



**CHILDREN IN NEED OF SERVICES:**  
A Guide to Cases under Article 5 of  
Georgia's New Juvenile Code

Prepared by:  
Kirsten Widner  
Barton Child Law and Policy Center  
Emory University School of Law  
1301 Clifton Road  
Atlanta, Georgia 30322  
404.727.6664  
bartonclinic.emory@gmail.com  
www.bartoncenter.net



## Table of Contents

I. What Does “Children in Need of Services” Mean? .....	2
II. What Are the Goals and Legislative Intent of CHINS? .....	3
III. Who’s Involved in a CHINS Case? .....	5
<i>Which Court Hears the Case?</i> .....	5
Venue .....	5
One Judge, One Family.....	6
<i>Who Is a Party?</i> .....	6
<i>Who Else Can the Court Involve?</i> .....	6
<i>Who Gets Representation?</i> .....	7
Right to Counsel .....	7
Guardians ad Litem .....	7
IV. How Does a Child in Need of Services Come Before the Court? .....	8
<i>Police Contact</i> .....	9
<i>Complaint</i> .....	9
V. What’s the Process? .....	11
<i>Detention Decisions (if any)</i> .....	11
Initial Placement Alternatives .....	11
Case Plans for Children Placed in Foster Care.....	12
Continued Custody Hearing .....	13
<i>Opportunities for Problem Solving Outside of Court</i> .....	17
School-Based Efforts .....	17
Community-Based Risk Reduction Programs .....	18
Mediation.....	20
<i>Court Process</i> .....	21
Petition.....	21
Summons .....	23
Adjudication .....	25
Disposition .....	25
Continued Oversight .....	27
<i>Competency Related Issues</i> .....	29
Appendix A: Key Definitions from the New Code .....	30
Appendix B: Case Timelines.....	33

## I. What Does “Children in Need of Services” Mean?

The “Children in Need of Services” or “CHINS” framework represents a new approach to court involvement with children who have committed status offenses, and their families. CHINS replaces Georgia’s current approach to children who are deemed “unruly” and those who have been adjudicated status offenders under the current O.C.G.A.<sup>1</sup> and provides for court intervention with essentially the same class of children.

A Child in Need of Services is defined as a child who is:

- Under the age of 18;<sup>2</sup> and
- Needs care, guidance, counseling, structure, supervision, treatment, or rehabilitation;<sup>3</sup> and
- Is found by the court to have been one or more of the following:
  - Required by mandatory school attendance laws to attend school but habitually truant;<sup>4</sup>
    - In Georgia, school attendance is mandatory for all children age 6 to age 16.<sup>5</sup>
    - Truant means having 10 or more unexcused absences in the current school year.<sup>6</sup>
  - Habitually disobedient to his or her parent, ungovernable, or placing him- or herself in unsafe circumstances;<sup>7</sup>
  - A runaway, meaning that the child has been away from his or her parent, guardian or legal custodian for

<sup>1</sup> O.C.G.A. § 15-11-2(11) defines “status offender.” O.C.G.A. § 15-11-2(12) defines “unruly child.”

<sup>2</sup> New Code Section 15-11-2(10) (defining a child as someone under the age of 18, or a person of a different age in certain circumstances that generally will not apply in the CHINS context). Current O.C.G.A. § 15-11-2(2) also uses the age of 18 as the cutoff for unruly children.

<sup>3</sup> New Code Section 15-11-2(11)(A). This is similar to but more expansive than current O.C.G.A. § 15-11-2(12)(H)’s requirement that the child need “supervision, treatment or rehabilitation.”

<sup>4</sup> New Code Section 15-11-2(11)(A)(i); O.C.G.A. 15-11-2(12)(A).

<sup>5</sup> O.C.G.A. 20-2-690.1(a).

<sup>6</sup> New Code Section 15-11-381(6). The current O.C.G.A. does not define truant.

<sup>7</sup> New Code Section 15-11-2(11)(B). Current O.C.G.A. § 15-11-2(12)(B) covers the disobedience and ungovernability, but does not address the child’s placing him- or herself in unsafe circumstances.

### *A Note About*

#### *Terminology:*

This guide is intended to help court personnel and other stakeholders become familiar with the new law before it goes into effect. Because the new law renumbers and replaces current law, we will use the following terminology for maximum clarity: “O.C.G.A.” will be used for the current Official Code of Georgia Annotated, before the changes take effect on January 1, 2014, and for those parts of the current code that are not changing.

