

# GEORGIA DEPENDENCY LAW IN THE FTC CONTEXT

JERRY BRUCE, DIRECTOR  
JEN CARRERAS, DEPUTY DIRECTOR

GEORGIA OFFICE OF THE CHILD ADVOCATE

# GEORGIA'S JUVENILE CODE

## TITLE 15, CHAPTER 11

### ARTICLE 1: GENERAL PROVISIONS

- JURISDICTION
- DEFINITIONS
- BEST INTERESTS FACTORS

### ARTICLE 2: JUVENILE COURT ADMINISTRATION

- 15-11-70: FAMILY TREATMENT COURTS

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# GEORGIA JUVENILE COURT JURISDICTION

Juvenile court is a court of LIMITED JURISDICTION

“A court of limited jurisdiction has authority to hear and decide cases only of a particular subject matter.”

*Wex Online Legal Dictionary*, Legal Information Institute, Cornell University Law School, 2022.

## O.C.G.A. 15-11-10

Juvenile court is the sole court for initiating action concerning children who are alleged to be delinquent, dependent, or in need of services

# GEORGIA JUVENILE COURT JURISDICTION

“Dependent child” means a child who:

- (A) Has been abused or neglected and is in need of the protection of the court;
- (B) Has been placed for care or adoption in violation of law; or
- (C) Is without his or her parent, guardian, or legal custodian.

O.C.G.A. 15-11-2(22)



# GEORGIA JUVENILE COURT JURISDICTION

## Abuse definition:

- Physical injury caused by caregiver act or omission
- Emotional abuse
- Sexual abuse/exploitation
- Prenatal abuse
- Act of family violence in the presence of the child

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



# GEORGIA JUVENILE COURT JURISDICTION

Neglect definition:

- The failure to provide proper care or control, subsistence, or education
- Inadequate supervision
- Abandonment

O.C.G.A. 15-11-2(48)



## When can the government appropriate a parent's decision-making rights?

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The state can only take over the parents' decision-making for a child AFTER the state has established its authority to do so (jurisdiction).

1. Prove parent is unfit, allowing the state to assume the parent's decision-making rights
2. State makes decision based upon best interests

# BEST INTERESTS IN GEORGIA'S JUVENILE CODE



“ . . Above all, this chapter shall be liberally construed to reflect the paramount child welfare policy of this state is to determine and ensure best interests of its children.” 15-11-1

The purpose of the article on dependency is “to ensure that the health, safety, and bests interests of a child be paramount concerns in all dependency proceedings.” 15-11-100.

“Whenever a best interests determination is required, court shall consider and evaluate all factors (20) affecting the best interests of the child in context of child’s age and developmental needs.” 15-11-26.

“In determining a child’s best interests, a guardian ad litem shall consider and evaluate all factors (13) affecting the best interests of a child in context of a child’s age and developmental needs.” 15-11-105(b).



A parent's ability to decide best interests is a fundamental liberty right.

There is a “fundamental liberty interest of natural parents in the care, custody, and management of their child”.


*Santosky v. Kramer*, 455 U.S. 745, 753 (1982).

“The liberty interest at issue in this case — the interest of parents in the care, custody, and control of their children — is perhaps the oldest of the fundamental liberty interests recognized by this Court.” *Troxel v. Granville*, 530 U.S. 57, 65 (2000).

“Why are the child’s best interests only considered after the parents’ rights?”

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It is not WHETHER the child’s best interests are being considered, but WHO has the right to decide what is in the child’s best interests.



## Best Interest Factors

- Child's **physical safety** and welfare, including food, shelter, health, and clothing
- Love, affection, bonding, and emotional ties between **child and parent** or caregiver
- Love, affection, bonding, and emotional ties between **child and siblings** (including half and stepsiblings)
- Child's **need for permanence**, including need for stability and continuity of relationships with parent, siblings, other relatives, and any other person who has provided significant care to the child
- Child's sense of **attachments**, including sense of security and familiarity, and continuity of affection for the child
- **Capacity and disposition** of each parent or person available to care for child to give love, affection, and guidance and to continue education and rearing of child
- **Home environment** of parent or person available to care for child considering promotion of child's nurturance and safety rather than superficial or material factors
- **Stability** of unit and presence or absence of support systems within community to benefit child
- **Mental and physical health** of all individuals involved

