

XXIII. VISITATION

- A. **Code Sections: O.C.G.A. §15-11-55 (disposition of deprived child); O.C.G.A. §15-11-63 (visitation home when delinquent child is in restrictive custody); O.C.G.A. §15-11-93 (effect of termination order on visitation); O.C.G.A. §15-11-11 (protective orders for visitation and contempt citations).**
- B. **Department of Family and Children Services - Social Services Manual Foster Care Service, Chapter 1000, Section 10 (§1010.2).**
- C. **Scope of this Section:**

This section deals with visitation referenced in the O.C.G.A. §15-11. It covers visitation in the following circumstances:

- 1. Visitation with deprived child in DFCS custody;
- 2. Visitation with delinquent child in restrictive DCYS custody;
- 3. Effect of termination of parental rights/adoption on visitation;
- 4. Visitation with children during proceedings by local court policy; and
- 5. Enforcement of protective orders for visitation.

D. **Visitation with Deprived Child in DFCS Custody:**

1. Deprived Child in DFCS Custody: Visitation rights are a residual "parental tie" which is not severed by the placement of the child in temporary DFCS custody, without a specific finding as to that right. In re K.B., 188 Ga. App. 199, 372 S.E. 2d 476 (1988). Under O.C.G.A. §15-11-55, once a child is adjudicated deprived, a dispositional order entered may contain conditions and limitations, including rights to visitation, as the court prescribes. However, if the child is placed in the temporary legal custody of DFCS, such conditions and limitations, unless specifically articulated to the contrary by the Court, are practically governed by the ability of DFCS to meet its own policies regarding visitation, as set forth below.

2. There are no statutory guidelines on frequency of visitation between the parent(s) and/or legal guardian of a child in the temporary legal custody of DFCS. However, §1010 of the Social Services Manual of DFCS, §1010 addresses the policies regarding visitation.

(a) That section recognizes the following guidelines for visitation:

- Parents may visit as frequently as agency resources permit, or as otherwise specified by Court Order.
- A visitation plan should be established with written notification provided to the parent(s). There should not be a deviation from the plan except for parental condition or conduct which adversely affects the child or persons in the child's immediate environment.

- When agency resources allow, visitation should be scheduled at two (2) week intervals.
- A child initially placed in foster care should have a family visit in the first week following placement. If a visit is not possible, arrangements should be made for a telephone or written contact during the first week of placement.
- The younger the child, the more frequent visitation is needed for the child to maintain a relationship with the parent.
- Supervised visits may offer the best opportunity to assess how visitation affects the parent and child and the quality of the interaction, especially during the first visits after the initial placement.
- When the parent is experiencing serious difficulties in relating to the child, the Services Worker should assist the parent in developing more meaningful ways of interacting with/relating to the child, such as activities, games, etc.
- Visits should be held in the least restrictive environments possible. Parks, playgrounds, and the home of the foster parent or parent offers alternatives to office visits. Visits should occur in the parent's home when appropriate.
- Family visits should become more frequent and of longer duration when placement with the parent nears. Overnight, weekend, and holiday visits in the home of the parent are important in the transition from foster care.
- Parents have the right to visit the child until parental rights are severed by the court or voluntarily relinquished.
- Siblings should have the opportunity to visit with each other especially when the parent is not cooperating with visitation.
- Other family members may visit when the Caseworker deems it important for the child.

(b) Visitation should take into account the following:

- the child's eating, sleeping and activity patterns; the parent's work schedule or other responsibilities; the activities and responsibilities of the home/facility.
- that the parent who misses visits, shows up late, seems disinterested, etc., may be experiencing great discomfort at having to continually face the reality of having the child taken away; the parent may respond to a better understanding of how important visiting is to the child and encouragement from the Services Worker.

- if a particular behavior of the parent is considered dangerous or detrimental to the child, an explanation should be provided to the parent as to why such behavior is detrimental; a written agreement specifying what is not acceptable should be developed; if visitation is reduced or curtailed, written notice should be provided to the parent, particularly if such reduction or curtailment represents a change in the case plan.

E. Visitation with Delinquent Child in DJJ Restrictive Custody:

1. Delinquent Child in Restrictive Custody: Under O.C.G.A. §15-11-63(e)(1)(D), a youth confined to a youth development center under this section shall not be permitted home visits during the first six (6) month period of confinement unless authorized by the court, except for "emergency visits for medical treatment, severe illness or death in the family." Any and all home visits must be "carefully arranged and monitored while a youth is confined in a youth development center, whether such confinement is pursuant to a court order or otherwise."

2. O.C.G.A. §15-11-63(a)(1) defines a home visit as one that is monitored by "appropriate personnel of the Department of Children and Youth Services designated pursuant to the regulations of the commissioner of children and youth services."

F. Visitation post Termination of Parental Rights/Adoption:

O.C.G.A. §15-11-93 indicates that an order terminating the parental rights of a parent "terminates all the parent's rights and obligations with respect to the child." This would include visitation. Under a recent adoption case in Minnesota (Adoption of C.H. 554 N.W. 2d 737 [Minn., 1996] Supreme Court), the Court ruled that even under an open adoption arrangement (i.e. -- one in which the adopting parents had a private contract concerning certain matters post adoption, including the right of the biological family to continued visitation with the child), the court concluded that such a provision was unenforceable until such time as the legislature determines state policy favors open adoptions and specifically authorizes such arrangements.

G. Visitation of Children While Attending Court Proceedings:

1. The policies of the particular court will control the visitation of children while at court for a court proceeding including a delinquent proceeding or a deprived proceeding (including a Judicial Citizen Review Panel meeting). Assuming the parent and child are both emotionally stable and physically safe in each other's presence, the public is otherwise protected and the child is not at risk of escape or being kidnapped, visitation at the court during court proceedings is often the only time the parent and child will be able to visit.

2. Some reasons court visitation should be encouraged and allowed are as follows: children may often be detained in detention facilities so geographically distant that visitation during visiting hours is not practical; parents work schedules or transportation needs may prohibit visitation; and visitation with deprived children during Judicial Citizen Panel Reviews may allow the panel an opportunity to observe the interaction between the parent and the child and make a better recommendation to the judge regarding reunification.

H. Enforcement of Orders Concerning Visitation:

1. Protective Orders for Visitation: O.C.G.A. §15-11-11 provides that upon "application of a party or on the court's own motion, the court may make an order restraining or otherwise controlling the conduct of a person if an order of disposition of a child has been or is about to be made...and due notice of the... motion and the grounds therefore" are provided. Under O.C.G.A. §15-11-11(a)(2), that order may "permit a parent to visit the child at stated periods."

2. The motion shall be heard at a hearing after notice thereof and opportunity to be heard therein is afforded to the person or persons subject to the protective order. The order may be modified, extended as to time, or both, or terminated if the court determines that the best interests of the child and the public will be served thereby. O.C.G.A. §15-11-11(b).

3. The protection orders may be enforced "by citation to show cause for contempt of court by reason of any violation thereof and, where protection of the welfare of the child so requires, by the issuance of a warrant to take the alleged violator into custody and bring him before the court." O.C.G.A. §15-11-11(c).