endorsed by the court in Sanchez. If the parent or guardian of the child does not specifically object to a violation of the statutory time frame without a continuance, the issue will be considered waived on appeal. Id. at 409. The court has come to a similar conclusion for adjudicatory hearings involving minors who are not removed from the home. The parents of the minor not in state custody did not object to a hearing beyond the sixty day time limit either at the hearing or in a motion for a new trial and the issue was therefore effectively waived. E.S. v State, 134 Ga. App. 724 (1975).

The Uniform Rules for the Juvenile Courts of Georgia allow a judge to continue an adjudicatory hearing for a reasonable time for "good cause shown" despite these statutory time limits. In deprivation cases, the granting of a continuance beyond the statutory time limitations must be by written order stating the specific reason for the continuance. URJC, 11.3. No specific definition of what constitutes "good cause" for a continuance has been given. This leaves the juvenile court judge with a great deal of discretion in adjusting the statutory time frame for holding an adjudicatory hearing. What one judge may consider an adequate basis for a continuance may differ substantially from that of another. It should be remembered that an excessive number of continuances can result in the child remaining in foster care for an extended period of time. It is important for the DFCS caseworker to consult with the SAAG representing the department,

as well as the law guardian/CASA prior to the hearing, to make sure that all documents and necessary witnesses will be available at the start of the hearing in order to prevent unnecessary continuances.

The law guardian/CASA plays a major role at this stage of the proceedings. Pre-trial negotiation is one of the most critical phases of advocacy because a full-blown trial may not be in a child's best interest. A child may have to testify against a parent in a trial causing anxiety and trauma for the child. The experience could further alienate the child from the parent and can create a dynamic that is not conducive to successful family reunification. ABA Standards, supra at C-6, D-6. The law guardian should make all practical attempts to resolve a case prior to the adjudicatory hearing. This would include holding conferences with parties based on independently gained information, interviews, viewing of videotaped testimony and other information the team has gathered. The CASA can play a crucial role in these pretrial negotiations, bringing to the table home evaluations, psychological/psychiatric reports, relative placement analysis and proposed testimony from witnesses, all invaluable to the attorneys if there is to be a successful resolution. Bross and Michaels, at 90. It should be noted that all agreements, including proposed stipulations or admissions, amended language or other consensual proposals must have the approval of the law guardian/CASA.

Pursuant to pre-trial negotiations, the CASA can and should bring to the table information about the family members and family history; relevant historical data; information on reasonable efforts regarding services provided, if appropriate, available or refused; summaries of persons interviewed and documents reviewed; and a summary of the facts which justify his or her recommendations. Georgia CASA Publications: The Role of the CASA Volunteer in Court Proceedings, (1989).

It is here that the mediator role of the law guardian/CASA is most visibly seen. In most cases it would most definitely serve the child's best interests to have all adversarial parties agree on a plan that seeks family reunification (or an

alternative permanent plan) prior to entering the courtroom. If, however, an amicable stipulated agreement cannot be reached, the next phase of the process is the adjudicatory hearing, which resembles in all aspects, a full trial.

A. Pretrial Discovery

The Georgia Supreme Court has ruled that the provisions of the Civil Practice Act are not applicable to the Juvenile Court system. English v. Milby, 233 Ga. 7 (1974). In addition, neither the Fourteenth Amendment to the United States Constitution nor the Georgia Constitution require pretrial discovery in proceedings to terminate parental rights. In the Interest of L.L.W., et al., 141 Ga. App. 32 (1977). The Georgia Juvenile Code does not specifically mention the use of discovery in deprivation proceedings.

However, the Uniform Rules for the Juvenile Courts of Georgia state that discovery may be allowed in all cases where deprivation is alleged. URJC, 7.1. Any discovery permitted under this rule will be at the discretion of the presiding juvenile court judge. Requests for discovery must be made in writing and state the type of discovery requested which can include interrogatories, depositions, admissions of a party to the proceeding, requests for production of documents, and requests for physical and mental examinations of a parent, guardian, custodian, or child. URJC, 7.2. All such requests must include a Rule Nisi spelling out a time and place for a hearing on the request to determine what discovery will be allowed and a time frame for completion. URJC, 7.2(a); URJC, 7.4. Any and all objections to any such request shall be made at the hearing or else the objection is waived, unless otherwise allowed at the discretion of the court. URJC, 7.2(b).

The discovery motion and notice of a hearing shall not be served later than three days, excluding weekends and holidays, before the time specified for the hearing, unless specifically ordered by the court on ex parte application for good cause shown. Service must be performed upon all parties, including the parents, the child or his/her legal custodian or their legal counsel, if so

represented. URJC, 7.2(c). If the child has been removed from the home, the discovery request must be filed within forty-eight hours of the filing of the petition. Otherwise, the request should be filed within fifteen days of the filing of the petition. If the child is in shelter or foster care, discovery must be completed within fifteen days of an approval order, but in all other cases it must be completed within thirty days. URJC, 7.3. In addition, if the child is in foster or shelter care, a discovery request by any party acts as a request for continuance of the time period for the adjudicatory hearing which shall then be reset to within seven days, excluding weekends and holidays, of the date that such discovery is ordered to be completed by the court. URJC, 7.3. Responsive pleadings are encouraged in deprivation matters but they are not required by the rules. URJC, 7.6.

There are several issues related to discovery of which one should be aware. The Court of Appeals has overturned a trial court ruling authorizing an attorney for a father involved in a termination proceeding to interview the child alone without supervision by DFCS or a guardian ad litem. The court held that an attorney could not interview an adverse party without the presence of counsel. In the Interest of L.L.W., et al., 141 Ga. App. 32 (1977). The father's ability to call witnesses, introduce evidence, and cross-examine witnesses for the state was enough to protect his interests under the constitution. Id. at 33.

A source of occasional controversy in the area of pretrial discovery, is a request for the production of documents from the DFCS caseworker's file. The Child Abuse and Deprivation Records Act, O.C.G.A. § 49-5-40(b) states that "each and every record concerning the report of child abuse" is confidential and access to such records is prohibited. The Georgia Code allows for a judge to access these records by subpoena when access to such records is necessary "for the determination of an issue" before the court. O.C.G.A. § 49-5-41(a)(2). The juvenile court judge is required to review the file independently and release only the information necessary for the resolution of this issue. O.C.G.A. § 49-5-41(a)(2). In reviewing the DFCS case file, the judge will take into account the

appropriate evidentiary rules to determine if the document is admissible. O.C.G.A. § 49-5-41(a)(2). The law guardian/CASA's relationship with DFCS workers may be such that caseworkers will readily and voluntarily share information, understanding that each player's role is not necessarily adversarial, but that it involves gathering as much information as possible to formulate a recommendation to help the child. However, the relationship can be somewhat guarded requiring diligent and assertive efforts to get the necessary information.

For parent attorneys, the Georgia Court of Appeals previously overturned a juvenile court order because the trial judge in that case said that the father and his attorney had no right of access to the Department of Human Resource's records. The court found that the legislature intended to allow pretrial discovery of department records within the discretion of the juvenile court judge, except where specifically barred by statute. The court specifically looked at the code section O.C.G.A. § 49-5-41(a)(2). Ray v. Dept. of Human Resources, 155 Ga. App. 81 (1980). The Court of Appeals later held that the right to know the nature of the evidence against a person is fundamental to our system of justice. There the juvenile court also made the mistake of denying the parents any access to departmental records and files. The court said that if the files contained a matter which should have remained confidential, those records could have been removed from the casefile prior to providing it to the parents' attorney. In Re M.M.A., 166 Ga. App. 620 (1983). This ability to access DFCS records in a deprivation action, only goes so far. The Georgia Court of Appeals has held that a trial judge acted within his power in refusing to allow discovery of "caseworker notes, memorandum, and other caseworker generated documents" that were not intended to be used by the department at the hearing. Discovery is applicable to juvenile court proceedings within the confines set by the trial court judge. There was no evidence in this case that the child's parent was denied access to documents that were favorable or material to his case. In Re C.M., 179 Ga. App. 508 (1986). One should remember that discovery requests are granted at the discretion of the juvenile court judge. What one judge may consider relevant for

the determination of an issue before the court may differ from that of another judge.

B. Summons and Necessary Parties to the Proceedings

Once an adjudicatory hearing date has been scheduled pursuant to the required time frame discussed above, the judge will issue a summons to all individuals "who appear to the court to be proper or necessary parties to the proceeding." O.C.G.A. § 15-11-39(b). These parties will include the parents, guardian, custodians, law guardian, Court Appointed Special Advocates, DFCS caseworkers, and any other persons who appear to be necessary parties. O.C.G.A. § 15-11-39(b). The parents of a child born in wedlock or legitimated are proper parties and entitled to the substantive and procedural protections of the Georgia Juvenile Code. Id. at Ch. VI, p. 2. The mother of a child born out of wedlock *is a necessary party* and must be provided with a summons and a copy of the petition. O.C.G.A. § 15-11-96, to be discussed later in the chapter on Termination of Parental Rights, has often been interpreted to give the father of an illegitimate child the same procedural protections in a deprivation action. The summons will require them to appear before the court at a fixed time to answer the allegations listed in the petition. A copy of the deprivation petition will accompany the summons. O.C.G.A. § 15-11-39(b).

Service of the summons may be made by any "suitable person" under the direction of the court. O.C.G.A. § 15-11-39.1(c). Presumably, this includes the DFCS caseworker and this is common practice in many jurisdictions throughout the state. If a party lives within the state and can be found; the summons may be personally served upon him/her within twenty-four hours of the hearing. If a party lives within the state but cannot be found, the summons may be mailed to the party by registered or certified mail at least five days prior to the hearing. A party who lives outside of the state can be personally served or served by mail at least five days prior to the start of the hearing. O.C.G.A. § 15-11-39.1(a). An objection to a service of process in a deprivation hearing can be waived by that party's

voluntary appearance at the proceeding. In the Interest of W.J.G., a child., 216 Ga. App. 168 (1995). In this case, the mother had abandoned the home and her location was unknown, but as soon as she made contact with the court, she was provided with an attorney and served notice of each subsequent hearing and review. Id. at 171.

It is apparently common practice throughout the state for service of the summons and the petition to occur at the 72-hour hearing itself. There does not appear to be anything in the Code to prevent this method, but one must remember that the summons must include a date for the adjudicatory hearing. The judge will have to schedule the adjudicatory hearing at the 72-hour hearing and issue the summons immediately. A copy of the petition must be attached to the summons. Therefore, if this procedure is followed, the petition must be completed before the 72-hour hearing.

If, after reasonable effort, a party cannot be found, the court may resort to service by publication, which usually means public notice in a local newspaper. O.C.G.A. § 15-11-39.1(b). The adjudicatory hearing cannot be held until five days after the date of the last publication. O.C.G.A. § 15-11-39.1(b). If a party is provided notice by publication, a provisional hearing may be conducted on the allegations of a petition alleging deprivation. The summons served upon any other party must state that prior to the final hearing a provisional hearing will be held at a specific time and place. All other parties who are not served by publication must appear at this hearing to answer the allegations contained in the petition. O.C.G.A. § 15-11-39.2(a)(2)(B). The court may enter a temporary order pending the final hearing in juvenile court. The findings of fact and the dispositional order made at the provisional hearing will become permanent at the final hearing unless the party served by publication appears. The child in question must be before the court at the provisional hearing. O.C.G.A. § 15-11-39.2(a)(3). If the party served by publication does appear at the final hearing, the findings from the provisional hearing shall be vacated and the court would

proceed normally into an adjudicatory hearing on the merits of the petition. O.C.G.A. § 15-11-39.2(c).

C. Conduct of the Hearing and the Standard of Evidence

One of the main features of the juvenile court system is the use of confidentiality for the purpose of protecting the child from any later stigmatization from the public. For this reason, there are no jury trials used in juvenile court and all judicial decisions are rendered by the juvenile court judge. O.C.G.A. § 15-11-41(a). The general public is also excluded from observing deprivation hearings. Only the parties to the proceeding, their lawyers, witnesses, or any other person the court finds having a "proper interest" in the proceeding are allowed to attend. O.C.G.A. § 15-11-78(a). This differs considerably from a dispositional hearing, where the judge has discretion to admit the general public. O.C.G.A. § 15-11-78(b)(5).

The Georgia Supreme Court has held that a state may create a rule that deprivation hearings in juvenile court are presumed closed to the press and public. For constitutional reasons, this presumption is not binding and the press or plaintiff must be given an opportunity to show that the neither the state's interest nor the juvenile's interest in a closed hearing is overriding in comparison to the public's interest in a public hearing. The burden is on the press or the public to formally request that the hearing be opened and the court must then allow that party to present evidence and argue that the presumption should be lifted in a particular case. Florida Publishing Company v. Morgan, 253 Ga. 467 (1984). If a party fails to object to the presence of reporters in the courtroom during an adjudicatory hearing, that party waives the right to raise this issue on appeal. Heath v. McGuire, 167 Ga. App. 489 (1983).

A party is entitled to introduce evidence and call witnesses on his/her behalf as well as cross examine adverse witnesses under the Georgia Juvenile Code. O.C.G.A. § 15-11-7(a). In addition, all parties have the right to counsel and

the right to testify at all stages of the proceedings. All of these rights are guaranteed by the due process clause of the Fourteenth Amendment. In the Interest of L.L.W., 141 Ga. App. 32 (1977)

In addition, the court itself has several rights under the Code as well as by common law during the hearing. The court may, in its discretion, exclude the child from all or part of a deprivation hearing to shield the child from unnecessary stress and conflict. O.C.G.A. § 15-11-78(a). The judge also has the discretionary right to question any witness called by any party for the purpose of determining the truth so long as the court does not appear to take sides in the dispute prior to a ruling. T.L.T. v. State, 133 Ga. App. 895 (1975). The Court of Appeals has held that a trial judge was allowed to question a minor in chambers without the presence of counsel in a deprivation hearing when such an interview was conducted on the record and no objection was made by any party to the procedure. In re R.R.M.R., 169 Ga. App. 373 (1983). The Court of Appeals has also held that when examining the child's preferences in the matter, the trial court may exclude the parent from the proceedings so long as his or her attorney is present and has the ability to cross-examine the child. Spence v. Levi, 133 Ga. App. 581 (1974). Bear in mind that anytime a child is interviewed, even by the court itself, the law guardian should request to also be present or to have the CASA be present.

The actual hearing itself is preserved by the court reporter using stenography or a recording device should it become necessary to review the case on appeal. O.C.G.A. § 15-11-41(b). If a trial court fails to record the hearing without an express waiver by the juvenile and his/her parent, guardian or attorney, the findings of the court can be reversed on appeal. In re R.L.M., 171 Ga. App. 940 (1984).

The Court of Appeals has held that the admission of some hearsay testimony during the adjudicatory hearing is not alone grounds for a reversal on appeal. In a situation where a judge assumes the role of the trier of fact in the absence of the jury, the judge is presumed to sift through the evidence and only

consider admissible portions of witness testimony in making a determination in the case. As long as there is some other evidence other than the hearsay statements which can independently support the judicial finding, the admission of hearsay testimony does not justify a reversal of a juvenile court ruling on appeal. Moss v. Moss, 135 Ga. App. 401 (1975). Other evidence presented at trial must support a finding of deprivation or termination by clear and convincing evidence outside of the hearsay statements. In the Interest of J.T.S., et al., 185 Ga. App. 772 (1988). Only after making a finding of deprivation may a court consider hearsay for issues relating to the disposition of the case. There must be specific findings of fact which the judge relies on in ruling a child to be deprived outside of any hearsay statements made at trial in order to avoid a reversal on appeal. These findings of fact must be clear, and not merely a recitation of the legal requirements for a finding of deprivation. In the Interest of D.S., 212 Ga. App. 203 (1994).