## Best Interest Factors

- Home, school, and community record and history of child, as well as any health or educational special needs of the child
- Child's community ties, including church, school, and friends
- Child's background and ties, including familial, cultural, and religious
- Least disruptive placement alternative for child
- Uniqueness of every family and child
- Risks attendant to entering and being in substitute care
- Child's wishes and long-term goals
- Preferences of persons available to care for child
- Evidence of family violence, substance abuse, criminal history, or sexual, mental, or physical child abuse in any current, past, or considered home for child
- Recommendations from a guardian ad litem
- Any other factors considered by court/GAL to be relevant and proper to its determination

O.C.G.A. § 15-11-26 (court); O.C.G.A. 15-11-213 (Disposition hearings); O.C.G.A. § 15-11-105 (GAL)

# Weighing Best Interests Factors

- Apply all BI factors to the facts
- Recognize when you are giving a factor more weight than another conflicting factor
- Analyze why you believe that factor is more important in this case
- Check how your own experiences are affecting your decision
- Seek independent professional advice when helpful to fill information gaps or remove your own bias



**“Reasonable efforts”  
means due diligence  
and the provision of  
appropriate services.  
OCGA 15-11-2(61)**

Reasonable efforts shall be made to preserve or reunify families (unless not required under specific circumstances):

- Prior to placement in foster care for a child alleged to be dependent; or
- To eliminate the need for removal for a child adjudicated dependent.

Court must make reasonable efforts findings at each stage of the proceedings

O.C.G.A. 15-11-202



Did DFCS make reasonable efforts to prevent removal?

Would it be contrary to the welfare of the child to continue in the care of the parent?

O.C.G.A. 15-11-131, 15-11-202

REMOVAL

# Preliminary protective hearing

Within 72 hours of removal  
Child and parent have right to  
attorney

Findings:

- Is there probable cause to believe the child is dependent?
- Is protective custody necessary to prevent abuse or neglect pending adjudication?
- Reasonable efforts
- Contrary to the welfare



# PETITION

If removal continued after PPH → within 5 business days of the PPH

If the child was returned at PPH → within 30 days of the PPH

If the child was never removed → When court oversight is necessary to implement services or otherwise remedy the grounds for dependency



# PETITION

“A petition alleging dependency ... shall set forth plainly and with particularity:

(1) The facts which bring a child within the jurisdiction of the court, with a statement that it is in the best interests of the child and the public that the proceeding be brought.”

O.C.G.A. 15-11-152

# EMERGENCY VS. NON-EMERGENCY PETITION

Non-Removal process  
Family preservation case  
↓  
Non-emergency petition  
↓  
Adjudication  
↓  
Disposition  
15-11-212(a)(1) child  
remains with parent  
subject to conditions

Removal process  
Imminent threat of harm  
↓  
Removal  
↓  
PPH  
↓  
Adjudication  
↓  
Disposition  
15-11-212(a)(2) custody to  
DFCS or another qualified  
individual

# ADJUDICATION HEARING

The Adjudication Hearing is the “trial” – the stage of proceedings where the court determines whether the evidence presented establishes clearly and convincingly that the child is abused or neglected, thereby enabling the state to usurp parental autonomy.



## Clear and convincing evidence

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“[T]he party must present evidence that leaves you with a firm belief or conviction that it is highly probable that the factual contentions of the claim or defense are true. This is a higher standard of proof than proof by a preponderance of the evidence, but it does not require proof beyond a reasonable doubt” (emphasis added).

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*Colorado v. New Mexico*, 467 U.S. 310, 316 (1984)

# FAMILY TREATMENT COURT JURISDICTION

Juvenile court is authorized by law to establish family treatment court as “an alternative to the traditional judicial system for the disposition of dependency cases...” (O.C.G.A. 15-11-70)(emphasis added).


- ✓ Disposition alternative
- ✓ Dependency must first be established by CCE and must continue throughout FTC case



## SUBSTANCE ABUSE AS GROUNDS FOR DEPENDENCY

Evidence must prove clearly and convincingly that a child is presently dependent as a result of the parent's substance use. Evidence of previous or possible future dependency alone is insufficient. See *In re A.M.B.*, 361 Ga.App. 551 (2021).

Also see *In re M.S.*, 352 Ga. App. at 262 (2019), where the court held that “a dependency determination cannot be based solely on speculation that the child might be dependent in the future.”



## SUBSTANCE ABUSE AS GROUNDS FOR DEPENDENCY

In order for a child to be dependent due to parental substance abuse, there must be evidence connecting the parent's substance use to the child's condition.





