

## **XXI. PERMANENCY PLANNING**

**A. Code Sections: Adoption Assistance and Child Welfare Act of 1980, Public Law 96-272 (amends Title IV of Social Security Act), O.C.G.A. § 15-11-58, 15-11-28, 15-11-29.**

**B. Uniform Juvenile Court Rules: 3.10, 15.2, 24.1-24.16**

**C. Purpose** - To provide permanency and stability in the long term planning and placement of children.

### **D. Procedure**

1. **Jurisdiction.** O.C.G.A. § 15-11-28. The Juvenile Court has exclusive original jurisdiction over juvenile matters and shall be the sole court for initiating actions concerning any child who is alleged to be deprived. When a court orders reunification with a parent whose residence is in a county other than the county of the court, the court may transfer jurisdiction to the juvenile court of the residence of the parent who is to receive custody. O.C.G.A. § 15-11-30.5. See also section D.5.c. below, regarding reunification.

2. **Venue.** O.C.G.A. § 15-11-29. This section provides that deprivation proceedings may be commenced in the county in which the child resides or in the county in which the child is present when the action is commenced; provided, however, that for the convenience of the parties and witnesses, the court may transfer the proceeding to the county in which the child resides. If a superior court judge sits as a juvenile court judge, then hearings may be heard in any county within the judicial circuit over which the judge presides. See Ga. Const. 1983, Art. VI, Sec. 11, Paragraph VI; In re R.A.S., 249 Ga. 236 (1982); Guy v. Houston County DFCS, 162 Ga. App. 778 (1982); and In re M.J.G., 203 Ga. App. 452 (1992) (waiver of venue).

3. **Removal of the child/Reasonable efforts.** An order removing a child must be based on a finding that staying in the home would be contrary to the welfare of the child. The court shall also determine whether reasonable efforts were made by DFCS or any other agency to preserve and reunify the family prior to placement of the child in foster care, to prevent or eliminate the need for removing the child from home, and to make it possible for the child to return safely home. In determining reasonable efforts to be made with respect to a child, the child's health and safety shall be the paramount concern. Such findings shall also be made at every subsequent review of the order. O.C.G.A. § 15-11-58(a).

If continuation of reasonable efforts to return a child safely to the child's home is determined to be inconsistent with the permanency plan for the child, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child. O.C.G.A. § 15-11-58(a)(3).

Reasonable efforts to place a child for adoption or with a legal guardian may be made concurrently with reasonable efforts to return a child safely home. O.C.G.A. § 15-11-58(a)(6).

O.C.G.A. § 15-11-58(a)(4) provides that reasonable efforts **shall not be required** to be made with respect to a parent of a child if a court of competent jurisdiction has determined that the parent has:

- a. subjected the child to aggravated circumstances which may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse;
- b. committed murder of another child of the parent;
- c. committed voluntary manslaughter of another child of the parent;
- d. aided or abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of another child of the parent;
- e. committed a felony assault that results in serious bodily injury to the child or another child of the parent; or
- f. had his or her parental rights to a sibling terminated involuntarily.

Upon a finding that reasonable efforts shall not be required to be made with respect to a parent for one of the reasons above, the court shall hold a permanency hearing within 30 days after such determination. Reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child. O.C.G.A. § 15-11-58(a)(5).

4. DFCS Report. Within 30 days after removal, and at each subsequent review of the disposition order, DFCS must submit a report to the court. The report must include either:

a case plan for reunification of the family;

OR

a statement of the underlying facts/reasons that reunification is not appropriate.

a. This report will become part of the case record and shall be made available to the parents/guardian of the foster child. O.C.G.A. § 15-11-58(b).

b. A meeting to determine the contents of the report shall be held by DFCS in consultation with a Citizen Review Panel, if one is designated by the court, and the parents and children, when available. The parents shall be given at least five days written notice of the meeting and shall be advised that the report will be submitted to the court. The report shall contain any dissenting recommendations of the Citizen Review Panel, and any recommendations of the parents, if applicable.

5. Reunification. If the report contains a plan to reunify the child with the family, and is adopted, it will be in effect until modification by the court. O.C.G.A. § 15-11-58(c).