“New Code” or “New Code Section” will be used to refer to the sections rewritten and renumbered by HB 242 that will take effect on January 1, 2014.

“Proposed Model Code” or “P.M.C.” will be used to refer to the original Young Lawyer’s Division proposal for

- more than 24 hours without permission and without “just cause;”<sup>8</sup>
- Out in public between midnight and 5am;<sup>9</sup>
- Present in a bar without his or her parent, guardian or legal custodian, or in possession of alcoholic beverages;<sup>10</sup>
- In violation of a court order from a previous CHINS case;<sup>11</sup>
- Someone who has committed an offense that is only applicable to a child;<sup>12</sup>
  - This covers any other status offense that might not be specifically captured by the list.
- Someone who has committed a delinquent act who is in need of supervision but not treatment or rehabilitation.<sup>13</sup>



**Ideas in Application:** Imagine a 15 year-old girl suspected of being commercially sexually exploited by her much older boyfriend. Her parents don’t feel able to control her behavior and they need help. Under the New Code, a complaint could be filed alleging that she is a child in need of services because she is not obeying her parents and is placing herself in unsafe circumstances.

The New Code divides different types of cases into separate “articles” for organizational clarity. The CHINS provisions are found in Article 5. The following sections will explain the framework the New Code creates for these cases and how it is different from current law.

## II. What Are the Goals and Legislative Intent of CHINS?

Under the current O.C.G.A., provisions related to unruly children are intermingled with the provisions relating to delinquent children, and court proceedings for unruliness look and feel very similar to delinquency proceedings.<sup>14</sup> The drafters of the Proposed Model Code introduced the CHINS framework in Georgia with the goal of distancing the treatment of children alleged to be status offenders from the delinquency model. They also hoped to “create an informal process by which families can receive services and reach resolutions before formal court involvement.”<sup>15</sup>

Many states are already using models like CHINS, though they are all a little bit different. The drafters of the Proposed Model Code looked specifically at the frameworks from

<sup>8</sup> New Code Sections 15-11-2(11)(A)(iii) and 15-11-381(4). Current O.C.G.A. § 15-11-2(12)(D) covers approximately the same children but does not provide a minimum timeframe for the absence.

<sup>9</sup> New Code Section 15-11-2(A)(v); O.C.G.A. § 15-11-2(12)(E).

<sup>10</sup> New Code Section 15-11-2(A)(vii); O.C.G.A. § 15-11-2(12)(G).

<sup>11</sup> New Code Section 15-11-2(A)(vi); O.C.G.A. § 15-11-2(12)(F) (involving violation of an order in a previous unruly case).

<sup>12</sup> New Code Section 15-11-2(11)(A)(iv); O.C.G.A. § 15-11-2(12)(C).

<sup>13</sup> New Code Section 15-11-2(11)(B); O.C.G.A. § 15-11-2(12)(I).

<sup>14</sup> Delinquent children are children who have committed acts that would be crimes if they were adults. O.C.G.A. § 15-11-2(6) & (7).

<sup>15</sup> Comments to P.M.C. § 15-11-601.

Connecticut, Florida, Louisiana, Massachusetts, New Hampshire, New York, and Washington for inspiration.<sup>16</sup>

There were other significant contributions to the development of the CHINS article as well. When Governor Nathan Deal reappointed the Special Council on Criminal Justice Reform for Georgians in 2012, he tasked members to look at the juvenile justice system. They found that a significant portion of the Department of Juvenile Justice’s resources were being expended to detain children who had committed only status offenses. Specifically, the report said “In 2011, nearly 25 percent of juveniles in out-of-home placements were adjudicated delinquent for a misdemeanor or status offense.”<sup>17</sup> The Special Council looked to the experience of states such as Texas, Florida, Virginia, and Alabama that had restricted use of out-of-home placements for status offenders in shaping its own recommendations.<sup>18</sup> Although they did not specifically endorse the CHINS approach, the Special Council recommended an absolute prohibition against the use of the Department of Juvenile Justice’s out-of-home placements for status offenders, and the development of more evidence-based community programs and supervision.<sup>19</sup> Members of the Special Council continued to play a significant role in the development of the New Code as it worked its way through the legislative process.