The Georgia Evidence Code provides a special hearsay exception to a child's description of sexual contact or sexual abuse:

> A statement made by a child under the age of 14 years describing any act of sexual contact or physical abuse performed with or on the child by another or performed with or on another in the presence of the child is admissible in evidence by the testimony of the person or persons that whom made if the child is available to testify in the proceedings and the court finds that the circumstances of the statement provide sufficient indicia of reliability. O.C.G.A. § 24-3-16.

The major question to be decided in each case in which this hearsay exception is used is whether the statements provide a "sufficient indicia of reliability" to allow them to be admissible. In making such a determination, there are several factors to be considered:

1. The atmosphere and circumstances under which the statement was made (including the time, place, and people present there;
2. The spontaneity of the child's statement to the person present;
3. The child's age;

4. The child's general demeanor;
5. The child's condition (physical or emotional);
6. The presence or absence of threats or promise of benefits;
7. The presence or absence of drugs or alcohol;
8. The child's general credibility;
9. The presence or absence of any coaching by parents or other third parties before or at the time of the child's statement, and the type of coaching and circumstances surrounding the same; and, the nature of the child's statement and typical language used therein;
10. The consistency between repeated out-of-court statements by the child. Gentry v. State, 213 Ga. App. 24 (1994).

It is not necessary to hold a separate hearing on potential hearsay statements at trial to see if they contain the required "indicia of reliability" prior to hearing them in court. The Georgia Supreme Court ultimately found no error in not doing so since by later admitting such statements into evidence the judge ultimately found the statements reliable just as he surely would have done following a separate evidentiary hearing. Robinson v. State, 257 Ga. 725 (1988). The trial judge is presumed to know the law and in any ruling using hearsay statements as a basis for a decision, the judge is presumed to have found them admissible. In the Interest of D.R.C., a child., 198 Ga. App. 348 (1991); and In the Interest of T.M.H., et al., children., 197 Ga. App. 416 (1990).

The term "available to testify" in this Code section refers to the child's competency to testify under O.C.G.A. § 24-9-5. Hunnicutt v. State, 194 Ga. App. 714 (1990). In order to testify as a competent witness, a child must normally be able to understand the "nature" of the oath to tell the truth, the whole truth, and nothing but the truth. O.C.G.A. § 24-9-5(a). However, in all cases in which a child is involved in a deprivation action, that child is deemed competent to testify in court. O.C.G.A. § 24-9-5(b). It is NOT necessary to establish competency and/or credibility of the child who is the subject of the proceedings. Any other child witnesses that are not the subject of a deprivation petition must meet normal competency requirements.

After hearing the evidence on any petition alleging deprivation, the court shall make and file its findings as to whether the child is deprived. If the court does not find that the child is deprived under the Juvenile Code by clear and convincing evidence, it shall dismiss the petition and order the child discharged from any detention or other restriction previously ordered in the proceeding. O.C.G.A. § 15-11-54(a). If the court finds by clear and convincing evidence that the child is deprived, it shall sustain the petition and proceed immediately into a disposition hearing or continue such a hearing until another date. O.C.G.A. § 15-11-54(c). The court may order the child to remain in detention or shelter care during the period before the continued dispositional hearing. Such a continuance to another date within a "reasonable period" of time may be granted in order to receive reports and other evidence bearing on the disposition of the case. O.C.G.A. § 15-11-56(b). A common third option used by many juvenile courts but not provided for in the Juvenile Code is to suspend the proceedings for a given period of time during which the child's caretaker is permitted to carry out the court's stated objectives.

The Georgia Juvenile Code authorizes the use of protective orders restraining or controlling the conduct of a person on the motion of a party or by the court's own motion if an order of disposition has been made or is about to be made. The party against whom such an order is issued must be given notice of the application, the grounds therefore, and the opportunity to be heard prior to approval of the order by the court. The order may require a person:

1. to stay away from the home or the child;
2. to permit a parent to visit the child at stated periods;
3. to abstain from offensive conduct against the child, his parent, or any person to whom custody of the child is awarded;
4. to give proper attention to the care of the home;
5. to cooperate in good faith with an agency to which custody of a child is entrusted by the court or with an agency or association to which the child is referred by the court;
6. to refrain from acts of commission or omission that tend to make the home not a proper place for the child;

7. to ensure that the child attends school pursuant to any valid law relating to compulsory attendance;
8. to participate with the child in any counseling or treatment deemed necessary after consideration of employment and other family needs; and
9. to enter into and complete successfully a substance abuse program approved by the court.

O.C.G.A. § 15-11-11(a)(1-9).

These orders may be enforced by a contempt order of the court and when necessary a warrant to take the alleged violator into custody and bring him before the court. O.C.G.A. § 15-11-11(c).

The law guardian may want to be aware of some practice tips to aid in the most effective representation of the child's interests at this stage of the process. As a fully participating litigant, the law guardian has the same rights and powers at trial as do the attorney for DFCS and counsel for the parents/guardians (if any). While the order of cross-examinations and the presentation of evidence may vary depending on the jurisdiction, the law guardian will have the opportunity to cross- examine each and every witness called by other parties, and will additionally have the opportunity to present independent evidence and witnesses, including the CASA. The law guardian will be held to the same standards of courtroom procedure, etiquette and substantive knowledge of the law as all other party attorneys. The law guardian may have statements, information from interviews with the children and photographs or other physical evidence which will need to be presented. The child's statements to the law guardian/CASA may be admissible under the hearsay rule regarding such. Regarding the possible confidentiality of such statements made by the child, many jurisdictions consider statements made by a child to their guardian ad litem (or law guardian) to be outside the scope of attorney-client privilege, that is, in acting as attorney for the child's interest and not as the child's attorney, the usual rules of privilege may not apply, allowing the law guardian to disclose information revealed in the course of the investigation, as long as the child's best interests

are served by doing so. The law guardian/CASA should always disclose to the child this possibility during the initial interview.

One of the most critical roles of the law guardian is ensuring that any preliminary agreements, stipulated or amended petitions and litigated findings of fact not only comport with the initial allegations of deprivation, but more importantly, can be accurately and comprehensively addressed in a subsequent case plan for reunification or other permanent plan for the child. The reunification or other permanent plan may only contain goals and steps that are strictly tied to the specific findings of fact found at the adjudicatory hearing (this will be discussed in greater detail in the disposition hearing section). The law guardian should make certain that ambiguities in findings are kept to a minimum. For example, in a case of sexual abuse, a finding that "the child stated s/he was molested" does not indicate that the child was, in fact, molested, and without some assignation of culpability, it may be that reunification and therapeutic efforts will be hindered or unsuccessful. Moreover, a parent may be less likely to protect the child from any future abuse if there is no finding that a named individual actually caused harm to the child. Finally, such language may prove useless to the District Attorney's office in concurrent or subsequent criminal prosecutions against the perpetrators of the sexual abuse. Another area to watch for is in petitions where physical abuse is alleged; findings of fact that hold the child was either intentionally injured by a party or that the injury was the result of negligence may also prove problematic. Remember, the ultimate goal of the adjudicatory hearing is to produce findings of fact that can be adequately addressed in a permanent plan for the child.

D. Reasonable Efforts Requirements

One of the most difficult and confusing issues for all participants in deprivation hearings are the requirements of the federal Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272). All states receive foster care maintenance payments for each child in foster care under the Title IV-E of the Social Security Act. In order to maintain these payments, P.L. 96-272 now requires that in each case of a deprived child in state custody, "reasonable efforts" have to be made to work with the family to prevent the necessity of removing the child from the home. In addition, if removal was necessary to protect the health and safety of the child, reasonable efforts must be made to allow for the reunification of the child with his family.

Since the passage of Public Law 96-272, the focus of the child welfare system has shifted toward providing for and protecting the individual needs of the children over the needs of the family unit. This shift culminated in the passage of the federal Adoption and Safe Families Act of 1997 (Public Law 105-89), in November 1997. In Georgia, Senate Bill 611 and House Bill 1572 were passed to bring the Georgia Juvenile Code into compliance with this Act. This law modifies existing federal legislation regarding foster care so that reasonable efforts to reunify families are not always required and the provision of reunification services is limited. Specifically, Senate Bill 611, codified in O.C.G.A. § 15-11-58, allows an initial finding as early as the dispositional phase, that reasonable efforts to reunify <u>not</u> be required, and a "nonreunification" plan be submitted in lieu of a reunification plan. O.C.G.A. § 15-11-58(f). Additionally, if a child has been in foster care 15 out of the most recent 22 months, states are directed to file petitions to terminate parental rights unless the state has placed the child with a relative; the state has documented a compelling reason for determining that terminating parental rights would not be in the best interests of the child; or the state has not provided appropriate reunification services, if such services were warranted. Finally, the law requires a permanency hearing to be held within 12 months after a child has entered foster care and extensions of custody to the DFCS were shortened in maximum duration from 18 months to 12 months. These legislative changes are attempts to more adequately define what is meant

by "reasonable efforts" and to pragmatically and more expeditiously move children out of the foster care system and into more stable, permanent homes.

The burden on the social service agency to provide preventative and reunification services applies, in most instances, to every step of the deprivation process. In such cases, a judicial determination of whether reasonable efforts were made by the department to prevent the removal of the child from the home will be made at the 72-hour informal detention hearing as well as the adjudicatory hearing on the formal deprivation petition. The juvenile court judge must find that DFCS attempted to work with the family to alleviate whatever problems existed in the home prior to asking the court to remove the child from the home and filing a deprivation petition. If the child has been removed from the home, DFCS must work with the child's parents, custodian, or guardian to enable the return of the child to the home. The juvenile court judge will again review the actions of DFCS to determine if reasonable efforts were made to provide "reunification services" to the child's parents during the judicial review of the disposition of the deprivation case, which should occur at least once every six months. O.C.G.A. § 15-11-58(a). Specifically, reasonable efforts must be made to preserve or eliminate the need for removal and, where removal was deemed necessary, to make it possible for a child to return safely to his/her home. O.C.G.A. § 15-11-58(a)(2)(A-B).

There are emergency situations in which the child's health and safety are in imminent danger thus requiring the immediate removal of the child from the home. In such instances it would not be reasonable to make an effort to prevent removal. This is recognized in the Georgia's DFCS Child Protective Services Manual. Federal guidelines also recognize the need for immediate removal and as long as DFCS adequately documents the emergency nature of the situation for the juvenile court judge, the state is still eligible to receive federal funding of a share of the foster care costs for this child. The Adoption and Safe Families Act and its implementing legislation make clear that the safety and health of the child are to be the paramount concerns throughout the case. O.C.G.A. § 15-11-

58(a)(1). Thus, under certain egregious circumstances, reasonable efforts will not be considered. As identified in O.C.G.A. § 15-11-58(a)(4), reasonable efforts are not required with respect to a parent of a child who has subjected the child to aggravated circumstances including abandonment, torture, chronic abuse or sexual abuse, who has committed the murder or voluntary manslaughter of another child of the parent or aided or abetted, attempted, conspired or solicited to do the same, or who has committed a felony assault that results in serious bodily injury to the child or another child. Reasonable efforts are similarly not required where the parental rights of another sibling of the child have been terminated involuntarily. O.C.G.A. § 15-11-58(a)(4). In these situations, DFCS is not required to submit a reunification plan to the court as part of its 30-day case plan. O.C.G.A. § 15-11-58(b). These situations will be discussed at length in the following chapter on Disposition of a Deprived Child.

Where reunification is the permanency goal, federal regulations require that the case plan for each child must include a description of services offered and provided to prevent the removal of the child from the home and to reunify the family after removal. 45 C.F.R. Ch. XIII, § 1356.21(d)(4), (10-1-96 Edition). Alternatively, when appropriate, the case plan may state clearly all of the reasons supporting a finding that reasonable efforts to reunify are detrimental to the child and therefore, that reunification services need not be provided. O.C.G.A. § 15-11-58(f)(1)-(2). Periodic reviews by a judge or a Citizen Review Panel should occur at least once every six months. O.C.G.A. § 15-11-58(k). Except where justified by the circumstances mentioned, if at any point the judge finds that reasonable efforts have not been made, under Public Law 96-272, the State of Georgia will lose the federal foster care maintenance payments provided for that child under Title IV-E of the Social Security Act. 42 U.S.C. § 671(a)(15) and § 672(a)(1).

Often court participants find it very confusing to work with P.L. 96-272 because of a lack of any clear standard as to the meaning of "reasonable efforts." Neither the Adoption Assistance and Child Welfare Act of 1980 nor the

Adoption and Safe Families Act of 1997 provided any definition of this term, simply requiring that reasonable efforts have to be made by the department. Federal regulations established pursuant to the Adoption Assistance and Child Welfare Act require each state to submit a Title IV-B plan which specifies which preplacement preventative and reunification services are available to children and families in need. 45 C.F.R. Ch. XIII, §1357.15(e)(1)(10-1-95 Edition). The regulations provide a list of services which may be provided as part of this plan but these are merely suggestions not requirements. The following is a list of those services:

1. 24-hour emergency caretakers;
2. homemaker services;
3. day care;
4. crisis counseling;
5. individual and family counseling;
6. emergency shelters;
7. procedures and arrangements for access to available emergency financial assistance;
8. temporary child care to provide respite to the family for a brief period;
9. home-based family services;
10. self-help groups;
11. services to unmarried parents;
12. provision of or arrangements for mental health, drug and alcohol abuse counseling;
13. vocational counseling or rehabilitation;
14. other services the agency identifies as necessary or appropriate.

    45 C.F.R. Ch. XIII, §1357.15(e)(2) (10-1-95 Edition).

Another source of insight into the meaning of the term "reasonable efforts" can be found in a widely read book, Making Reasonable Efforts: Steps for Keeping Families Together. This book was published with the cooperation of several groups including the National Council of Juvenile and Family Court Judges. Included in this publication is a list of recommended services written in

broad terminology to be made available under the state's reasonable efforts requirements. That list follows.

1. family preservation services;
2. generic family based/family centered services;
3. cash payments;
    a. to meet emergency needs;
    b. to provide ongoing financial support;
4. noncash services to meet basic needs;
    a. food and clothing;
    b. housing (emergency shelter and permanent housing);
5. noncash services to address specific problems;
    a. in home respite care;
    b. out of home respite care;
    c. child day care;
    d. treatment for substance abuse/chemical addiction;
    e. treatment for sexual abusers and victims;
    f. mental health counseling/psychotherapy;
    g. parental training;
    h. life skills training;
    i. household management;
6. facilitative services
    a. visitation (to prepare both parent and child for their eventual reunification);
    b. transportation (when services are geographically inaccessible). (p. 81-90).

Many of these suggested services are similar to those contained in the federal regulations. However, as of now, there are no formal requirements at the federal or state level as to what must be contained in Georgia's Title IV-E plan. One should consult the DFCS manual periodically to see what preplacement preventative and reunification services are available in his/her county. Since there is no formal definition of reasonable efforts, juvenile court judges in a given county or circuit may interpret this requirement more stringently than do the

department or law guardian/CASA, and reject recommendations if he/she feels that more intensive efforts are needed to prevent the removal of the child or to provide for the reunification of the family.