(a) The plan must contain at least:

(i) An explanation for why the child was placed in foster care, why the child can't be protected at home, and the harm that the child may incur in staying at home;

(ii) A description of the services offered and provided to prevent removal;

(iii) A discussion of how the plan is designed to achieve a placement in a **safe** setting that is the **least restrictive**, and most appropriate setting **available** and **close** to the home of the parents, consistent with the child's best interests;

(iv) A description of specific actions to be taken by the parents and the specific services to be provided by DFCS or other agencies so that the child can be safely returned home. Services and actions required of the parents which are not directly related to the circumstances necessitating removal cannot be made conditions of the return of the child without further court review;

(v) Specific time frames for the fulfillment of goals;

(vi) The person within DFCS who is directly responsible for ensuring that the plan is implemented; and

(vii) Consideration of the advisability of a reasonable visitation schedule which allows the parents to maintain contact with their children.

b. A copy of this report must be given to the parents at the same time it is submitted to the court, along with written notice that the report will be made the order of the court unless the parents request a hearing within five days from the date they receive the report. If no hearing is requested, the court shall enter a dispositional order or supplemental order incorporating all elements of the plan which the court finds essential to reunification, specifying what must be accomplished before reunification can be achieved. O.C.G.A. § 15-11-58(d).

c. When an order of disposition incorporates a reunification plan and the residence of the parent is not in the county of the court with jurisdiction, or if the residence of the parent changes to a county other than the county of the court with jurisdiction, the court may transfer jurisdiction to the juvenile court of the residence of the parent or parents to whom reunification is directed. Within 30 days of the filing of the transfer order, the transferring court shall provide the receiving court with certified copies of the adjudication order, the order of disposition, the order of transfer, the case plan, and any other court documents deemed necessary by the transferring court to enable the receiving court to assume jurisdiction. Compliance with this Code Section terminates jurisdiction in the transferring court and initiates jurisdiction in the receiving court. O.C.G.A. § 15-11-30.5.

6. Non-reunification. When DFCS' report to the court does not contain a plan for reunification services, the court, upon proper notice to the parents, shall hold a permanency hearing no later than 30 days following the filing of the report to review the report and the determination that a plan for reunification is not appropriate. O.C.G.A. § 15-11-58(e).

a. The report must contain at least: O.C.G.A. § 15-11-58(f)

(i) An explanation of why the child was placed in foster care, why the child can't be safely protected at home, and the harm that the child may incur in staying at home;

(ii) A description of the services offered and the services provided to prevent removal of the child from the home; and

(iii) A clear statement explaining why reasonable efforts to reunify the child 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 O.C.G.A. § 15-11-94(b) or O.C.G.A. § 15-11-58(a)(4).

b. During the hearing to review the determination that reunification is inappropriate, the DFCS representative must notify the court whether and when it intends to proceed with termination of parental rights. If the DFCS representative does not intend to petition for termination, the court can appoint a guardian ad litem and charge such guardian with the duty of determining whether termination proceedings should be commenced. O.C.G.A. § 15-11-58(g).

c. The findings of the court shall include a determination by clear and convincing evidence that reasonable efforts to reunify the child with the family will be detrimental, and that reunification services should not be provided or should be terminated. 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:

(i) The parent has unjustifiably failed to comply with a previously ordered plan designed to reunify the family;

(ii) A child has been removed on at least two prior occasions and reunification services were made available on those occasions;

(iii) Any of the grounds for terminating parental rights exist as provided in O.C.G.A. § 15-11-94(b); or

(iv) Any of the circumstances set out in O.C.G.A. § 15-11-58(a)(4) exist, making it unnecessary to provide reasonable efforts to reunify.

d. Whenever the permanency plan is adoption or placement in another permanent home, the DFCS report submitted to the court shall document the steps to be taken by DFCS:

(i) to find an adoptive family, a fit and willing relative, a legal guardian, or other permanent living arrangement for the child;

(ii) to place the child with an adoptive family, a fit and willing relative, a legal guardian, or in another planned permanent living arrangement; and

(iii) to finalize the adoption or legal guardianship.

At a minimum, such documentation shall include child specific recruitment efforts such as the use of state, regional, and national adoption exchanges including electronic exchange systems. O.C.G.A. § 15-11-58(j).

e. Termination proceedings. DFCS is required to file or join a petition for termination in the following circumstances:

(i) When the child has been in DFCS custody for 15 of the past 22 months;

(ii) When the child is an abandoned infant;

(iii) When the parent has murdered or committed voluntary manslaughter of another child of the parent;

(iv) When the parent has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of another child of the parent;

OR

(v) When the parent has committed a felony assault that results in serious bodily injury to the child or another child of the parent.

However, a petition for termination is **not required** if:

- the child is being cared for by a relative;
- the case plan documents a compelling reason why termination is not in the child's best interests; or
- DFCS has not provided services necessary for safely returning the child home.

