

III. ADJUDICATORY HEARING DELINQUENCY/UNRULY

A. Code Sections: O.C.G.A. §15-11-6, 15-11-9, 15-11-39, 15-11-65, 15-11-78, 15-11-79, 15-11-80, 15-11-83

B. Uniform Juvenile Court Rules 6.8, 11.1 - 11.4, Forms JUV-3, JUV-21

C. Procedure

1. Purpose. To determine if the allegations contained in the complaint or petition are true.

2. When Held. If the child is not in detention, no later than sixty (60) days from the filing of the petition. If the child is in detention, no later than ten (10) days from the filing of the petition. O.C.G.A. §15-11-39(a), UJCR 6.8. May be continued on motion of the court or that of a party only for good cause shown, and only for a reasonable time. If the court fails to set the adjudicatory hearing within the applicable 10-day or 60-day time limit, upon proper motion to dismiss and after a hearing on the motion, the court may deny the motion, or may grant the motion either with or without prejudice. In any case, findings of fact and conclusions of law must be filed as a part of the order. If a petition is dismissed without prejudice, the petition may be refiled. In the Interest of R.D.F., 266 Ga. 294 (1996).

3. Present in Court. Judge/Associate judge, child, parent(s)/guardians, prosecuting attorney, attorney for child and/or parent(s), court reporter/recorder, guardian ad litem (if appropriate), witnesses or any other persons the court finds have a proper interest in the proceeding or in the work of the court, and court clerk. O.C.G.A. §15-11-78(a).

The general public shall be admitted to an adjudicatory hearing involving an allegation of a designated felony or to any adjudicatory hearing involving delinquency where the child has previously been adjudicated delinquent. If the current case involves an allegation of sexual assault or substantial evidence of deprivation, the court shall close the hearing to the public. O.C.G.A. §15-11-78(b).

4. Step-by-Step Procedure.

a. The matter is called and the contents of the petition are read. The parties, attorneys and other interested persons are made known to the court and entered in the record.

b. If the child is not represented by counsel, the court should insure the child has previously knowingly and voluntarily waived the right to counsel. It is advisable to inform the child and parent(s) of the nature and consequences of the proceeding.

If there is no prior right to counsel waiver, the court should advise the child of his/her rights and determine whether the child and/or parent(s) desire to proceed with or without counsel. O.C.G.A. §15-11-6. If the child and/or parent(s) desire legal representation, the matter should be continued to allow counsel to be secured. If the child is detained, scheduling priority should be given. If the child has previously waived the right to counsel, the court may inquire if

the child and parent(s) are ready to proceed with hearing.

c. The court should examine the petition and its allegations and determine whether a guardian ad litem should be appointed for the child. Pursuant to O.C.G.A. §15-11-9, the court shall appoint a guardian ad litem for a child who is a party to the proceeding if he/she has no parent, guardian, or custodian appearing on his/her behalf or if their interests conflict with his/hers or in any other case in which the interests of the child require a guardian. A party to the proceeding or his/her employee or representative shall not be appointed.

d. The court asks the parties if they are ready to proceed. If there has been no arraignment, the child or the child's attorney is asked whether child admits or denies the allegation in the petition.

(1) If a child admits to the allegations, the court is convinced that the admission is knowingly and freely entered, and that there is a basis in fact to believe that the child committed the charge alleged, the court enters an order of adjudication finding that the child has committed the delinquent or unruly act. *See Uniform Form JUV-3 for suggested Admission/Denial Form and Order of Adjudication.* The court may proceed to a dispositional hearing or continue the matter to allow for a social history (presentence) investigation. If the child is detained, a dispositional hearing is scheduled for within thirty (30) days. O.C.G.A. §15-11-65(a).

(2) If the child denies the allegations, or if the court cannot accept the tendered admission, the matter is called for trial.

e. Trial.

(1) The judge or prosecutor may request stipulation of the jurisdictional information regarding the child's age and residence contained in the petition.

(2) The state and defense present their opening statements, conduct direct and cross-examination of witnesses, and make closing arguments. The presentation of evidence and order of arguments are governed by the same rules as apply to criminal trials in superior court.

(3) The judge prepares a fact finding decision. The standard of proof is **beyond a reasonable doubt**.

(a) If there is reasonable doubt the child committed the act(s) alleged, the court shall dismiss the petition and order the child discharged from any detention or other restriction theretofore ordered in the proceeding. O.C.G.A. §15-11-65(a), UJCR 11.2. *See Uniform Form JUV-3 for suggested Order of Dismissal.*

(b) If the court determines the child committed the act(s) alleged beyond a reasonable doubt, the court enters an order of adjudication finding the child has committed the delinquent or unruly act(s). *See Uniform Form JUV-3 for suggested Order of Adjudication.* The court may then proceed to the dispositional hearing or continue the matter to allow for a social history (presentence) investigation. UJCR 11.4. A decision concerning detention and bond may then be

made. If the child is detained, the court shall conduct the dispositional hearing within thirty (30) days of the adjudicatory hearing. If the hearing is conducted more than thirty (30) days after the adjudicatory hearing, the court shall make and file written findings of fact explaining the need for the delay. O.C.G.A. §15-11-65(a).

f. Post Trial

(1) In preparing a social history or predispositional report, the juvenile court must complete Uniform Form JUV-21 Social History Format and Face Sheet. If additional information is desired, the juvenile court may attach an addendum to the Social History as part thereof.

(2) In any hearing which was open to the public pursuant to O.C.G.A. §15-11-78(b), the Court must allow public access to the Complaint, Petition, and Order. O.C.G.A. §15-11-79.

(3) Within 30 days of any proceeding in which a child is adjudicated delinquent for a second or subsequent time, or any adjudicatory hearing involving a designated felony, the Court shall provide written notice to the school superintendent or to his or her designee of the school in which said child is enrolled or, if the information is known, of the school in which such child plans to be enrolled at a future date. Said notice shall include the specific delinquent act or designated felony act that such child committed. O.C.G.A. §15-11-80.

(4) The names and addresses of children who have been photographed or finger printed pursuant to O.C.G.A. §15-11-83 and the offense or offenses charged shall be made available in the discretion of the court to the appropriate Department of Family and Children Services and school superintendent. O.C.G.A. §15-11-83(c).