The above lists of services can be useful to the law guardian/CASA as a guideline in researching exactly what resources are available in one's own jurisdiction, and can serve as a checklist as to what services have been provided, and what may be needed to remove the risk to the child and to facilitate reunification, if possible.

At court hearings, the CASA, through the law guardian, should provide a report that addresses the reasonable efforts made for preventing removal. The report should include what problems necessitated initial removal of the child, what services are targeting this and each problem, whether those services are adequate, and whether the parents can reasonably take advantage of the services offered by the Department of Family and Children Services. Georgia CASA Publications: "The Role of a CASA Volunteer in Court Proceedings" (1997).

VIII. Disposition of a Deprived Child

The main focus of the dispositional hearing is what should be done to improve the situation of the child now that he/she is found to be deprived in the adjudicatory hearing. The dual hearing procedure is sometimes called a bifurcated system, that is, a system with one hearing on the merits of the deprivation petition, and a separate hearing to determine the permanency plan for the child.

If a child is found to be deprived, the court may go immediately into the dispositional phase of the proceedings, or the dispositional hearing may be postponed, upon motion by any party to the adjudicatory hearing, for a reasonable time. O.C.G.A. § 15-11-55. Some reasons to continue the dispositional hearing may include the research and development of special resources for a particular case; rapid progress and compliance on the part of the parent or guardian that may obviate the necessity for a full 12-month custody award to DFCS; sufficient time for Interstate Compact for the Placement of Children evaluations to be completed; sufficient time for psychological evaluations, home/placement evaluations, or drug/alcohol tests to be completed; and other considerations as deemed appropriate.

Once a child has been adjudicated as deprived, the court has determined that it has the power to suspend the privacy interests of the parents and the child, and intervene in the family life for the protection of the child and possible rehabilitation of the family unit. Duquette, at 79. Thus, at disposition, the court officially considers what it shall do to protect and help the child and his or her family.

The law guardian/CASA should be mindful of the generally accepted philosophy that according to experts in the fields of child psychology and child development, children need to be raised in a permanent family setting in order to be emotionally healthy. It is also uniformly accepted that temporary foster care placements do not provide children with the permanence they require. Hardin and Shalleck, "Children Living Apart From Their Parents,"Legal Rights of Children, Horowitz and Davidson (eds.) (1984) at 371-373. The goal of permanency for children leads to the conclusion that there are two possible desirable case outcomes for children in deprivation cases. First, in cases where the parents can be provided services that "will reduce the risk children face in the family home to an acceptable level, children should not be removed from the family home. If removed initially, children should be returned home as soon as the risk has been reduced to an acceptable level." The other path which might be

followed exists in cases where the parents refuse services, or will not, within a reasonable time "benefit from the services necessary to reduce the risk to children to an acceptable level," and therefore, the children should be removed from the family home and another permanent placement should be promptly sought. Lawyers For Children, ABA Center for Children and the Law, (1990), at 313.

The focus at this stage for the law guardian becomes the formulation of a permanent plan for the child, and while the presumption in many cases is that reunification should be the goal, the court, with the information provided by the law guardian/CASA, can begin to consider other alternatives as well for permanency: plans that may include guardianship or custodial awards to other individuals, staffings for the termination of parental rights, or long term foster care agreements. More often than not, at this stage the law guardian/CASA will assist in the development and scrutiny of a reunification case plan, which will be court ordered, and which must be complied with by the parent or guardian if custody of the children is to be eventually returned to them. Be aware, however, that courts are increasingly looking at dispositional alternatives to expand permanency planning resources.

A. Evidence

The types of information that can be presented to the judge are expanded in the dispositional hearings, and most of the constraints on evidence from the adjudicatory hearing are not present. In these hearings the court is authorized to receive "all information helpful in determining the questions presented" even if this information would not have been admissible during the adjudicatory hearing because of evidentiary problems such as hearsay. O.C.G.A. § 15-11-56(a). The opposing counsel is still entitled to examine these reports prior to the dispositional hearing and to cross examine any witnesses put forth by the

opposing counsel. O.C.G.A. § 15-11-56(a). However, confidential sources of information need not be disclosed. O.C.G.A. § 15-11-56(a).

The judge may direct that a social study and report be made to the court concerning "the child, his family, his environment, and other matters." However, the court may not take this information into consideration until after the adjudicatory hearing finding that the child is deprived. These reports are only admissible for purposes of decisions which must be made in the dispositional hearing. O.C.G.A. § 15-11-12(a). The Georgia Supreme Court has held that the admission of such a report prior to the conclusion of an adjudicatory hearing was more than a technical violation of the law but did not constitute grounds for reversible error. The caseworker who wrote the report was a witness and available for cross-examination and the appeals court assumed that the trial court did not consider only hearsay statements contained in the report. In the Interest of J.C., et al, 242 Ga. 737 (1978). Judges in some jurisdictions may require that the 30-day case plan be completed and submitted to the court prior to the dispositional hearing.

B. Dispositional Alternatives

If a child is found to be deprived, the court may make any of several possible dispositions best suited to the protection and physical, mental, and moral welfare of the child:

1. Permit the child to remain with his or her parents, guardian, or other custodian, including a putative father, subject to any conditions and limitations as the court prescribes, including supervision as directed by the court for the protection of the child;
2. Subject to conditions and limitations as the court prescribes, transfer temporary legal custody to any of the persons or entities described in this paragraph. The court may approve or direct the retransfer of the physical custody of the child back to the parents, guardian or other custodian either upon the occurrence of specified circumstances or in the discretion of the court. Any such return can be made subject to further conditions prescribed by the court including continued supervision of the case by the Court and DFCS for the protection of the child. The persons or entities to

whom or which temporary legal custody may be transferred include the following:

a. any individual including a putative father who, after study by the probation officer or other person or agency designated by the court, is found by the court to be qualified to receive and care for the child;

b. an agency or other private organization licensed or otherwise authorized by law to receive and provide care for the child;

c. any Public agency authorized by law to receive and provide care for the child; or

d. an individual in another state with or without supervision by an appropriate officer under O.C.G.A. § 15-11-89(a).

O.C.G.A. § 15-11-55(a)(1)-(2).

The court is also authorized in all dispositional hearings to order the child and/or the child's parents or guardian to participate in counseling. O.C.G.A. § 15-11-57.

The Georgia Juvenile Code provides the court with the power to punish a person for contempt of court for disobeying an order of the court, obstructing or interfering with the proceedings of the court, or the enforcement of its orders. O.C.G.A. § 15-11-5.

The court may also order the parent(s) or guardian of the child to compensate the county or the Department of Human Resources for the following expenses:

1. the cost of medical and other examinations and treatment of a child ordered by the court;
2. the cost of care and support of a child committed by the court to the legal custody of and individual or a public or private agency;
3. reasonable compensation for services and related expenses of counsel appointed by the court, where appointed by the court to represent the child and when appointed by the court to conduct the proceedings;
4. reasonable compensation for a guardian ad litem;
5. the expenses of service of summons, notices, and subpoenas, travel expenses of witnesses, transportation, subsistence, and detention of the child, and other like expenses incurred in the proceedings under this article; and

6. the cost of counseling and advice required or provided under O.C.G.A. § 15-11-57, O.C.G.A. § 15-11-8(b). The court is authorized to require payment from a parent or guardian for these items after providing such a person with an opportunity to be heard and finding that he/she is financially able to make such payments. O.C.G.A. § 15-11-8.

Special rules exist for the disposition of a mentally ill or mentally retarded child. O.C.G.A. § 15-11-149. If at any time the evidence indicates to the court that a child may be suffering from one of these conditions, the court may commit the child to an appropriate institution, agency, or individual for study and report on the child's mental condition. O.C.G.A. § 15-11-149(a). If it appears from the study and report that the child is committable under the laws of this state, the court shall order that the child shall be detained and shall proceed to commit the child within ten days to the Division of Mental Health, Developmental Disabilities, and Addictive Diseases of the Department of Human Resources. O.C.G.A. § 15-11-149(c). Otherwise, the child's case disposition should be made as otherwise provided by this section. O.C.G.A. § 15-11-149(d).

A court's order removing a child from the child's home shall be based upon a finding by the court that leaving such a child in the home "would be contrary to the welfare of the child"; O.C.G.A. § 15-11-58(a). At this point the court will also make a determination as to whether reasonable efforts were made to prevent or eliminate the need for the removal and to make it possible for the child to return to the home of his parent(s) or guardian. O.C.G.A. § 15-11-58(a).

The statute allows for the transfer of temporary legal custody to the Division of Family and Children Services or to other qualified individuals or organizations. O.C.G.A. § 15-11-55(a)(2). The custodian to whom legal custody of the child is given by the court has several rights under the law:

1. The right to physical custody of the child;
2. The right to determine the nature of the care and treatment of the child, including ordinary medical care;

3. The right and duty to provide for the care, protection, training, and education as well as the physical, mental, and moral welfare of the child. O.C.G.A. § 15-11-13.

These rights are subject to the conditions and limitations imposed on the custodian by the dispositional order as well as the remaining rights and duties of the child's parents or guardian. O.C.G.A. § 15-11-13. "Legal Custody" is defined elsewhere under Georgia law as a legal status which embodies the following rights and responsibilities:

1. The right to have the physical possession of the child or youth;
2. The right and duty to protect, train, and discipline him;
3. The responsibility to provide him with food, clothing, shelter, education, and ordinary medical care; and
4. The right to determine where and with whom he shall live.

   O.C.G.A. § 49-5-3(12).

The Code notes that these aspects of legal custody are subject to any residual parental rights and responsibilities. O.C.G.A. § 49-5-3(13). These residual rights include the right to visitation of the child by his parents. A juvenile court judge can order an end to visitation; however, the parent(s) are entitled to a hearing on a termination of visitation rights if the issue was not formally addressed by the court in the adjudicatory or dispositional hearings. In the Interest of K.B., 188 Ga. App. 199 (1988).

Another residual right remaining with a parent whose child has been temporarily transferred to the custody of DFCS is the authority to consent to the child's adoption. The Georgia Supreme Court has held that a mother retains the authority to place her child up for adoption with the child's grandparents prior to a hearing on the termination of her parental rights. At that point her parental rights remained in force and the termination proceedings were no longer necessary since the mother had voluntarily terminated her rights by placing the child for adoption. The court retained the authority to deny the adoption petition by the

child's grandparents if such a decision would be in the best interests of the child. Skipper v. Smith, 239 Ga. 854 (1977).

In awarding temporary legal custody, the juvenile court has several options. The court is not required to place the child with a non-custodial parent simply because the custodial parents' parental rights have been temporarily suspended. The judge may in his/her discretion choose to place the child with DFCS instead of the non-custodial parent based on a review of the suitability of the other parent as a temporary guardian of the child. In the Interest of A.S., 185 Ga. App. 11 (1987).

The juvenile court judge has the power to place conditions and limitations prior to the transfer of temporary legal custody of a child to another individual or agency. O.C.G.A. § 15-11-55(a)(2). This authority includes the ability to condition the return of the child to his parent(s) or guardian on the achievement of certain goals by the parent or guardian. The judge can also order continued supervision by DFCS after the child has been returned to the home. O.C.G.A. § 15-11-55(a)(2). If DFCS is attempting to obtain temporary legal custody of a child, it is important to determine what conditions the caseworker would like to see imposed upon the parent in order to regain custody of the child. There are many possibilities and the needs of each child may differ. However, almost every case will require the parent to cooperate with the case plan as adopted by the court, to keep his/her address known to DFCS, and to visit the child, and pay child support to the department. Kipling Louise McVay, Deprivation and Termination, Children in Court: A Systems Approach, p. 22 (1989).

The rights of foster parents who have temporary custody of a child via placement from DFCS is an area that has not been explored extensively. A panel of the Fifth Circuit Court of Appeals has held that while a state court may establish a rule that foster parents have no protectable property rights in regards to the children in their care under the due process clause, whether or not they have a protectable liberty interest is a federal constitutional question. Drummond v. Fulton Co. DFCS, 547 F.2d 835 (5th Cir, 1977). The court held that the foster

parents in this case were entitled to a due process hearing prior to having a child who had been in their care since infancy removed to another foster home and their request for the adoption of the child denied. Id. at 855. The court also found that the child himself had a protectable liberty interest in a "right to a stable environment" which authorized the child to intervene in the suit through his guardian ad litem. Id. at 856, 857. The Fifth Circuit later reheard this case *en banc* later that year and reached the opposite conclusion. Drummond v. Fulton Co. Dept. of Family and Children Services, 547 F.2d 835 (5th Cir. 1977) The court here found no protectable liberty interest not to be moved from home to home without a prior hearing and rejected a "right to a stable environment." Id. at 1208. The court found that under Georgia Law, foster care is temporary arrangement which gives rise to no protectable rights on behalf of the child's temporary guardians. This is a state-created interest and not a liberty interest under the 14th amendment. Id. at 1207.

A dispositional order transferring the temporary legal custody of a child is not equivalent to a termination of parental rights. The transfer of legal custody to DFCS or any other organization or individual only suspends the rights of the child's parents. These rights are not severed on a permanent basis. Rodgers et al. v. Dept. of Human Resources, 157 Ga. App. 235 (1981). The Court of Appeals has held that the statute does not authorize the separation of legal and physical custody of a deprived child between two separate organizations or individuals.

In re R.R.M.R., 169 Ga. App. 373 (1983). A juvenile court has no authority to transfer temporary legal custody to DFCS and then order the child be placed in foster care. If DFCS is given legal custody, the department has the authority to decide where and with whom the child will live. In re R.L.M., 171 Ga. App. 940 (1984). In addition, the juvenile court cannot award joint custody between DFCS and an unrelated third party if DFCS objects to this arrangement. In a typical deprivation case, the child is adjudicated as deprived and then temporary legal custody is transferred to DFCS during the dispositional hearing. From that point

on, DFCS has the authority as the party with "legal custody" of the child under O.C.G.A. § 49-5-3(12) to determine where and with whom the child shall live. The court may not award temporary legal custody to DFCS and then give physical custody of the child to an individual of its own choosing. The court re-emphasized that physical aud legal custody cannot be separated. In the Interest of J.N.T., a child, 212 Ga. App.498 (1994).

Dispositional orders involving the placing of a child in shelter or foster care remain in effect for 12 months after the order was issued unless it is terminated by the court before that time. O.C.G.A. § 15-11-58(k). Similarly, all other dispositional orders continue in effect for not more than one year. Uniform Rules for the Juvenile Courts of Georgia, 15.2. The court may terminate an order of disposition prior to its expiration if it appears that the purposes of the order have been completed. O.C.G.A § 15-11-58.1(b). A dispositional order is also terminated automatically once the child reaches the age of eighteen (18). O.C.G.A. § 15-11-58.1(c).

The law guardian/CASA needs to ensure that the case plan is specific and that it addresses the needs of the family and the child. In order for a rehabilitative step or goal to be court ordered, it must be substantively tied to a specific finding of fact. For example, the court cannot order a parent to attend a drug rehabilitation program unless it was specifically found by the court that substance abuse was a factor contributing to the deprivation of the child. Case plans, which will be discussed in greater detail in the following section, serve to integrate the legal and social aspects of the case, and provide the basis upon which the case is reviewed at all subsequent hearings. Duquette, at 80. As at all other stages of the proceedings, the law guardian/CASA may assume the role of "mediator" at disposition, as a cooperative settlement remains a priority. Often the law guardian plays a role in achieving cooperative and non-adversarial agreement on the case plan and dispositional order. Id.