While pursuing the petition for termination, DFCS continues to be required to seek permanent placement of the child through adoption. O.C.G.A. § 15-11-58(m).

7. Duration of Court Order. Except as provided by law, an order of disposition placing a deprived child in foster care under supervision of DFCS shall continue in force for 12 months after the date the child is considered to have entered foster care, or until sooner terminated by the court. The "date the child is considered to have entered foster care" is defined as the date of the first judicial finding that the child has been subjected to child abuse or neglect, or the date that is 60 days after the date on which the child is removed from the home, whichever is earlier. O.C.G.A. § 15-11-58(k).

8. Reviews. All cases of children in foster care shall be initially reviewed *within 90 days* of the dispositional order, but *no later than six months*, by a juvenile or associate juvenile court judge, judge pro tempore or a judicial citizen review panel established by the court. Following such initial review, additional periodic reviews shall be held at six-month intervals. O.C.G.A. § 15-11-58(k).

a. At the time of review of each case, a representative from DFCS shall notify the court whether DFCS intends to petition for the termination of parental rights, and if it intends not to do so, the court may appoint a guardian ad litem (GAL) to determine whether termination proceedings should be commenced. The Code is silent about procedure, but the GAL should be required to respond at a set time in writing. The Code is also silent about the further duties of a GAL, but the GAL should be required to attend the review which gave rise to the GAL's appointment. O.C.G.A. § 15-11-58(k).

b. If a panel review is held, the panel shall submit its report, including its findings and recommendations and those of DFCS, along with DFCS' proposed revised plan for reunification (or other permanency plan, if necessary), to the court and the parents within five days after the review. Any party may request a hearing in writing within five days after receiving a copy of the revised plan. O.C.G.A. § 15-11-58(k).

c. If no hearing is requested, or scheduled by the court on its own motion, the court shall review the proposed revised plan and enter a supplemental order incorporating a revised plan as part of its disposition hearing. If a hearing is held, the court shall enter a supplemental order incorporating all elements that the court finds essential in the proposed revised plan. O.C.G.A. § 15-11-58(l). The judge's supplemental order shall be entered within a reasonable time from the conclusion of the hearing or expiration of the time for the hearing to be requested. The order shall provide one of the following:

- (i) That the child shall return to the home of his parents/guardian/custodian, with or without imposed conditions;
- (ii) That the child shall continue in the current custodial placement and that the current placement is appropriate for the child's needs; or

(iii) That the child shall continue in the current custodial placement, but that the current placement plan is no longer appropriate for the child's needs, and DFCS shall devise another plan within available resources. The new plan must be submitted within ten days for court approval.

All parties shall receive a copy of the order.

9. Recommendation by Review Panel that Rights Be Terminated. If the Citizen Review Panel determines that the parents have unjustifiably failed to comply with the ordered plan designed to reunite the family and that such failure is significant enough to warrant consideration of termination of parental rights, the panel may make a recommendation to the guardian ad litem, DFCS, and the intake officer that a petition for termination of parental rights should be prepared. Any such party or officer shall file a petition if they find sufficient evidence. If there is no guardian ad litem when the citizen review panel makes this recommendation, the court may appoint a guardian who will then have the duty to determine if the termination proceedings should be commenced. O.C.G.A. § 15-11-58(l).

10. Extension of DFCS Custody. Under the provisions of O.C.G.A. § 15-11-58(n), the court may extend the duration of the order placing custody in DFCS for not more than twelve months if:

a. A hearing is held upon the motion of DFCS prior to the end of the order, which will determine the permanency plan for the child. Such permanency plan shall state:

(i) Whether, and, if applicable, when the child shall be returned to the parent or referred for termination and placed for adoption or referred for legal guardianship. If DFCS has documented a compelling reason why one of these plans would not be in the best interest of the child, the plan shall state that the child shall be placed in another permanent living arrangement; and

(ii) Whether reunification services, if in effect, should be discontinued.

b. Reasonable notice of the motion, hearing and opportunity to be heard are given to the parties affected, including foster parents, if any, of a child and any preadoptive parent or relative providing care for the child. However, such foster parents, preadoptive parents or relatives providing care for the child are not required to be made parties to the review or hearing solely on the basis of their right to notice and an opportunity to be heard.

c. The court finds that the extension is necessary to accomplish the purposes of the order extended.

d. For children placed out of state, procedural safeguards are applied to determine whether the out of state placement is still appropriate and in the best interest of the child.

e. For children who have reached 16, the plan lists the services needed to shift from foster care to independent living.