# JURISDICTION CAN CONTINUE... NOW WHAT?

CASE PLAN – 30 days from removal

DISPOSITION HEARING – 30 days from  
adjudication

JUDICIAL REVIEW – 75 days after from removal;  
4 months after initial review; every 6 months  
thereafter

PERMANENCY – 9 / 12 months after removal

TERMINATION OF PARENTAL RIGHTS – 15/22  
months absent compelling reasons

Timeline challenges with FTC?



# CASE PLAN

O.C.G.A.  
15-11-200 &  
15-11-201

- Assessment of child's and family's strengths and needs
- Recommended permanency plan
- Goals and activities designed to enable safe return
  - Goals and activities must be related to resolution of grounds for dependency
- Schedule of visits between children and family members
- Demonstrate reasonable efforts

Family treatment court (FTC) ensures that children, parents, and family members receive comprehensive services that meet their assessed needs and promotes sustained family safety, permanency, recovery, and well-being. In addition to high-quality substance use and co-occurring mental health disorder treatment, the FTC's family-centered service array includes other clinical treatment and related clinical and community support services. These services are trauma responsive, include family members as active participants, and are grounded in cross-systems collaboration and evidence-based or evidence-informed practices implemented with fidelity.

*NADCP Family Treatment Court Best Practices*, Standard 6 – Comprehensive Case Management, Services, and Supports for Families, p. 113, 2019.

## CASE PLANNING: NADCP STANDARDS

- A. Intensive Case Management and Coordinated Case Planning
- B. Family Involvement in Case Planning
- C. Recovery Supports
- D. High-Quality Parenting Time
- E. Parenting and Family-Strengthening Programs
- F. Reunification and Related Supports
- G. Trauma-Specific Services for Children and Parents
- H. Services to Meet Children's Individual Needs
- I. Complimentary Services to Support Parents and Family Members
- J. Early Intervention Services for Infants and Children Affected by Prenatal Substance Exposure
- K. Substance Use Prevention and Intervention for Children and Adolescents

## NADCP Standard 6:

Comprehensive  
Case Management,  
Services, and  
Supports for  
Families

## NADCP Standard 6A:

### Intensive Case Management and Coordinated Case Planning

Intensive case management: small caseloads and high frequency and intensity of contact between participants and case managers.

High levels of interagency service coordination and communication

Coordinated Case Plan: “Development of a single, coordinated case plan reveals areas of multiple and potentially conflicting requirements from different systems; resolving such conflicts keeps the participant from becoming overwhelmed. Clear communication, cross-systems information and data sharing, and shared decision making are all critical aspects of the care coordination process.” NADCP p. 120.

## NADCP Standard 6B: Family Involvement in Case Planning

Group decision-making with parents and families leads to:

- Higher rates of reunification
- Lower rates of reentry into foster care
- Increased placement stability
- More timely permanency decisions

“It is important for [the parent’s attorney] to be engaged in case planning to provide additional support.” NADCP p. 120.

## NADCP Standard 6C: Recovery Supports

- Completion of 90 or more days in SUD treatment approximately doubles the likelihood of reunification
- Engagement of certified recovery specialists and peer support specialists
- Use of peer and mutual self-help groups

## NADCP Standard 6D: High Quality Parenting Time

“The FTC operational team considered each child and family’s situation and determines the appropriate frequency, number, duration, and types of parenting and family visits.”

NADCP p. 125.



# NADCP Standard 6D: High Quality Parenting Time

*Recommended Frequency and Duration of Parenting and Family Time (Visitation)* (92, 94)

<b>Age Range</b>	<b>Frequency of Visits with Parents</b>	<b>Frequency of Visits with Siblings</b>	<b>Duration of Each Visit*</b>
<i>0 to 12 months</i>	<i>Daily if possible or 3-5 times per week</i>	<i>One or more times per week</i>	<i>At least 60 minutes</i>
<i>12 to 24 months</i>	<i>Daily if possible or 2-4 times per week</i>	<i>One or more times per week</i>	<i>60 to 90 minutes</i>
<i>2 to 5 years</i>	<i>Daily if possible or 2-4 times per week</i>	<i>One or more times per week</i>	<i>1 to 2 hours</i>
<i>6 to 12 years</i>	<i>At least 1-3 times per week</i>	<i>One or more times per week</i>	<i>1 to 3 hours</i>
<i>13 to 18 years</i>	<i>At least 1-2 times per week</i>	<i>One or more times per week</i>	<i>1 to 3 hours</i>

*\*For all age groups, session duration increases after each successful visit.*

NADCP p. 125.