In representing the child's interests in the dispositional hearing, the law guardian should have sufficient information from the DFCS worker, CASA and

others involved in the case to make a recommendation to the court. It is entirely appropriate to request a continuance if relevant and pertinent information has not yet been revealed. The law guardian is not a "rubber stamp" of the efforts and actions of the DFCS. Of course, it is ethical and generally advantageous to maintain an professional and amicable relationship with all caseworkers. However, the law guardian/CASA may sometimes disagree with the DFCS worker on appropriate placements, necessary or appropriate reunification goals or other facets of the case. In these circumstances, the law guardian/CASA would be remiss in not making his/her concerns known to the court. There will be numerous instances when law guardian/CASA recommendations mirror those of the caseworker, or only slightly differ, yet the fundamental role of the law guardian/CASA is to ensure the child is receives the best possible plan for permanency, and this may involve, at times, contradicting the recommendations of other parties. With their overwhelming caseloads, DFCS workers may not always have completed permanent plans for children as expeditiously as the law guardian/CASA or the court would like, and may fail to address permanency issues. "Most social workers assume that eventual, not immediate, reunification of the family and the long term provision of services is the correct plan in every case, and that consideration of other permanent plans is premature." Lawyers For Children, ABA Center for Children and the Law, (1990) at 317. This certainly is not always the case, a primary responsibility of the law guardian/CASA is to ensure that permanent plans for the child are developed from the very earliest point possible.

C. Interstate Compact on the Placement of Children

In advocating toward a permanent plan for the child, the law guardian/CASA's investigation may reveal that the best placement for a child is with an individual who resides outside of Georgia. While a child in the temporary custody of DFCS cannot automatically be sent to live with that individual, regardless of how appropriate the placement seems, there is a mechanism for

evaluating and approving the out of state placement. There are, however, several strict rules of regarding these placements.

The juvenile court system only has authority to place a child in institutional or foster care within the confines of the State of Georgia. A juvenile court cannot make an order of disposition placing a child outside of the State of Georgia without the cooperation and approval of the state where the child will reside. In order to address the inherent difficulties of placing a child in a facility or foster care situation across state lines, the Interstate Compact on the Placement of Children (ICPC) was formed in the 1950s. This compact has been ratified and is in force in all fifty states. The term "placements" for purposes of the compact include a foster family, boarding home, child-caring agency or institution located in another state. This definition does not include any institution for the mentally ill, any hospital or other medical facility or any institution that is primarily educational in character. ICPC Article II(d). In addition, Article VIII of the ICPC lists two situations in which the terms of the ICPC shall not apply to:

1. the sending or bringing of a child into a receiving state by his parent, step-parent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or non-agency guardian in the receiving state.
2. any placement, sending or bringing of a child into a receiving state pursuant to any other interstate compact to which both parties are a party to.

This second restriction applies to minors who are covered by other compacts such as the Interstate Compact on Juveniles and the Interstate Compact on Mental Health which cover the interstate transfer and supervision of juvenile delinquents and the mentally ill.

Article III(b) of the ICPC requires that prior to "sending, bringing, or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to possible adoption," the sending state shall furnish the appropriate public authorities in the receiving state written notice of the intention

to send, bring, or place the child in the receiving state. The notice must at least contain at least the following:

1. The name, date, and place of birth of the child.
2. The identity and address or addresses of the parents or legal guardian.
3. The name and address of the person, agency or institution to or with which the sending agency proposes to send, bring, or place the child.
4. A full statement of the reasons for such a proposed action and evidence of the authority to which the placement is proposed to be made. ICPC, Article III(b)(1-4). In practicality this means that the caseworker or the judge who has made a proposed order for disposition in another state, will need to complete ICPC Form 100A and send it, along with the social history of the child, to the Compact Administrator for the State of Georgia as defined in Article VII of the ICPC. You should consult the Department of Family and Children Services to get the name and address for this person.

The administrator is responsible for reviewing the information and forwarding it to the Compact Administrator in the receiving state. The appropriate child welfare agency in the receiving state will conduct a study of the proposed placement site and record their findings in a report to the receiving state's Compact Administrator. The child welfare agency of the receiving state may request the sending agency to provide any supporting or additional information that is necessary under the circumstances in order to evaluate the proposed placement. ICPC, Article III(c). The child will not be "sent, brought, or cause to be sent or brought into the receiving state" until the Compact Administrator in the receiving state has notified the sending state in writing that the proposed placement does not appear to be contrary to the interests of the child. ICPC, Article III(d).

The National Association for the Administrators of the Interstate Compact recommends that it should take no longer than 30 working days (6 weeks) to process such a request in the receiving state from the time that the Compact Administrator receives the request until the date that the proposed placement is approved or denied. Guide to the Administration of the Interstate Compact on thePlacement of Children, p. 7. These procedures allow the fulfillment of two

important purposes of the Interstate Compact on the Placement of Children. First, the state from which the child is sent is provided with the most complete information on which to evaluate a proposed placement before it is made. Second opportunity to ascertain the circumstances of the proposed placement in order to assure adequate protection for the child. ICPC Article I, (c and d).

The length of time required to approve an interstate transfer under the Compact has sparked a great deal of debate about reforming this procedure in recent years. Article VII of the ICPC allows the Compact Administrators in each state, acting jointly to establish rules and regulations to allow for the purposes of the act to be carried out more effectively. In 1996, The Association of Administrators for the ICPC, in coordination with the National Council of Juvenile and Family Court Judges and other groups, established Regulation 7 which provides for the "Priority Placement" of children across state lines in certain circumstances. Priority Placement procedures are now applicable if the proposed placement is with a parent, step-parent, grandparent, adult brother or sister, adult uncle or aunt and:

1. the child is under two; or
2. the child is in an emergency shelter; or
3. the court finds the child has spent a substantial amount of time in the home of the proposed placement.

ICPC Regulation 7.1(a).

The Priority Placement procedures can also be invoked if the receiving state Compact Administrator has a properly completed ICPC-100A and the necessary supporting documentation for over thirty (30) business days but has not provided notice as to whether the placement will be approved or denied. ICPC, Regulation 7.1(b).

Regulation 7 establishes a strict time table for the completion of each step in the process of placing a child in a facility or foster care family across state lines. If a juvenile court judge determines that the circumstances warrant a priority placement, he/she should within two (2) business days notify the sending agency (the local county DFCS office). The county department has three (3)

business days to transmit the order along with a completed ICPC-100A and the, supporting documentation to the Georgia Compact Administrator. Within two (2) business days the Compact Administrator should send the priority placement request and supporting documentation to the receiving state's Compact Administrator by overnight mail. The receiving state's child welfare department has twenty (20) business days from this date to send to Compact Administrator for that state the evaluation of the proposed placement. The Compact Administrator in the receiving state will return the necessary documentation with a notice of approval or denial to the sending state's Compact Administrator by fax. The Georgia Compact Administrator will then notify DFCS and the juvenile court judge of the decision of the receiving state. Regulation 7, ICPC. The priority placement request and home study requires additional forms which are attached at the end of this chapter.

Under Article V of the ICPC, the sending state will retain jurisdiction over the child once an out of state placement has been made. This means that the juvenile court acting through DFCS will make all decisions in regards to custody, supervision, care, treatment and disposition of the child. The sending state will also continue to have financial responsibility to the child and DFCS will have to make foster care payments just as it would in an in state placement until the child is adopted, emancipated, or reaches the age of majority. ICPC, Article V(a).

O.C.G.A. § 15-11-89 and O.C.G.A. § 15-11-90 are the basic statutory enactments of the Interstate Compact for the Placement of Children which Georgia has adopted. In addition to these procedures, if the court determines that a child who has been adjudicated deprived is or is about to become a resident of another state, the court may defer the dispositional hearing and request by any appropriate means that the juvenile court of the child's new or prospective residence to accept jurisdiction over the child. O.C.G.A. § 15-11-87(a). If the child becomes a resident of another state while under the protective supervision of the court, the court may request that the juvenile court of the child's new residence accept jurisdiction and continue his protective supervision.

O.C.G.A. § 15-11-87(b). If the receiving court approves the request, the sending juvenile court will transfer custody of the juvenile as well as a certified copy of the order adjudging the child to be deprived as well as the order of disposition if one has already been filed. The juvenile court of the sending state will also provide a statement of the facts of the case as well as any recommendations and other information it considers of assistance to the accepting court in making a disposition. O.C.G.A. § 15-11-87(c). If a Georgia juvenile court receives a similar request from an out of state court to accept jurisdiction over a deprived child and the court finds that the child is in fact deprived and is or is about to become a resident of the county in which the court presides, the court shall notify, the requesting court of its acceptance of the child not later than 14 days after the request is received. O.C.G.A. § 15-11-88(a). The court is authorized to make its own order of disposition or to enforce the order entered by the out of state juvenile court. O.C.G.A. § 15-11-88(c).

The law guardian/CASA must ensure that the DFCS worker provides him/her with copies of all ICPC transmittals and forms. In representing the child's interests, the law guardian/CASA has the right and responsibility to review the documentation, and to analyze the reports, letters and evaluations from the proposed receiving state's agency, as these will form the basis of his/her ultimate placement recommendation. Often times, the law guardian/CASA may be the party bringing the out of state resource to the attention of the caseworker, having learned of the potential placement through interviews and investigation.

While not under the purview of the Interstate Compact for the Placement of Children, the CASA organization can and often does play a major role in facilitating stable placements for children outside of Georgia. There are occasions where children have been placed with relatives in other states pursuant to the ICPC, yet the juvenile court in Georgia where the child was adjudicated has retained jurisdiction. Obviously, with subsequent panel reviews and hearings such as custody extensions, the law guardian will need to assess the living situation of the child and evaluated the continued appropriateness of

the placement, the child's educational, emotional and medical status, etc. Because CASA is a national organization with branches throughout the United States, you may be able to call upon the CASA program director in the area where the child in question has been placed, to conduct a courtesy evaluation and interview, and/or serve as a liaison between the law guardian/CASA and the child protective services worker in the state serving the child.

For an excellent discussion of problems involving the ICPC, and recommendations for improvement, see Joint Committee on ICPC Improvement (May 8, 1996) (A copy can be obtained by writing to: American Public Welfare Association, 810 First Street, NE, Suite 500, Washington, DC 20002-4267), contained in Child Advocacy at the Crossroads: The Development and Direction of Children's Law in America, National Association of Counsel for Children, Children's Law Manual Series (1996 Edition).

IX. Permanency Planning

A. 30-Day Case Plans

Within thirty (30) days of the child's removal from the home and at each subsequent review of the dispositional order, DFCS must submit a written report which shall either include a case plan for the reunification of the family or the basis for its determination that a plan for reunification is not appropriate. The contents of the report shall be based upon a meeting held between DFCS, in consultation with the citizen review panel (if such a panel operates within your county), and the parents and children if available. O.C.G.A. § 15-11-58(b). The parents shall be given written notice of the meeting at least five days in advance

and shall be advised that the report to be discussed at this meeting will be submitted to the judge to become an order of the court. O.C.G.A. § 15-11-58(b). The final report will become part of the formal case record and will be made available to the parents or guardian of the child upon request. The report must contain any dissenting recommendations of the citizen review panel and any recommendations made by the parents. O.C.G.A. § 15-11-58(b). The adjudicatory and dispositional hearings will often have already been held before the end of the thirty day time period. Be aware that courts in some jurisdictions require the 30-day case plan to be completed before the dispositional hearing is held.

In many cases, the citizen review panel will NOT have met prior to the dispositional hearing on a case, and the DFCS caseworker will have authored the case plan, sometimes in conjunction with his or her supervisor and the parents. The law guardian/CASA must carefully scrutinize the plan, as the goals contained therein serve as a baseline from which to measure progress on the part of the depriving party, and to see if the conditions of deprivation are continuing. Depending upon the allegations, typical goals might include the completion of parenting skills classes; attendance at counseling sessions; the production of negative drug and/or alcohol screens; completion of substance abuse rehabilitation programs; verification to DFCS of adequate child care plans; regular visitation with the children in care; periodic contact with DFCS; attendance at all panel reviews and any other goals that are <u>specifically tied to findings of fact.</u>

If a 30-day case plan is submitted to the court which contains a plan for reunification services, it must also address each of the following items:

1. Each reason requiring the removal of the child;
2. the purpose for which the child was placed in foster care, including a statement of the reason why the child cannot be adequately protected at home and the harm which may occur if the child remains in the home;
3. the services offered and provided to prevent the removal of the child from the home;

4. a discussion of how the plan is designed to achieve a placement in the least restrictive, most family-like setting available and in close proximity to the home of the parents, consistent with the best interests and special needs of the child;
5. a clear description of the specific actions taken by the parents and specific services provided by DFCS or other appropriate agencies in order to bring about the identified changes that must be made in order to return the child to the home. (all services and actions required of the parents not directly related to the circumstances necessitating separation cannot be made conditions for the return of the child without further court review).
6. specific time frames in which the goals of the plan are to be accomplished to fulfill the purpose of the reunification plan;
7. the person within DFCS who is directly responsible for ensuring that the plan is implemented;
8. consideration of the advisability of reasonable visitation schedules which allow parent(s) to maintain meaningful contact with their children through personal visits, telephone calls, and letters.

   O.C.G.A. § 15-11-58(c).

If the report contains a proposed plan for reunification services, the report must be transmitted to the parents at the time it is filed with the court, along with written notice that the report will be the order of the court unless, within five days from the receipt of the report, the parents request a court hearing to review the contents of the report. If no hearing is requested, the court shall enter a disposition order or supplemental order adopting the parts of the plan for reunification services which the court finds essential, and specifying what must be accomplished by all parties before reunification of the family can be granted. O.C.G.A. § 15-11-58(d).

In assisting in the development of, or in reviewing a previously prepared case plan, the law guardian/CASA should analyze several factors to ensure that an appropriate plan is being presented to the court for an order. The law guardian should ask the following questions:

1. Have any significant new developments occurred since the last hearing? This would include: new or additional allegations of deprivation that have surfaced which were not originally addressed; results of psychological evaluations revealing relevant factors that may affect compliance with the

plan; concurrent criminal investigations or prosecutions that have caused a parent or guardian to be incarcerated; or a putative father's legitimation of the child since the case was last before the juvenile court.

2. What is the level of cooperation between the parents/guardians, and the DFCS workers who will be primarily responsible for enforcing the case plan? Are the parties on the same "wave length" or does continuing animosity indicate trouble ahead for successful plan compliance?
3. Do the experts and professionals involved in the case feel that the proposed steps and goals are appropriate? For example, are doctors and health care providers satisfied that a child in their care will be best served by the proposed plan?
4. Has there been sufficient information presented to adequately assess the physical and emotional status of the children? Are there special services that you deem necessary that may not have been included or overlooked by others? The law guardian/CASA will have conducted an independent investigation and may have additional relevant information.
5. Are there appropriate family members who can provide care for the child rather than a foster parent? If so, can that relative adequately protect the child from further harm? Bear in mind that many extended family members may NOT be suitable for placement, as some may not appreciate the severity of an order of deprivation, and the attendant responsibility of preventing contact from the perpetrators especially if the perpetrator is a son, daughter or other relative.
6. Will the child's educational needs be adequately met in the new placement? Can the child remain in his or her home school?
7. What are the child's preferences about his or her placement? Does the child want to visit with his or her parent? What special items does the child need from the home from which they were removed?