NOTE: Custody in DFCS may only be extended for one twelve-month period. Beyond that, DFCS must file a new deprivation petition in order to continue custody. In the Interest of B.G. and R.G., 231 Ga. App. 39 (1998).

## **E. Foster Care Review**

The laws of the various states differ as to the type of foster care review, but a system for such review is mandated by P.L. 96-272. Georgia has elected to use a judicial based system of review of all children in foster care. O.C.G.A. § 15-11-58(i). It is of interest that the statute does not distinguish between court ordered foster care and voluntary foster care in regard to review, and both are subject to the statutory scheme.

Children need the sense of belonging and continuity that a permanent home provides. They grow and flourish in a home that is stable and of significant duration. When children are allowed to drift or linger unnecessarily long in foster care, they fail to bond and develop as individuals. The human cost for the lack of permanent home is immeasurable but the financial costs are known to be staggering.

The goal of any foster care case review is to prevent unnecessary foster care and to assure the establishment of a supportive permanent home.

The responsibility of ensuring that adequate services are provided to children placed in foster care is the social and moral responsibility of the juvenile court. The juvenile court is the gatekeeper of the foster care system. Children come into care only on the court's sanction and the process provided to prevent unnecessary removal and to achieve permanence is a judicial function. When citizen panels are used for foster care review, they are tools to be used by the judge and should never be considered a replacement of the judge, nor an abdication of the judge's responsibilities.

Review materials from DFCS should reach the Court in sufficient time to allow the notification of all parties, including children, foster parents, attorneys for the children, GALs, DFCS personnel, mental health workers and other interested parties.

The Permanent Homes Program of the Council of Juvenile Court Judges of Georgia provides procedures for the conduct of citizen panel reviews, a copy of which is attached. It is suggested that judges who hold reviews without the assistance of citizen panels should be aware of citizen panel review procedures and should develop an informal style in the conduct of judicial reviews.

### **a. A Sample Colloquy for the Conduct of Judicial Reviews:**

*The Court:* "It is the belief of the Court and the Department of Family and Children's Services that children should not remain in foster care or in temporary custody for long periods of time because all children need a permanent home.

"The purpose of this review is to examine the court-ordered case plan. We hope to accomplish this by making sure that the court-ordered goals are realistic and by reviewing the progress or the lack of progress being made.

"The review today is not a hearing; however, all proceedings are confidential. Everyone here will have an opportunity to give his or her point of view so that we can see what progress is being made toward permanence."

The judge should make sure that everyone is introduced and determine which of the parties should remain in the room at the time.

*The Court:* "During this review, we will discuss:

- (i) The continuing necessity for and appropriateness of the placement;
- (ii) The extent of compliance with the case plan;
- (iii) The extent of progress made in alleviating or mitigating the causes of placement; and
- (iv) A projected, likely, date by which the child will be returned home or placed for adoption or legal guardianship."

All four issues must be addressed during the case review.

The judge should begin the presentation of information by asking the DFCS caseworker to present an update on the case. The child(ren) may be excused, if the information to be presented is of a sensitive nature.

b. Guidelines for the Conduct of Citizen Review Panels:

Chairperson Responsibilities During the Review:

- (i) Facilitate and lead the review meeting
- (ii) Help the panel stay focused
- (iii) Keep time restrictions

Calling the Meeting to Order: Opening Statement by Panel Chairperson

"The citizen review panel, appointed by the \_\_\_\_\_ County Juvenile Court, is called to order to conduct a case review in the interest of \_\_\_\_\_. (insert child(ren)'s name(s) here)

"It is the belief of the Court and the Department of Family and Children's Services that children should not remain in foster care or in temporary custody for long periods of time because all children need a permanent home.

"The purpose of this citizens' review panel is to reunite this child (or these children) with his or her family if at all possible. We hope to accomplish this by working with the parents to insure that the court-ordered goals are realistic and by reviewing the progress or the lack of progress being made.

"Our review today is not a hearing; however, all proceedings are confidential. Everyone here will have an opportunity to give his or her point of view so that we can see what progress is being made toward permanence. Any information presented may have future bearing on the case."



The Chairperson should make sure that everyone is introduced and determine which of the parties should remain in the room at the time.

"All parties present must swear or affirm to the following Oath of Confidentiality:"

(Administer Oath of Confidentiality here. Chairperson should witness signatures.)

The Chairperson should begin presentation of information by asking the DFCS caseworker to present an update on the case. The child(ren) may be excused if the information presented is of a sensitive nature.