## NADCP Standard 6

### E. Parenting and Family-Strengthening Programs

- Determine recovery stage at which parents can participate with their children in a meaningful way and retain and apply acquired skills and knowledge
- Ensure that parenting intervention provides instruction on fundamental coping strategies before teaching parenting techniques

### F. Reunification and Related Supports

- Help families achieve and maintain reunification
- Create and implement plan for post-reunification services

## NADCP Standard 6

G. Trauma-Specific Services for Children and Parents

H. Services to Meet Children's Individual Needs

I. Complimentary Services to Support Parents and Family Members

J. Early Intervention Services for Infants and Children Affected by Prenatal Substance Exposure

K. Substance Use Prevention and Intervention for Children and Adolescents

## NADCP Standard 6

“The FTC case plan does not replace the child welfare case plan or the treatment plan but rather is coordinated, supporting the key elements of all plans. The complementary services and supports outlined in all case plans are consistent, avoiding duplication and unnecessary services.”

NADCP p. 133.

## DFCS POLICY NO. 19.24

### Family Treatment Courts

DFCS shall ensure, in partnership with the FTC team:

- > The creation of coordinated treatment plans and case plans
- > The provision of evidence-based treatment
- > A “warm hand-off” or plan for warm hand-off of parent to appointments

<https://odis.dhs.ga.gov/ViewDocument.aspx?docId=4005655>

## Disposition hearing – court findings

O.C.G.A. 15-11-213

Why the best interests and safety of a child adjudicated as a dependent child are served by the disposition and case plan ordered

The availability of services recommended in the case plan

Whether reasonable efforts were made to prevent removal and to reunify after removal up to this point

Disposition is the stage where the court (1) determines what goals must be accomplished to remedy the grounds for dependency, (2) orders a case plan, and (3) determines what custody and family time should be in the meantime.



# TYPES OF DISPOSITION ORDERS – CUSTODY

OCGA 15-11-  
212(a)

Remain with parent subject to conditions for protection of the child

Transfer temporary legal custody to (among others):

- Any person, including biological parent, who is found qualified by a study, prioritizing kin
- Public or private agency authorized to receive care of the child (except DJJ and DBHDD)





# TYPES OF DISPOSITION ORDERS

OCGA 15-11-212(f)

If dependency is found to have been the result of substance abuse, the court may order that custody cannot be returned until either:

- (1) Substance abuse treatment and clean screens for 12 months, or
- (2) Successful completion of family treatment court

# DISPOSITION HEARING AND ORDER

Proposed case plan must be entered

Final case plan must be  
incorporated into court order

Must have conditions for return and may  
have conditions of return

Best Interests

Reasonable efforts / CTW

## CONDITIONS FOR RETURN / MODIFICATION OF DISPOSITION

Conditions for return are met. Child remains dependent but can be kept safe in the home subject to conditions of return.

### Modification of Disposition Order

O.C.G.A.15-11-32(b) Court can modify its order if changed circumstances so require in the best interests of the child

# JUDICIAL REVIEW HEARINGS

Initial review – 75 days after removal

Subsequent review – 4 months after initial review

Can be more frequent at court discretion

O.C.G.A. 15-11-216

# JUDICIAL REVIEW HEARINGS

- Present dependency
- Case plan compliance
- Placement appropriateness
- Whether all required services are being provided
- Appropriate visitation schedule
- WTLP and ILP services for child 14+
- Reasonable efforts to reunify

O.C.G.A. 15-11-216, 15-11-218

# PERMANENCY HEARING

## Purpose:

“To determine the future permanent legal status of each child in DFCS custody.” O.C.G.A. 15-11-230(a).

## Timing:

Under 7 or sibling under 7: within 9 months of removal

7 years or older: within 12 months of removal



# PERMANENCY HEARING

O.C.G.A. 15-11-232

## Findings:

- Reasonable efforts to finalize permanency
- Placement appropriateness
- Compliance with plan by all parties and service providers
- Appropriateness of service providers
- Efforts to eliminate reasons for removal
- Date likely to achieve permanency
- WTLP and ILP services for 14+
- Child consult re: permanency plan 14+
- Qualified Residential Treatment Program placement – additional findings
- Permanency plan
- (If child has been in care 15/22 months)  
Compelling reason why TPR is not in child's best interests (15-11-233)



# RIGHT TO ATTORNEY AND APPOINTMENT OF GAL



## OCGA 15-11-103 Right to Counsel

(a) A child and any other party to a proceeding under this article shall have the right an attorney at all stages of the proceedings under this article.

(c) A child's attorney owes to his or her client the duties imposed by the law of this state in an attorney-client relationship.