Once the preceding questions have been addressed and answered the law guardian/CASA may then recommend that the court adopt the proposed plan as its order of disposition. Duquette at 84-86.

B. Non-Reunification Plans

As stated earlier, recent legislative changes have enabled more expeditious development and implementation of a permanent plan for a child who has been adjudicated deprived. Reunification services are no longer required in each and

ever every case before the court. The court may now consider a motion that reunification services not be required, and order an alternative permanent plan for the child as part of the case disposition. If the report to the court does not contain a plan for reunification services, the court, after proper notice to the child's parent(s), shall hold a hearing within 30 days following the filing of the report. O.C.G.A. § 15-11-58(e). A case plan with a non-reunification recommendation must address each of the following issues:

1. each reason requiring the removal of the child;
2. the purpose behind placing the child in foster care, the reasons why the child cannot be adequately protected at home, and the harm which may occur if the child remains in the home;
3. a description of the services offered and provided to prevent the removal of the child from the home,
4. a clear statement describing all of the reasons supporting a finding that reasonable efforts to reunify a child with the child's family will be detrimental to the child, and that reunification services therefore need not be provided, including specific findings as to whether any of the grounds for terminating parental rights exist, as set forth in § 15-11-94(b) or ¶ 4 of subsection (a) of this Code section.

   O.C.G.A. § 15-11-58(f).

At this hearing, DFCS will be expected to inform the judge whether and when it intends to proceed with the termination of parental rights. If DFCS has no such intention, the judge may appoint a guardian at litem (if one has not already been appointed) to review the report and determine whether termination proceedings should be commenced independently on behalf of the child. O.C.G.A. § 15-11-58(g). Remember though, that if the law guardian for a child files any further actions on his/her behalf another law guardian will need to be appointed; by filing such motions, the law guardian has essentially become the attorney for the child, and is no longer able to independently and objectively represent the child's best interests in future proceedings. O.C.G.A. § 15-11-9, and In re J.S.C., infra.

In order to accept a recommendation by DFCS that a reunification plan for a particular family is not appropriate, the court must determine by clear and

convincing evidence that reasonable efforts to reunify a child with his/her family will be detrimental to the child. O.C.G.A. § 15-11-58(h). There is a presumption that reunification services should not be provided if the court finds by clear and convincing evidence that:

1. the parent has unjustifiably failed to comply with a previously ordered plan designed to reunite the family;
2. a child has been removed from the home on at least two previous occasions and reunification services were made available on those occasions;
3. any of the grounds for terminating parental rights exists. (these grounds will be discussed in the following chapter on Termination of Parental Rights);or
4. any of the circumstances exist which make it unnecessary to provide reasonable efforts to reunify.

   O.C.G.A. § 15-11-58(h)(1-4).

C. Judicial and Citizen Review

The law guardian/CASA's job is not done after the adjudicatory and dispositional hearings. There is overwhelming evidence that the child's need for an advocate is often greatest following his or her placement in foster care or institutional settings. Lawyers For Children, ABA Center for Children and the Law, (1990). The law guardian/CASA's primary goal following the placement of a child in foster care should be to ensure that the child's out of home placement is as short as possible. If family reunification is the goal, the law guardian/CASA has a role in monitoring the steps each party - DFCS and the parent/guardians - is taking to achieve the child's return home. If termination of parental rights and adoption, or some other goal, is pursued as the permanency plan for the child, then the law guardian/CASA has a role in monitoring how the agency is implementing that plan. Foster care is not a panacea for an abused or neglected child, providing at best a temporary safe haven. There has been litigation filed in this and other jurisdictions highlighting deficiencies in the foster care system; given the overwhelming number of children coming into care and the usually

severe budgetary constraints, some of the children's basic needs may not be adequately met at all times (eyeglasses, dental care, appropriate counseling, medications, etc.). For most children, foster care provides little stability. Children are frequently moved from one placement to another, sometimes spending only a single or a few nights in a home before the placement disrupts for various reasons. Also, while in foster care, many children lose contact with their siblings as these visits are often hard to facilitate. Grimm, After Disposition: The Need for Advocacy and the Role of Child's Counsel, National Center for Youth Law, (1990). There are many good foster homes available for children, and in most cases, the basic needs of children are met in these placements. However, foster care is NOT viewed as a permanent plan for a child, and the law guardian/CASA's role is to ensure that permanency always remains the primary goal for the child. Again, this requires that continued advocacy for the child's best interests for what may be long after the initial court hearings.

In Georgia, thousands of children come into the temporary custody of DFCS each year, and are placed in foster care. Studies have shown that children who remain in temporary foster care for 18 months have an 80 percent chance of remaining in foster care until their 18th birthday. Murphy, Matz, Cheever, Norwood, The Team Approach to Child Advocacy: D, July, 1993. Our state legislature has responded to federal mandates of developing permanency for children by implementing a review system of the cases of all children in out-of-home placements. (See detailed statutory requirements and case law, infra.) Some jurisdictions, particularly the smaller ones, generally have the juvenile court judge periodically review the case plan for the child, whereas a growing number of counties in Georgia have implemented Citizen Review Panel Programs to ensure that permanency is being pursued. These programs were established in response to the Adoption Assistance and Child Welfare Act of 1980. The impetus behind passage of the law was the belief of Congress, supported by child welfare administrators, practitioners and extensive research, that the public child welfare system, responsible for serving abused and neglected children, had become a "holding system." Children were languishing in

foster homes too long, and being moved too many times. One of the first requirements was to establish a system of case review at least every six months for each child in foster care.

Panel programs use local volunteers selected by the juvenile court judge; they represent a wide cross section of racial, social-economic and religious sectors of the community. Many are employed, others are retired, students over the age of 18 or homemakers. They have a variety of skills and expertise. Panel members must submit to a criminal records check and be sworn in by the judge of the juvenile court before they can begin reviewing these confidential cases. Ongoing training is provided regularly so volunteers can learn more about pertinent child welfare issues, laws and new resources to help families.

In Georgia, the cases of all children in foster care under the supervision of DFCS shall be initially reviewed within 90 days of a disposition order but no later than six months following the child's placement. Thereafter, these cases are to be periodically reviewed every six months. O.C.G.A. § 15-11-58(k). At these periodic reviews, the reunification plan proposed by DFCS may be revised and adjusted over time in order to meet the needs of the child and to react to the changing conditions of his/her parents. The law guardian/CASA should review the progress (or lack of progress) made on the goals, and always scrutinize whether the goals that remain as part of the plan are appropriate for ultimately arriving at permanency for the child. All review subsequent to the dispositional hearing should be conducted by the juvenile court judge or the citizen review panel if such an organization is active in a given county. At the time of each review, DFCS will be expected to inform the court whether it intends to proceed with the termination of parental rights.

While it may not be feasible for the law guardian to personally attend each and every review, (although that would be the ideal circumstance), the law guardian can conduct his or her independent analysis of the progress on and appropriateness of the permanent plan's goals and steps. Any CASA appointed to a case should attend and participate in Citizen Panel or Judicial Reviews of

the case. If attendance is not possible, the CASA should submit a report to the law guardian to be reviewed by him/her and then submitted to the review panel and the court.

Each panel review of a foster care case shall make findings and submit recommendations to the court which should address the following issues:

1. the necessity and appropriateness of the current placement;
2. whether reasonable efforts have been made by the local DFCS office to obtain permanency for the child;
3. the degree of compliance with the specific goals and objectives set out in the case plan of all appropriate parties and their level of participation:
4. whether any progress has been made in improving the conditions that caused the child's removal from the home;
5. any specific changes that need to be made in the case plan, including a change in the permanency goal and the projected date when permanency for the child is likely to be achieved. URJC, 24.7

There are specific guidelines for foster care reviews by Citizen Review Panels contained in Rule 24 of the Uniform Rules for the Juvenile Courts of Georgia. Three panel members constitute a quorum and no action may be taken and no review made in the absence of a quorum. URJC, 24.6(b) The panel can choose to hear from any person who formally requests to be heard as long as they have specific knowledge of the case and can assist with the review process. Parents and children may bring a representative of their choice who is authorized to provide the panel with information. URJC, 24.13(a). Often, clergy members, foster parents, children's therapists, the CASA or intern and the law guardian will attend the review. The chairperson may excuse any person from the review at the request of any participant if the chairperson determines that such exclusion is necessary to proper review of the case. URJC, 24.13(e). Each participant in the review must affirm by oath to keep all information disclosed in the review confidential. URJC, 24.13(f). The panel may meet privately with the child if it will serve to improve the child's ability to communicate. URJC, 24.13(b). The parents, child, DFCS staff and foster parents should all receive written notice of a review.

URJC, 24.13(c). As law guardian/CASA, it is vital to keep abreast of the case, and ensure receipt of timely notice of all reviews.

If the Citizen Review Panel conducts the review, the panel will transmit its report, including its findings and recommendations along with those of DFCS and the department's proposed revised plan for reunification or nonreunification to the court and the parents within 5 days. Any party to this proceeding may request a hearing on the proposed revised plan within five days after receiving a copy of the report. O.C.G.A. § 15-11-58(k).

If no hearing is requested, the juvenile court judge will review the proposed revised plan and enter a supplemental order incorporating the revised plan as part of its disposition of the case. It should be emphasized that this supplemental order of disposition has the same legal effect as did the original disposition and plan for the child; therefore, it is obviously important for the law guardian/CASA to have as much input at this stage of the proceedings and he or she did at the onset.

If a hearing is held, the court will review the evidence presented by all parties and enter a supplemental order incorporating the elements of the revised plan the court finds appropriate. The supplemental order shall be entered by the judge within a "reasonable time" after the hearing and shall provide for one of the following:

1. that the child return to the home of his or her parents, legal guardian, or custodian with or without court imposed conditions;
2. that the child continue in the current custodial placement and that the current placement is appropriate for the child's needs; or
3. that the child continue in the current custodial placement but that the current placement plan is no longer appropriate for the child's needs and direct the department to devise another plan.

   O.C.G.A. § 15-11-58(l).

The law guardian/CASA should be mindful that in many cases, visitation between parent/guardian and the children who have been removed is a "barometer" for the ultimate success of reunification. Visitation is absolutely

critical to maintaining the bond between parent and child, yet frequent visitation may not often occur. Of course, the failure of a parent to make visitation appointments and/or keep them is beyond the control of the law guardian/CASA and most other parties. A parent's lack of visits with the child is one of the most important factors the court will weigh in future custody extensions or in termination of parental rights proceedings. Because of their budgetary constraints, DFCS is only required to provide at least a monthly visit with parents, yet child welfare experts agree this is insufficient for the formation and/or maintenance of a solid familial bond. See Haralambie, The Child's Attorney, supra at 154-169. The law guardian/CASA may be able to assist; often CASAs are granted permission by the court to facilitate visits, and help the overburdened caseworkers set up and (if required) supervise visits between parents and children.

Finally, there are several facts the law guardian/CASA should together ascertain in their review of the ongoing status of a particular case. If the plan does not appear to look toward permanency, they should approach the court with appropriate motions and petitions (eg., protective orders, motions for additional findings of fact, placement reviews (discussed infra), petitions to modify custody, or judicial reviews of panel recommendations and DFCS requests for retransfer of physical custody or requests to be relieved of custody).

1. Use the case plan as a checklist; inquire as to significant new developments since the last hearing or review.
2. Ascertain what progress (if any) has been made in the home toward alleviating the conditions that cause the child to remain under the supervision of the court and in his or her out of home placement (or if placed back into the home, what conditions still warrant continued DFCS custody and supervision.)
3. Determine if any goals have been fully achieved, and ask whether such compliance and completion warrants unsupervised visitations, placement back into the home or a return of full legal custody to the parents.
4. Review the frequency and nature of visitations.
5. Review the level of contact and cooperation by the parents with their DFCS worker.

6. Determine if the counseling that has been arranged for the parents and the children is adequately addressing the issues that necessitated the out of home placement.
7. Remember that goals cannot just be surreptitiously added if statements or comments made in the panel review, or pursuant to your own post dispositional investigation reveal additional "depriving conduct" on the part of the parents or guardian that was not originally addressed. (For example, if a child who has been removed because of the parent's substance abuse problem reveals to a foster parent or teacher that he or she was also sexually molested). If appropriate, the DFCS worker should be notified, and in conjunction with the SAAG, a motion for additional findings of fact should be brought before the court (in essence, it amounts to a new deprivation complaint with the new allegations, on a child who has already been adjudicated as deprived.)

The law guardian/CASA may assume several other responsibilities in the quest to achieve ultimate permanency for the child whose interests he or she represents. Often , the CASA will be either required or requested to assist the law guardian in making recommendations regarding the placement of children back into the home from which they were removed.

Prior to legislation that went into effect July 1, 1993, the Department of Family and Children Services had unfettered discretion to place a child back into the home he/she was removed from, upon the caseworker's information and belief that there had been sufficient compliance with the case plan minimizing any future risk of harm to the child. Tragically, following several incidents whereby children (possibly prematurely) placed back into the home were injured and even killed by parents, the legislature felt compelled to reduce some of the discretion of DFCS and under O.C.G.A. § 15-11-55, placement back into the home from which the child was removed requires a separate judicial order. "The court shall approve or direct the retransfer of the physical custody of the child back to the parents, guardian or other custodian either upon the occurrence of specified circumstances or in the discretion of the court." O.C.G.A. § 15-11-55(a)(2). Many courts require that the requests be made in writing, and that an investigation and analysis be conducted to ensure (as best as possible) that there has, in fact, been sufficient case plan compliance and risk elimination to warrant the

placement of the child back into the home. If possible, such requests should be reviewed by the law guardian/CASA and/or the citizen review panel, giving the court additional information and input in deciding whether to grant approval.

Depending on the guidelines in a particular jurisdiction and juvenile court, the law guardian/CASA may be called upon to make similar recommendations regarding DFCS requests for unsupervised visitation (that is, visits between parent and child unsupervised by a caseworker or other professional). The law guardian/CASA will need to become familiar with the requirements of the individual court in which they advocate. For example, in DeKalb County, the court considers any proposed visit with a parent that will take place overnight, or over a weekend, and which is not going to be supervised by a third party, to come under the purview of 15-11-55, and requires that a judicial order authorize the visit. Prior to presentation to the judge, the request is evaluated by the law guardian for a recommendation, similar to those for the retransfer of physical custody.

Another legislative directive in the laws governing case disposition and permanency planning for children is the provision that "notwithstanding any other provisions of law, the court after transferring temporary legal custody of a child to the Division of Family and Children Services...may at any time conduct sua sponte a judicial review of the current placement plan being provided to said child. After its review the court may order [DFCS] to comply with the current placement plan,. . . to devise a new placement plan within [it]s available resources, or make any other order relative to placement or custody outside the Department of Human Resources as the court finds to be in the best interest of the child." O.C.G.A. § 15-11-55(c). It is often the responsibility of the law guardian/CASA, who acts *independently* of DFCS, to bring questionable placement circumstances to the attention of the court, so that the sua sponte review may be held. Circumstances which have warranted such review in the past have included the discovery of a foster parent's conviction record for prior crimes, problems involving children in institutional care and issues surrounding

the level of protection afforded children who may have been placed with relatives.

D. Motions to Extend

As previously mentioned, the current trend in the law is to expedite permanency for children, and this is reflected in legislation shortening the length of time children are placed in the state's custody, and giving parents and guardians stricter time constraints within which to achieve reunification goals. The situation may arise, however, where DFCS wishes to extend custody of a child, usually to continue working with the parents or guardians who have made some progress on their goals, but have not completed them. Other reasons that DFCS may desire to maintain custody arise in cases where a special needs child requires placement in a residential treatment facility, and DFCS custody is necessary to financially maintain the placement. It may also be appropriate to extend custody for children whose permanent plan is participation in Independent Living Programs or Job Corps, or placement under long term foster care agreements.

As with all other stages in the deprived proceedings, the law guardian/CASA, should remain an integral player in the hearings to extend custody. The law guardian/CASA must conduct a review of the case file, and prepare for the hearing as one would in the same manner as for an adjudicatory hearing. In most cases, preparation for a custody extension will necessarily involve a new interview with the child, to ascertain the child's wishes, the appropriateness of the current placements, the effect of visitations with parents or lack thereof, the child's therapeutic progress (if applicable), and other relevant information.

In the law guardian/CASA's review of the case, additional information of tantamount importance to be considered prior to custody extensions are the goals, reports and recommendations submitted by the citizen review panels (or judicial reviews). Progress made on the goals is noted and analyzed. The law

guardian/CASA should also review all supporting documentation indicating the level of compliance with the various goals, including, but not limited to certificates of completion of parenting skills classes, documentation from mental health professionals, mental health professionals, medical reports, drug screens (tests), reports from rehabilitative facilities, documentation from the Interstate Compact for the Placement of Children (ICPC), child interviews and home studies and evaluations.

Here again, pre-trial negotiations may be advantageous over a full trial on the allegations in the motion to extend, and any negotiations resulting in agreements or the amendment of language contained in the motion may not take place without the full participation and consent of the law guardian/ CASA.

The custody extension hearings are conducted in the same manner as other adjudicatory hearings, and the law guardians/CASAs will ultimately offer a recommendation to the court as to whether continued custody of the child with the Department of Family and Children Services is in his or her best interest. As in the adjudicatory hearings, the law guardian will make known to the court any information or reports conducted by the CASA assigned to the case, and may choose to elicit in-court testimony from the CASA.

A court which made a disposition or supplemental order can extend its duration for twelve (12) months if DFCS, represented by the SAAG, files a motion with the court prior to the expiration of the order and a hearing is held to determine the child's future status. O.C.G.A. § 15-11-58(n). The permanency plan must state:

1. Whether the child should be returned to his/her parent(s),
2. Whether, and if applicable, when the child shall be referred for termination of parental rights and placed for adoption or referred for legal guardianship;
3. That the child shall be placed in another planned permanent living arrangement in cases where DFCS has documented to the court a compelling reason for determining that it would not be in the best interests of the child to return home, be referred for termination of parental rights,

be placed for adoption, or be placed with a fit and willing relative or with a legal guardian;

4. Whether reunification services should continue; and
5. What procedural safeguards should be applied to the following:
6. parental rights with respect to the removal of the child from the home of his/her parents;
    a. a change in the child's placement;
    b. any determination affecting visitation privileges of the parents.

O.C.G.A. § 15-11-58(o)(2).

The parents of the child must be given an opportunity to be heard at this hearing prior to the judge's decision. O.C.G.A. § 15-11-58(n)(2). In order to grant an extension of temporary custody over the child to DFCS, the court must find that the extension is necessary to accomplish the purposes of the original order. O.C.G.A. § 15-11-58(n)(3). If the desire to keep the child in temporary custody with DFCS is based upon new circumstances not previously addressed in the deprivation proceeding, the appropriate procedure would be to file a new deprivation petition.

The motion to extend temporary custody and the hearing thereon should be filed and held prior to the expiration of the original dispositional order removing the child from the home. O.C.G.A. § 15-11-58(n)(1). Failure to do so can result in a reversal on appeal of a decision to extend temporary custody. However, the parents or guardians must object to the failure to properly file the motion on time during the extension hearing or they will lose the right to object to the state's mistake on appeal. Page v. Shuff, 160 Ga. App. 866 (1982). A dispositional order which is allowed to expire before a proper extension is given by the juvenile court would seem to require the return of the child to his parents or guardian. However, nothing at this point would prevent DFCS from filing a new deprivation petition requesting that the child once again be removed from the home.

The Court of Appeals has refused to overturn a judgment of the trial court temporarily extending custody with DFCS on the last day before a dispositional

order was set to expire until another deprivation petition could be filed. In that case, the court held an emergency hearing to extend custody without notifying the child's mother. By the time the case reached the Court of Appeals, the trial court held an adjudicatory hearing on the merits of the new deprivation petition and once again ordered the child removed from the home. The court declined to reverse an improper extension order because the lower court had found once again by clear and convincing evidence that the child was deprived. In the Interest of P.M. et al.,children, 201 Ga App. 100 (1991). In order to prevent unnecessary trauma to the child as well as the need to again start the deprivation process, it is important for the SAAG and caseworker to coordinate with each other so that motions to extend custody are filed in plenty of time to allow for a hearing prior to the expiration of the original order.

The repeated use of motions to extend temporary custody without attempting to terminate parental rights have caused some to criticize this practice as promoting "foster care drift." This is the movement of a child from one temporary foster home to another while waiting (sometimes in vain) for the parents to comply with the court ordered reunification plan. The law guardian/CASA may question whether petitions to terminate rights should be pursued rather than custody extensions, and should make these concerns known to the court.

Prior to the natural expiration of a custody award to DFCS, the agency may (usually upon the completion of case goals, or when another permanency option has occurred, such as a third party being granted guardianship of a child) petition the court to modify custody back to the parents or guardian from whom the child was originally removed. However, DFCS is not always the petitioner asking for a custody modification. Often, the parents or guardians file these petitions, either with the assistance of counsel or pro se, alleging that the case plan has been complied with, that the conditions of deprivation no longer exist, and that there is no risk to the child if custody is awarded back to them. The burden of proof falls upon the petitioner; in this case, the parent must prove full

compliance with the case plan, and have supporting documentation and evidence to present in court if he/she is to prevail. The parents (or any party for that matter) can petition the court at any time for a modification of custody. "A deprivation order of the court may also be changed, modified, or vacated on the ground that changed circumstances so require in the best interest of the child..." O.C.G.A. § 15-11-40(b).

In cases where DFCS asks to be relieved of custody, some jurisdictions may not require a full hearing be held, provided that the request to be relieved is consented to by all parties, *including the law guardian/CASA.* Requests by DFCS to be relieved of custody may be handled much in the same manner as the requests for retransfer of physical custody, and involve the same high level of case analysis, investigation and scrutiny of compliance by the parents or guardian before a recommendation issues from the law guardian. If the law guardian/CASA, the parents (alone or through their attorneys) and DFCS agree that custody should be returned to the parents, a consent order will issue, and the case will be closed. The law guardian/CASA may, however, disagree with a request that DFCS be relieved of custody. Perhaps independent investigation or recent interviews with the child have revealed that there are unresolved issues in the home, and that further DFCS intervention and/or supervision is necessary to ensure the child's safety. In these cases, the request to be relieved of custody is not consensual, and the SAAG will have to file a petition to modify custody should DFCS wish to pursue it. A full hearing will ensue, the burden falling on the Department to prove case plan compliance and removal of risk to the child. For the law guardian/CASA, the same responsibilities exist at this hearing as for adjudicatory and custody extension hearings.

X. Termination of Parental Rights

A. Overview

A petition for the termination of parental rights is often filed by the DFCS when it appears that efforts to reunite the family will either be futile, or potentially endanger the child emotionally and physically. A termination petition can also be filed on behalf of the child by his or her guardian ad litem. O.C.G.A. § 15-11-95(b). However, an outside law guardian may be appointed to represent the child's interests if the original law guardian becomes the petitioner. An order terminating parental rights has the effect of ending all rights and obligations of the parent with respect to the child and the child to the parent including the right of inheritance. The parent will have no right to notice of or to object to the future adoption of that child into another home. O.C.G.A. § 15-11-93. The termination of one parent's rights with respect to the child has no effect on the legal rights of another child. O.C.G.A. § 15-11-105.

Once a parent's rights have been terminated, all obligations to support the child end and the state may not require the parent to support a child now in custody of DFCS. Dept. of Human Resources v. Ammons, 206 Ga. App. 805 (1992). In addition, a juvenile court may not reserve inheritance rights for a child in an order terminating parental rights. Spence v. Levi, 133 Ga. App. 581 (1974).

The venue requirements for a petition to terminate parental rights mirror those of a petition alleging the child to be deprived. O.C.G.A. § 15-11-29. The Court of Appeals has held that in a proceeding to terminate parental rights, a petition can also be filed in the county in which the child resides in a foster home if that location is different from the county in which the first action concerning the child was filed. Cain v. Dept. of Human Resources, 166 Ga. App. 801 (1983).

For the law guardian, the termination of parental rights may be the final chapter in a case on which he or she has been the child's advocate for a number of months or even years. The same level of participation in the hearings and the same degree of preparation is required of the law guardian as in prior hearings. If

this action ends the involvement of the law guardian/CASA with the child, or whoever the relationship ceases, it is important for the law guardian/CASA to discuss with the child, in a developmentally appropriate manner, the end of the representation. It is also crucial to determine what future contacts, if any, the child and the law guardian/CASA will have. ABA Standards, supra F-5.

B. Standards of Proof and Requirements for Termination of Parental Rights

The Georgia Juvenile Code has set forth four basic situations where a petition for the termination of parental rights is clearly appropriate:

1. the parent has given written consent, acknowledged before the court, to the termination of his/her parental rights with respect to the child, such as in a case where the parent places the child for adoption;
2. a decree has been entered by a court ordering the parent to support the child and the parent has wantonly and willfully failed to comply with the order for a period of 12 months or longer;
3. the parent has either abandoned the child or left the child in a situation that the identity of the parent cannot be determined after a diligent search and the parent has not come forward to claim the child within three months of his/her finding;
4. the court makes a finding of parental misconduct or inability.

   O.C.G.A. § 15-11-94(b)(1-4).

According to the Georgia Juvenile Code, the court can only order the termination of parental rights by finding by clear and convincing evidence that the parent in question falls into one of the categories above set forth. O.C.G.A. § 15-11-94(a). Even if the court finds justification for termination because the parent falls into one of these four categories, the court cannot terminate a parent's rights over the care and control of the child unless the termination would be in the best interest of the child. This is decided by the court after considering the physical, mental, emotional, and moral condition and needs of the child who is the subject of the proceeding, including the need of that child for a secure and stable home.

O.C.G.A. § 15-11-94(a). This is a high standard for the petitioner to meet. It is not sufficient by itself for termination to be in the "best interest" of the child or that the child might be better off in another environment. A finding of unfitness must be based on a review of whether the parent can care for the child alone without the necessity of state intervention. It is not enough that the child might find better "financial, education or even moral advantages elsewhere." Carvalho v. Lewis 247 Ga. 94 (1981). The court must still find by clear and convincing evidence a case of parental misconduct or inability. Ferreira, McGough's Ga. Juvenile Practice and Procedure, (2nd ed.), 5-6.

In a deprivation hearing, a decision is reached based on the needs of the child without regard to any "fault" on the part of the parents in causing or failing to prevent the causes of the child's condition. See Brown v. Fulton Co. Dept. of Family and Children Services, 136 Ga. App. 308 (1975). However, a petition to terminate parental rights can only be approved upon findings of some sort of "parental misconduct or unfitness resulting in the abuse of neglect of the child." Chancey v. Dept. of Human Resources, 156 Ga. App. 338 (1980). A decision to terminate cannot be based upon the "best interests" or "welfare of the child" alone. Id. at 340. A decision to approve a petition to terminate parental rights under any of the standards must be made by a finding of clear and convincing evidence. O.C.G.A. § 15-11-94(a). In a termination order, the judge must specifically state that his/her decision is supported by clear and convincing evidence. Failure to do so will result in a reversal upon appeal. In re R.L.Y., et al., 181 Ga. App. 14 (1986). A simple recitation of the statutory requirements followed by a statement that these minimum standards of parental conduct have not been met in a given case also will not be considered sufficient on appeal. In the Interest of M.H.F., a child., 201 Ga App. 56 (1991), and In the Interest of H.T., a child, 198 Ga. App. 463 (1991).

A decision to terminate parental rights is held to a very high standard which is taken very seriously by the appellate courts. "Seldom does the state wield so

awesome a power as when it permanently ends the family ties between parent and child." R.C.N. v. State of Ga., 141 Ga.App. 490,491 (1977).

C. Grounds for Termination

1. Voluntary Relinquishment of Parental Rights

The code contains a ground for termination applicable when the parent consents to the termination of his/her parental rights in writing and acknowledges this fact before the court. O.C.G.A. § 15-11-94(b)(1). That acknowledgment is not necessary when the parent voluntarily surrenders the child for adoption. O.C.G.A. § 15-11-94(b)(1). This section does not authorize a parent to file a motion in juvenile court to terminate his/her own parental rights. This section was meant to be used in situations where a third party, such as DFCS, requests a termination and the parent consents to this outcome. The Court of Appeals has held in a case where a mother filed a request to terminate her own rights to her daughter for fear of criminal prosecution for parental abandonment, such a motion had to be rejected. In re K.L.S., 180 Ga. App. 688 (1986). In this case, the mother had rarely seen her child in eight years and the maternal grandmother had threatened to swear out a warrant for her arrest. Id. at 689.

2. Failure to Comply with a Child Support Order

The Juvenile Code also authorizes the termination of parental rights when a parent has wantonly and willfully failed to comply with a child support order for a period of one year or longer. O.C.G.A. § 15-11-94(b)(2). Any complaint or petition alleging a failure to comply with a previous court order as a basis for termination should include a copy of that previous order attached to the complaint or petition. URJC, 4.1. The Court of Appeals has found that a mother's failure to provide child support for over one year did not justify termination when

there was no request for child support and no court order mandating such action. Uniroyal Goodrich Tire Co.,et al. v. Adams el al., 221 Ga. App. 705 (1996). The key to this standard appears to be whether the parent "wantonly and willfully" failed to comply with the court order. The Court of Appeals has upheld a decision by a juvenile court rejecting a termination petition where the trial judge defined "wantonly and willfully" based on precedence as "without reasonable excuse, with a conscious disregard for duty, willingly, voluntarily. and intentionally." In re H.B. and K.B., 174 Ga. App. 435 (1985). In that case the court found that the mother did not intentionally violate the court order for one year or longer when evidence showed that she had an extremely low income, tried to send $100 to the child's father and provided health insurance for the children by borrowing money and cashing in her retirement fund. Id. at 435. In another case, the Court of Appeals found that a father's failure to follow a child support order was not wanton or willful when he was laid off from his job and unable to pay child support. In re S.G.T., 175 Ga. App. 475 (1985). These cases were decided under O.C.G.A. § 15-11-51(a)(4) which was repealed when the General Assembly enacted Article II of the current Juvenile Code dealing with the Termination of Parental Rights in 1986. However, the language used in defining this particular ground for termination remains the same. O.C.G.A. § 15-11-1(b)(2).