## OCGA 15-11-104 Appointment of GAL

In every dependency case, should be CASA if possible

## **O.C.G.A. 15-11-105(c) Guardian ad Litem duties**

- (1) Maintain regular and sufficient in-person contact with the child and, in a manner appropriate to his or her developmental level, meet with and interview such child prior to custody hearings, adjudication hearings, disposition hearings, judicial reviews, and any other hearings scheduled in accordance with the provisions of this chapter;
- (2) In a manner appropriate to such child's developmental level, ascertain such child's needs, circumstances, and views;
- (3) Conduct an independent assessment to determine the facts and circumstances surrounding the case;
- (4) Consult with the child's attorney, if appointed separately, regarding the issues in the proceeding;
- (5) Communicate with health care, mental health care, and other professionals involved with such child's case;
- (6) Review case study and educational, medical, psychological, and other relevant reports relating to such child and the respondents;
- (7) Review all court related documents;
- (8) Attend all court hearings and other proceedings to advocate for such child's best interests;
- (9) Advocate for timely court hearings to obtain permanency for such child;
- (10) Protect the cultural needs of such child;
- (11) Contact the child prior to any proposed change in such child's placement;
- (12) Contact the child after changes in such child's placement;
- (13) Request a judicial citizen review panel or judicial review of the case;
- (14) Attend judicial citizen panel review hearings concerning such child and if unable to attend the hearings, forward to the panel a letter setting forth such child's status during the period since the last judicial citizen panel review and include an assessment of the DFCS permanency and treatment plans;
- (15) Provide written reports to the court and the parties on the child's best interests, including, but not limited to, recommendations regarding placement of such child, updates on such child's adjustment to placement, DFCS's and respondent's compliance with prior court orders and treatment plans, such child's degree of participation during visitations, and any other recommendations based on the best interests of the child;
- (16) When appropriate, encourage settlement and the use of any alternative forms of dispute resolution and participate in such processes to the extent permitted; and
- (17) Monitor compliance with the case plan and all court orders.

# Georgia Rules of Professional Conduct

RULE 1.2 SCOPE OF REPRESENTATION

RULE 1.3 DILIGENCE

RULE 1.4 COMMUNICATION

RULE 1.6 CONFIDENTIALITY

RULE 1.7 CONFLICT OF INTEREST

RULE 1.9 CONFLICT OF INTEREST: FORMER CLIENT

RULE 1.14 CLIENT WITH DIMINISHED CAPACITY

RULE 2.1 ATTORNEY AS ADVISOR

RULE 3.7 ATTORNEY AS WITNESS

## Ex Parte Communication

### Ga. Code. Jud. Cond. 2.9

Judges shall not initiate, permit, or consider ex parte communications, or consider other communications made to them outside the presence of the parties, or their lawyers, concerning a pending proceeding or impending matter, subject to the following exceptions:

- administrative/non-substantive matters
- Advice of disinterested expert Consult with court staff or other judges provided the judge makes reasonable efforts to avoid receiving factual information that is not part of the record
- Judges may, with the consent of the parties, confer separately with the parties or their lawyers in an effort to mediate or settle pending proceedings.
- When the law specifically allows for ex parte communication, such

Judges may initiate, permit, or consider ex parte communications when authorized by law to do so, such as when issuing temporary protective orders, arrest warrants, or search warrants, or **when serving on therapeutic, problem-solving, or accountability courts, including drugs courts, mental health courts, and veterans' courts.**

## Ex Parte Communication Ga. Code. Jud. Cond. 2.9

COMMENT [4] ... In [the accountability court] setting, ex parte communications that would otherwise be prohibited by this Code may be authorized by law, including general or local accountability court rules and standards that have been approved by the Supreme Court of Georgia. Courts using this authority should ensure that participating parties are advised of the potential for and scope of the permitted ex parte communications and have waived on the record with the advice of counsel any objection to such communications.




## Ex Parte Communication

## Georgia Rules of Professional Conduct



### RULE 3.5 IMPARTIALITY AND DECORUM OF THE TRIBUNAL

A lawyer shall not, without regard to whether the lawyer represents a client in the matter:

- seek to influence a judge, juror, prospective juror or other official by means prohibited by law;
  - communicate ex parte with such a person except as permitted by law
- 

JERRY BRUCE

Director

Georgia Office of the Child Advocate

[jbruce@oca.ga.gov](mailto:jbruce@oca.ga.gov)

(706) 892-8865

JEN CARRERAS, CWLS

Deputy Director

Georgia Office of the Child Advocate

[jcarreras@oca.ga.gov](mailto:jcarreras@oca.ga.gov)

(404) 545-0202

THANK YOU!