3. Parental Abandonment

The Court of Appeals addressed the issue of abandonment in Thrasher v. Glynn Co. DFCS, 162 Ga. App. 702 (1982). The facts of an abandonment case must be construed in favor of the parent and against a finding of abandonment. In order to make such a finding there must be sufficient evidence of "actual desertion, accompanied by the intention to sever entirely, so far as possible to do so, the parental relation and throw off all obligations growing out of the same, and forego all parental duties and claims." Id. at 702. The court noticed that the father had failed to attempt to legitimate the child, establish any familial relationship with the child, or contribute to the support of the child or of the

mother (including medical care) during or after her pregnancy and hospitalization. Id. at 702. Note that these are the same factors considered in determining whether a putative father whose address is not known should have his parental rights terminated even in the absence of his presence at the hearing. Merely turning over the custody of a child to another is not alone grounds for termination of parental rights. Here, custody of a child was provided temporarily to one of the mother's adult children. The mother had entered into an agreement whereby she reserved the right to reacquire custody by filing a petition with the probate court. This was not sufficient to constitute abandonment since there was no intent to entirely sever the parent-child relationship. Uniroyal Goodrich Tire Co., et al. v. Adams et al., 221 Ga. App. 705 (1996). In addition, the court found that the mother's failure to provide child support for over one year did not justify termination in this case because there was no request for child support and no court order mandating such action. Id. at 706.

4. Parental Misconduct or Inability

Parental misconduct or inability is a catch-all category under which most petitions to terminate parental rights are filed. To approve such a petition the court will need to find that:

1. the child is deprived under the definition given in the Juvenile Code (as explained in a previous chapter);
2. the lack of proper parental care or control by the parent in question is the cause of the child's deprivation;
3. the cause of the child's deprivation is likely to continue or will not likely be remedied; and
4. the continued deprivation will cause or is likely to cause serious physical, mental, emotional, or moral harm to the child.

   O.C.G.A. § 15-11-94(b)(4)(A)(i-iv).

The Juvenile Court is required to make specific findings of fact as to each of the statutory elements prior to approving a petition to terminate parental rights.

Failure to specifically find that the deprivation experienced was likely to cause the child serious "physical, mental, moral or emotional harm" constitutes grounds for reversal on appeal. Caldwell v. Boone et al., 166 Ga. App. 250 (1983). In ruling on the question of deprivation, the juvenile court is allowed to take judicial notice of a previously unappealed ruling finding the child to be deprived if such an order is still in effect. In the Interest of J.R., a child., 202 Ga. App. 418 (1992).

The records of previous hearings concerning the child who is the subject of the petition are admissible in any subsequent deprivation or termination proceedings in regards to that child. O.C.G.A. § 15-11-101.

This last type of termination petition is by far the most common. The key to this standard is whether the child lacked proper parental care and control. The Juvenile Code states that the court may consider any and all of the following factors in determining whether the parent has exhibited proper care and control over the child for purposes of a termination petition:

1. a medically verifiable deficiency in the parent's physical, mental, or emotional health that exists to such a degree and for such a length of time as to render the parent unable to provide properly for the physical, mental, emotional, or moral conditions and needs of the child;
2. the excessive use or history of chronic unrehabilitated abuse of drugs or alcohol which renders the parent incapable of providing properly for the physical, moral, emotional or mental conditions and needs of the child;
3. the conviction of the parent of a felony and the parent's subsequent imprisonment which has a clearly negative effect on the quality of the parent-child relationship;
4. the egregious conduct or evidence of past egregious conduct of the parent toward the child or toward another child of a physically, emotionally, or sexually cruel or abusive nature;
5. the physical, mental, or emotional neglect of the child or evidence of past physical, mental, or emotional neglect of the child or of another child by the parent in question;
6. the injury or death of a sibling of the child under circumstances which constitute substantial evidence that such injury or death resulted from parental neglect or abuse.

O.C.G.A. § 15-11-94(b)(4)(B)(i-vi).

In addition, if the child has already been removed from the home prior to a petition to terminate parental rights, the court can consider whether the parent, without a justifiable cause, has failed significantly for a period of one year or longer prior to the filing of the termination petition:

a. to communicate or to make a bona fide attempt to communicate with that child in a meaningful, supportive, parental manner;
b. to provide for the care and support of the child as required by law or judicial decree; and
c. to comply with a court ordered plan designed to reunite the child with the parent or parents.

O.C.G.A. § 15-11-94(b)(4)(C)(i-iii).

Courts generally consider a two-step analysis in deciding whether to terminate a parent's rights. First, the court determines whether there is clear and convincing evidence of parental misconduct or unfitness. Second, whether termination of parental rights is in the best interests of the child. In the Interest of C.L.R., 232 Ga. App. 134(1) (1998). If the court finds by clear and convincing evidence that these standards have been met and the petition to terminate parental rights is justified, there is no burden on the court to find by clear and convincing evidence that a lesser alternative disposition, such a transferring temporary legal custody to DFCS, would be less appropriate for the child. In the Interest of P.F.J., 184 Ga. App. 47 (1985). In most cases of parental misconduct or unfitness, the court must determine that the child is deprived, that lack of proper parental care and control is responsible for the child's condition and it is likely to continue in the future resulting in harm to the child. O.C.G.A. § 15-11-94(b)(4)(A)(i-iv). Past deprivation alone will not be considered sufficient to prove present deprivation but can be used as evidence as to whether such conditions are likely to continue into the future. In the Interest of A.M.B., et al, children. 219 Ga. App. 133 (1995), In the Interest of B.J., 220 Ga. App. 144 (1996). However, the fact that the termination statute uses the term "is deprived" instead of "will be" deprived does not mean that DFCS must wait for deprivation to occur before taking action. It is largely a question of the quality of the evidence. DFCS is

authorized to take action to terminate parental rights when evidence shows that the conditions under which the child will be raised in the parents home strongly indicate that deprivation will occur in the future. In one case, a mother who was 14 years old, borderline retarded, and living with her elderly grandparents was found to be unable to assist in caring for the child. Roberts v. State of Georgia, 141 Ga. App. 268 (1977). It is not necessary for the state to provide a parents with an opportunity to rehabilitate themselves prior to filing a motion to terminate their parental rights. The state is authorized to proceed immediately with such a motion once the deprivation action has commenced. In the Interest of B.R.S., a child., 198 Ga. App. 561 (1991).

Parental "misconduct or unfitness" authorizing a termination under the statute can be caused by either intentional or unintentional misconduct causing the abuse or neglect of a child or by what is tantamount to physical or mental incapacity to care for the child. A parent's failure to comply with requirements to attend mental health and parenting counseling can be considered in determining that the cause of the child's deprivation is likely to continue into the future. In the Interest of G.L.H., et al., children., 209 Ga. App. 146 (1993). Evidence of the living and economic conditions of foster parents who wish to adopt a child is not evidence as to the finding of whether termination would be in the "best interest" of the child by providing the court with potential alternative living arrangements. However, standing alone, the availability of an alternative living arrangement or a lack of wealth on the part of the natural parents is not enough to justify a termination of parental rights. In the Interest of J.M.G., a child. 214 Ga App. 738 (1994). The court has held that evidence of "foster care drift" alone is no reason to terminate parental rights, but the adoptability of a child and the child's need for a stable home and potential negative effects of long term foster care are factors in the determination of deprivation. In the Interest of J.C.J., a child., 207 Ga. App. 599 (1993); In re G.M.N. and D.M.N., 183 Ga. App. 458 (1987).

A common situation in which a termination is sought is when a parent is imprisoned after a conviction of a felony and this has a "clearly negative effect on

the quality of the parent-child relationship." O.C.G.A. § 15-11-94(b)(4)(B)(iii). The Juvenile Code specifically allows the court to consider this as evidence of a lack of proper "parental care or control" in determining if the child is deprived and whether the cause of that deprivation is likely to continue causing harm to the child. O.C.G.A. § 15-11-97(b)(4)(B)(iii). Imprisonment alone does not automatically result in a termination of that parent's rights to the care and control of his/her child. In the Interest of R.L.H., a child,188 Ga. App. 596 (1988). In that case the Court of Appeals affirmed a termination when the father did not attempt to contact DFCS or his children when he was released from prison for six weeks, refrain from criminal activity as required by the case plan, and had no present prospects for employment, a steady income, or a stable home. Id.

The Court of Appeals has also held that a "clearly negative effect on the parent child relationship" can be shown by direct or circumstantial evidence. In the Interest of L.F., a child., 203 Ga. App.522 (1992). In that case the negative effect was shown by the father's repeated incarceration of criminal offenses and parole violations. The court held this to be an additional factor to determine if the child is presently deprived and will likely continue to be deprived in the future. In addition, the murder of one parent by another does not automatically result in the termination of the surviving parent's rights. In the Interest of J.M.R., et al, children, 218 Ga. App. 490 (1995). If malice is shown by the murder of one's spouse, this is sufficient to imply moral unfitness authorizing termination since this is likely to continue resulting in harm to the child. Heath v. McGuire, 167 Ga. App. 489 (1983).

In another case, the Court of Appeals reversed a decision to terminate the parental rights of a man convicted of the voluntary manslaughter of his wife. The court noted that no malice is required in a manslaughter conviction and the statute's requirement of mitigating circumstances surrounding the homicide. The father was about to be released on parole at the time of the petition and had a home and job waiting for him. There was no other evidence of parental misconduct or failure to provide for his children and he had attempted to maintain

contact with the children throughout his incarceration. In the Interest of H.L.T., 164 Ga. App. 517 (1982). However, in the presence of other factors which indicate X to care for the child, a decision to terminate the paternal rights of a father convicted of the voluntary manslaughter of his wife was upheld. Brown v. Dept. of Human Resources, 157 Ga. App. 106 (1981).

The court is also authorized to consider a deficiency in the parent's physical, mental, or emotional health that renders the parent unable to provide properly for the needs of the child in determining if the child lacks proper parental care or control. O.C.G.A. § 15-11-94(b)(4)(B)(i). It should be remembered that a finding of present deprivation likely to be continued in the future causing harm to the child is based upon a finding of a lack of "proper parental care and control." The fact that a mother is living with the child's grandparents who provide the mother with support does preclude a finding of deprivation which is likely to continue into the future. The Court of Appeals affirmed a termination in a case where the mother was unable to retain more than the simplest parenting skills and needed constant supervision from her parents. The test is whether the parent, standing alone, is ultimately capable of mastering proper parental skills. In re S.R.J., a child., 176 Ga. App. 685 (1985). Another case involving the mental inability to properly care for a child involved a mother who was released from parenting classes because she could not meet her own needs let alone those of her child. In addition, she only attended 15 Alcoholic Anonymous meetings in a two year period, met with two psychiatrists but failed to show up for follow up appointments, failed to pay child support, find steady employment, or refit her house to make it fit for a child to live in. In the Interest of A.S.M., a child., 214 Ga. App. 668 (1994).

The Court of Appeals has come to similar conclusions in situations where the mother was mentally ill and mildly retarded and thereby incapable of caring for the child without assistance, as well as situations when a parent would require twenty-four hour supervision to avoid injuring the child. See Griffin v. Dept of Human Resources 159 Ga App. 649 (1981); and Maynard v. Berrien County

DFCS, 162 Ga App. 618 (1982). Termination of a father's parental rights was also justified when he failed to protect his child from her abusive mother even though he knew that she was prone to violence and had harmed the child in the past. The father was mentally retarded and his lack of care was likely to continue and not be reamed. The Georgia Supreme Court has rejected an equal protection argument by parents who had their parental rights terminated for mental incapacity to care for their children. The welfare of the child was the compelling government interest which justified the removal of the children from their home and the infringement upon their fundamental right to care for and raise their child. In the Interest of J.C., et al.. 242 Ga. 737 (1978).

Another common situation listed under the statute as evidence of a lack of proper parental care and control is the failure of a parent for over one year to comply with a case plan designed to reunite a family. O.C.G.A. § 15-11-94(b)(4)(C)(iii). This one year period appears to include the time period in which the parent and DFCS have entered into an agreement prior to the order having been filed by the Juvenile Court Judge. The Court of Appeals has held that a trial judge did not err in considering noncompliance with the plan even though not one year had passed since the plan was included in a supplemental dispositional order, since the plan was in effect by agreement of the parties for over a year and the purpose of the statute was served. The Court did note that this was not the dispositive factor in the termination. In the Interest of C.D.P., a child., 211 Ca. App. 42 (1993). Be careful not to confuse this ground for the termination of parental rights with the failure to provide court ordered child support for period of one year or longer.

When the child in already in DFCS custody, the court should also consider whether the parent has failed without justifiable cause for a period of one year or more to communicate with the child, provide for the care and support of the child, and to comply with a court ordered plan designed to reunite the family. O.C.G.A. § 15-11-94(b)(4)(C)(i-iii). The Court of Appeals has upheld an order to terminate parental rights when the trial court made specific findings as to the first two

factors, but not the third. The parent had not failed to comply with a reunification plan because one was not entered into by the parent. The court found that factor irrelevant to the case and held that while the first two factors alone would not be grounds for termination in and of themselves, in conjunction with other issues, they could provide a justification for the termination of parental rights. In the Interest of A.O.S., II., 189 Ga. App. 860 (1989).

D. Notice of Proceedings and Summons

The process of terminating a parent's rights begins with a petition similar to the one filed in a deprivation action. Once again this petition must set forth the facts alleged in ordinary and concise language and relate them to the terms of the statute. O.C.G.A. § 15-11-95(c). When the petition is filed, a summons notifying all relevant parties of the termination hearing should be sent to the child's parents, guardian, lawful custodian, current physical custodian, and law guardian/CASA. See O.C.G.A. § 15-11-96(a). A copy of the termination petition will be sent together with the summons so that all parties will be adequately prepared for the hearing. O.C.G.A. § 15-11-96(b). The summons will be served upon all parties at least thirty (30) days prior to the date of the termination hearing. O.C.G.A. § 15-11-96(c).

Many of the difficulties and much confusion surrounding preparing for a termination hearing involve notification to the fathers of the children born out of wedlock. When the petition seeks to terminate the parental rights of a biological father who is not the legal father of the child, a certificate must be included from the putative father registry identifying any registrant acknowledging paternity of the child or the possibility of paternity of a child during the two years prior to the child's birth. O.C.G.A. § 15-11-95(d). A legal father is defined as a male who:

1. has legally adopted a child;
2. was married to the biological mother of that child at the time the child was conceived or born unless his paternity was disproved in a court hearing;

3. married the legal mother of the child after the child was born and recognized the child as his own, unless paternity was disproved in a court hearing;
4. has been determined to be the father in a paternity hearing;
5. has legitimated the child.

All of these constitute a legal father so long as he has not surrendered or had his parental rights previously terminated. O.C.G.A. § 15-11-2(10.1)(A-E).

If there is a biological father who is not the legal father of the child and he has not surrendered his parental rights, he must be notified of the termination proceedings in the following circumstances:

1. If his identity is known to the petitioner or the petitioner's attorney;
2. If he is a registrant on the putative father registry who has acknowledged paternity of the child;
3. If he is a registrant on the putative father registry who has indicated possible paternity of the child during a period of two years immediately prior to the child's date of birth; or
4. If the court finds from the evidence, including but not limited to an affidavit of the child's mother that the biological father who is not the legal father has performed any of the following acts:
    a. lived with the child;
    b. contributed to the child's support;
    c. made any attempt to legitimate the child; or
    d. provided support or medical care for the mother either during her pregnancy or during her hospitalization for the birth of the child.

O.C.G.A. § 15-11-96(e)(1-4).

A biological father who is not the legal father of a child that is listed in one of the above categories must be notified of a proceeding to terminate his parental rights by one of the following methods:

1. registered or certified mail, return receipt requested, at his last known address, which notice shall be deemed received upon the date of delivery shown on the return receipt;
2. personal service; or

3. publication once a week for three weeks in the official organ of the county where the petition has been filed and of the county of his last known address, which notice shall be deemed received upon the date of the last publication.

If possible, the father should be notified by methods 1 and 2 prior to resorting to notice by publication. O.C.G.A. § 15-11-96(f)(1-3). If there is a biological father who is not the legal father of the child and his address is not known either to the petitioner or the petitioner's attorney, then the court should request an affidavit from the mother as to whether the biological father has performed any of the following acts:

1. lived with the child;
2. contributed to the child's support;
3. made any attempt to legitimate the child; or
4. provided support or medical care for the mother either during her pregnancy or her hospitalization for the birth of the child.

   O.C.G.A. § 15-11-95(g)(1-4).

If the court finds from the evidence that such a father has not performed any of these acts and the petitioner provides a certificate from the putative father registry that there is no listing for such an individual, then it shall be "rebuttably presumed" that the biological father who is not the legal father of the child is not entitled to notice of the proceedings to terminate his parental rights. Unless evidence exists to rebut this presumption, the court shall enter an order terminating this father's parental rights to the child. O.C.G.A. § 15-11-95(g). It appears that if the biological father who is not the legal father of the child has performed any of the acts enumerated above then he is at the very least automatically entitled to notice by publication even if his location or last known address are unknown. O.C.G.A. § 15-11-96(e) and (g).

If notice of a proceeding to terminate parental rights must be provided to a biological father who is not the legal father, such a father must be advised that he will lose all rights to the child and will not be entitled to object to the termination unless within (30) days of receipt of his notice he files:

1. a petition to legitimate the child; and
2. notice of the filing of the petition with the court in which the action is pending.

   O.C.G.A. § 15-11-96(h).

A biological father who is not the legal father of a child will lose all rights to such a child and the court must enter an order terminating those rights if within thirty days from the receipt of his notice he:

1. does not file a legitimation petition and gives notice as required in subsection (h);
2. files a legitimation petition which is subsequently dismissed for failure to prosecute; or
3. files a legitimation petition and the action is subsequently concluded without a court order declaring that he is the legal father of the child.

   O.C.G.A. § 15-11-96(i).

E. Right to Counsel

In a hearing on the termination of parental rights the juvenile court is required to appoint a separate attorney to act as counsel for the child and may choose to appoint a guardian ad litem to represent the best interests of the child. The attorney representing the child and the guardian ad litem may be and often are the same person. O.C.G.A. § 15-11-98(a), URJC, 11.8.

Be aware however, that in these cases, counsel for the child is required, and a law guardian may both roles (GAL and attorney for the child) only in the absence of any present of foreseeable conflict, the wishes of the client should comport fully with your recommendation as to what is in the child's best interest. The issue may be somewhat legally theoretical regarding infants or non-verbal children, they would obviously lack the capacity to communicate their desires to their attorney; given this lack of capacity, it has been suggested that you may ethically serve as the "attorney for the child's interests," thus satisfying the requirements for representation of the child. Rodatus, Hon. Robert V., <u>Legal, Ethical and Professional Concerns When Representing Children in Abuse Cases</u>

in Juvenile Court (ICLE of GA, Juvenile Law Program Materials, 3/29/96) at 16-008 through 16-012. But see ABA Standards, supra at B-3. The failure of a trial court to appoint an attorney to represent the interests of a child in a termination hearings constitutes grounds for a vacation of the judgment and a remand to the juvenile court for a rehearing. In re J.D.H., 188 Ga. App. 466 (1988). In addition, indigent parents are also guaranteed appointed counsel in proceedings to terminate parental rights. O.C.G.A. § 15-11-98(b). The Georgia Supreme Court has held that a man claiming to be the putative father to a child born to a married woman is entitled to appointed counsel in a proceeding to terminate parental rights. The putative father of a child born out of wedlock is clearly a party to a termination of parental rights. His failure to perform any parental duties previously does not affect his right to appointed counsel. Wilkins v. Georgia Dept of Human Resources, 255 Ga. 230 (1985).

The Court of Appeals has held that a guardian ad litem who represented a child in a deprivation action and subsequently filed a motion to terminate parental rights on behalf of the child may not represent that child in the future termination hearing. The purpose of the guardian is to protect the interests of the child in all matters relating to the litigation. Although the guardian here has no personal stake in the outcome of this litigation, if he/she advocates from the outset for the termination motion, the child is denied separate legal counsel. The child is to have independent legal representation separate from any other interest in the proceeding. In re J.S.C., 182 Ga. App. 721 (1987).

F. Placement of the Child Following a Termination Order

If after a termination order is entered, the child has no remaining legal parent, the court shall attempt to first place the child with his/her extended family or with a person related to the child by blood or marriage. "An exhaustive and thorough" search for such a family member will have begun at the beginning of any deprivation case by the court and the Department of Human Resources. A

located relative will be required to abide by the terms and conditions of the order of the court. O.C.G.A. § 15-11-103(a)(1). If the court in cooperation with the department cannot find a suitable placement for the child within his/her own family, the court may make any one of the following dispositions:

1. commit the child to the custody of the Department of Human Resources or to a licensed child-placing agency willing to accept custody for the purpose of placing the child for adoption or,
2. in the absence of an adoption, in a foster home, or take other suitable measures for the care and welfare of the child.

   O.C.G.A. § 15-11-103(a)(2)-(6).

In awarding custody after terminating parental rights, the Juvenile Court may not place a child directly with a potential adoptive family. The court should first attempt to place the child with DFCS, then with a licensed child placement agency, then in a foster home or some other "undesignated receiver." The agency or individual who receives the child is only a temporary guardian and will have the authority to consent to the future adoption of the child into another family. The grandparents of a child with no remaining legal parents may petition to adopt the child through the normal adoption procedures but they have no right to intervene in a termination hearing seeking custody of the child. Dept. of Human Resources v. Ledbetter, 153 Ga. App.416 (1980).The court will send a copy of every final termination order to the DFCS Adoption Unit within 15 days of the filing of such an order. O.C.G.A. § 15-11-103(c). If no petition to adopt the child is filed, the court will at least once every year review the circumstances of the child to determine what efforts have been made to assure that the child will be adopted. O.C.G.A. § 15-11-103(e). During this time, the custodian of the child has the authority to consent to the adoption of the child, his enlistment in the armed forces as well as surgical and medical treatment for the child. O.C.G.A. § 15-11-103(d).

The General Assembly has required that all termination hearings should be conducted in an expedited manner and an order of disposition in a termination

case should be filed no later than one year after the filing of the petition unless just cause is shown for delay. O.C.G.A. § 15-11-106.

XI. Motions for Reconsideration And Appeals

The Juvenile Code provides that a petition to modify or vacate a previous order of the court may be filed in particular circumstances after the disposition has been handed down. An order of the court shall be set aside if:

1. it appears that it was obtained by fraud or mistake sufficient therefore in a civil action;
2. the court lacked jurisdiction over a necessary party or of the subject matter; or
3. newly discovered evidence so requires.
   O.C.G.A. § 15-11-40(a)(1-3).

A dispositional order in a deprivation case may also be "changed, modified, or vacated on the ground that changed circumstances so require in the best interest of the child." O.C.G.A. § 15-11-40(b). Such a petition may be brought by any party to the proceeding, the probation officer, or any other person having supervision or legal custody of the child. The petition should set forth in clear and concise language the grounds on which the petition is based. O.C.G.A. § 15-11-40(c). After filing of the petition, the court must fix a time for the hearing and cause notice to be served as provided by O.C.G.A. § 15-11-39.1. The

hearing may be of an informal nature and the court shall grant or deny relief as the evidence warrants. O.C.G.A. § 15-11-40(d).

The situations provided in the Code for a petition to modify or vacate an order of the court are very specific. There is no authority provided by the Juvenile Code for a general Motion for Reconsideration based upon the evidence presented at the previous hearings. The Court of Appeals has ruled that the juvenile court has an inherent power to modify its own judgments within the statutory time frame for a notice of appeal to be filed. In re P.S.C., et. al., 143 Ga. App. 887 (1977). Such notice must be filed within 30 days after the entry of final judgment. The Court of Appeals has also held that a trial court can grant a rehearing on a decision to terminate parental rights. Since the Code provides that the court can modify, or vacate its previous ruling in this area, the court may take the less drastic step of ordering a rehearing to see if the original decision was correct. No hearing on a motion to rehear a case needed to be held before granting the relief requested. In re P.S.C., et al.,143 Ga. App. 887 (1977). The Court has also held that the petition will be looked at substantively to determine if it meets the criteria for modification or revocation under O.C.G.A. § 15-11-40. The fact that the appellant mislabeled the petition as a motion for a new trial and the court considered it a request for reconsideration is immaterial. The attorney requesting a new trial failed to make such a petition within the 30 day period provided. However, since the petition met the requirements for modification or revocation provided for in the statute, the trial court had authority to review the request regardless of the label.

Historically, a motion for a new trial could not be used to attack an order of the juvenile court. However, the Supreme Court recently held that a juvenile court was authorized to grant new trials. In re T.A.W., a child., 265 Ga. 106 (1995). The state constitution provides that "Each superior court, state court, and other courts of record may grant new trials on legal grounds." Ga. Const. Art. VI, § I, ¶ IV. The Juvenile Courts of Georgia are "courts of record" under O.C.G.A. § 15-11-4(b) and therefore have the right to grant new trials as do other courts

provided for in the constitution. Id. at 107. The court here overturned several previous decisions of the Georgia Court of Appeals.

An appeal from a decision of the Juvenile Court is provided for in O.C.G.A. § 15-11-3. The Code directs that appeals can be taken from the juvenile court to the Court of Appeals or the Supreme Court in the same manner as appeals from the Superior Court. An appeal from the juvenile court cannot be filed in the Superior Court Circuit in which the juvenile court is located. Such a procedure is not provided for in the statute. Rossi v. Prince, 237 Ga. 651 (1976).

However, an appeal from a decision of an Associate Juvenile Court judge made under O.C.G.A. § 15-11-21(d) will be by review of the Juvenile Court Judge of that county. URJC, 19.2. Such a review by the Juvenile Court judge should be a *de novo* review of the evidence presented to the Associate Juvenile Court Judge (formerly called a "referee"). A simple review of the associate judge's findings and recommendations is insufficient, however, a full *de novo* evidentiary hearing is not necessary. In the Interest of M.E.T. Jr., a child., 197 Ga. App. 255 (1990).

The judgment or order shall not be superseded and shall stand until it is revised or modified by the reviewing court. A trial court order can only be superseded at the discretion of the juvenile court judge. O.C.G.A. § 15-11-3. This is very different from an order of the Superior Court which is automatically superseded or suspended upon the filing of a timely appeal. Walker v. Walker, 239 Ga. 175 (1977). Only parties to the original proceeding have standing to appeal the judgment of the juvenile court.

Appeals asserting a federal or state constitutional challenge must be taken to the Georgia Supreme Court and all other appeals will be heard by the Georgia Court of Appeals. Ga. Const. Art. VI, §VI, ¶ II, cl. 1 and Art. VI, §V, ¶ III. This means that in effect most appeals from the Juvenile Court will be heard at the Court of Appeals. In the Interest of J.E.P., 252 Ga. 520 (1984). An indigent parent whose parental rights have been terminated has a right to a pauper

transcript of the previous proceedings for use in appealing that decision. Nix v. Department of Human Resources, 236 Ga. 794 (1976).

An adjudicatory order alone is not a final appealable judgment from which an appeal can be taken. Only after a dispositional hearing is held and an appeal issued can an order transferring temporary legal custody of a child be appealed. M.K.H. v. State of Georgia, 132 Ga. App. 143 (1974). No application is necessary prior to filing an appeal of a deprivation order is required as opposed to an appeal of a custody order which is discretionary. In the Interest of A.L.L., 211 Ga. App. 767 (1994). The Court of Appeals later held that a final order in a deprivation case is not a child custody or domestic relations case which requires an application for a discretionary appeal under O.C.G.A. § 5-6-35(a)(2). In the Interest of J.C.H., 224 Ga. App.708 (1992).

The standard of review to be exercised by the appellate court in reviewing a decision to terminate parental rights is "whether after reviewing the evidence in the light most favorable to the appellee, any rational trier of fact could have found by clear and convincing evidence that the natural parent's rights to custody have been lost." In the Interest of J.M.K., et al., 189 Ga. App. 140 (1988). In reviewing a decision finding a child to be deprived, the Court of Appeals has used a similar standard of review. Sanchez v. Walker Co. DFCS, 138 Ga. App. 49 (1976), *rev'd. on other grounds,* 237 Ga. 406 (1979). "When the trial judge, sitting as the trier of facts, hears the evidence, his findings based on conflicting evidence is analogous to the verdict of a jury and should not be disturbed by a reviewing court if there is any evidence to support it." Id. at 56. The appellate court is to defer to the juvenile court's decision unless this standard of review has not been met. In re G.T.S., 207 Ga. App. 187 (1993). "The juvenile court is vested with a broad discretion which will not be controlled in the absence of manifest abuse. The trial court had the opportunity to question and observe the parties and possesses a wide discretion in determining the issues before him and if the judgment is supported by any evidence and is not clearly erroneous, an appellate court is not authorized to set is aside." In re H.B. and K.B., 174 Ga.App. 435 (1985).

XII. Parental Notification Bypass Hearings

An additional responsibility of a law guardian does not necessarily address itself to permanency planning of abused or neglected children; however, as an attorney representing the best interests of children, a law guardian may be appointed on a parental notification judicial bypass hearing for a pregnant minor female.

Under O.C.G.A. § 15-11-110 et seq., any minor female in Georgia wishing to terminate a pregnancy, must provide written documentation to the medical personnel, from her parent or guardian, that the parent/guardian is aware the child is seeking an abortion. The law does not require parental consent, only notification. There are, however, cases where pregnant minors may not wish to tell their parent or guardian, and these minors may seek a judicial bypass of the parental notification requirement. When the minor (or her attorney) files the complaint for the bypass hearing, a law guardian will be appointed to represent the minor's best interest and make a recommendation to the court.

There are two grounds that may be plead in the minor's complaint: that notification to the parent or guardian of the minor's desire to terminate her pregnancy would not be in the child's best interest; or that the child is mature enough and well enough informed about the abortion procedures and alternatives to make the decision in consult with her physician and without notification to her parent or guardian.

Regardless of personal stance on the termination of unwanted pregnancies the law guardian electing to represent the interest of the child has

an ethical duty to represent those interests in court. This will, of course, necessitate an investigation into the reasons the child has petitioned the court for the bypass.

In some cases, the minor appears at the juvenile court accompanied by an attorney, possibly through a legal network created by Planned Parenthood, or other community organizations. This attorney serves as the child's legal counsel. In these situations, the law guardian will serve solely as the child's "attorney guardian ad litem," and represent her interests in court. If a minor files a motion for a judicial bypass pro se, the law guardian will consult with, interview and present the case in court on behalf of the child as the child's attorney AND guardian ad litem, both roles. If the law guardian does perceive or anticipate any conflict in representing the child AND her interests, the attorney will move the court to appoint an outside law guardian, and will remain as the child's counsel.

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