In addition to this history, we have clear statutory language about the goals of these provisions. The legislature included a purpose statement in each of the substantive articles of the New Code. The purpose statement for Article 5 gives us our clearest indication of the legislative intent for CHINS. It tells us these cases should:

- Acknowledge that often a child’s behavior is a sign that the child needs assistance to avoid progressing to more damaging choices;
- Make family members aware of their roles in creating and solving problems involving the child;
- Provide the child with the services and supports he or she needs to get back on track; and
- Ensure the cooperation and coordination of different agencies involved with the family.<sup>20</sup>



**Quick Recap:** The legislative history and purpose statement tell us that the CHINS framework is intended to:

- ✓ Move status offenders away from the delinquency model
- ✓ Reduce the use of secure detention and increase community-based services, particularly for low-risk offenders
- ✓ Understand the child’s behavior in the context of the family and respond through a multi-agency approach

<sup>16</sup> Id.

<sup>17</sup> REPORT OF THE SPECIAL COUNCIL ON CRIMINAL JUSTICE REFORMS FOR GEORGIANS 9 (2012), *available at*: [http://gov.georgia.gov/sites/gov.georgia.gov/files/related\\_files/press\\_release/Report%20of%20the%20Special%20Council%20on%20Criminal%20Justice%20Reform%20for%20Georgians%202012%20-%20FINAL.pdf](http://gov.georgia.gov/sites/gov.georgia.gov/files/related_files/press_release/Report%20of%20the%20Special%20Council%20on%20Criminal%20Justice%20Reform%20for%20Georgians%202012%20-%20FINAL.pdf).

<sup>18</sup> Id. at 15.

<sup>19</sup> Id.

<sup>20</sup> New Code Section 15-11-380.

### III. Who Is Involved in a CHINS Case?

The New Code gives much more explicit guidance about which juvenile court has jurisdiction over a particular case, which judge within that court should hear the case, who is considered a party and who else gets what type of representation.

#### ***Which Court Hears the Case?***

Specific Article 5 venue provisions outline which courts can receive and hear a CHINS case. A provision in Article 1 of the New Code gives guidance as to which judge within a court should hear the case.

#### **Venue**

A CHINS case can be initiated in either:

- The county in which the child is alleged to have done whatever act forms the basis for the CHINS petition; or
- The county where the child legally resides.<sup>21</sup>
  - A child legally resides wherever the person who has legal custody of the child lives.<sup>22</sup>

A case is initiated by filing either a complaint or petition with the juvenile court.<sup>23</sup> If that filing occurs in the county where the act is alleged to have occurred, the court must transfer the case to the county where the child legally resides.<sup>24</sup> This is consistent with the principle that a child's family and community are important resources in responding to a CHINS case.<sup>25</sup> These resources are easier to involve if the child's case is handled in his or her home community.

The transferring court is required to send certified copies of all documents relating to the case to the receiving court.<sup>26</sup>



***Ideas in Application:*** Imagine that a 14 year-old boy suspected to have run away from his home in Douglas County is picked up by police in Cobb County. The Cobb County police officer can file a complaint with the local juvenile court, and that court must then transfer the case to Douglas County, sending certified copies of the complaint and any other documents provided by the officer.

<sup>21</sup> New Code Section 15-11-401(a).

<sup>22</sup> O.C.G.A. § 19-2-4.

<sup>23</sup> See New Code Sections 15-11-390 and 15-11-420.

<sup>24</sup> New Code Section 15-11-401(b).

<sup>25</sup> New Code Section 15-11-380.

<sup>26</sup> New Code Section 15-11-401(c).

## **One Judge, One Family**

If the child or family has been before the court on another case, the New Code prefers that the same judge that heard the other matters should be the one to preside over the case if possible.<sup>27</sup> This is intended to ensure stability and continuity for the child and the family by having a consistent judge who has the benefit of the full context of the child and family's situation.<sup>28</sup>

If the child has another open case before the court, the New Code allows the court to consolidate the proceedings, even if the other case is a delinquency or dependency matter.<sup>29</sup> If the case is consolidated with a dependency case and the child is in foster care, the timelines of Article 3, the dependency article, must be followed.<sup>30</sup>

## **Who Is a Party?**

Under the general definition of a party in Article 1 of the New Code, the child is a party to any juvenile court proceedings to which he or she is subject, so the child is clearly a party to his or her CHINS proceedings.<sup>31</sup> The general definition of party also includes the state, a parent, guardian or legal custodian, or any other person subject to the judicial proceeding.<sup>32</sup> Practically speaking, the most common parties to a CHINS case will be the child and the state. This is because the child's act forms the basis of the petition, and the state is intervening to provide assistance to the child.

## **Who Else Can the Court Involve?**

New Code Section 15-11-423 allows the court to summon:

- The child;
- The child's parent, guardian or legal custodian;
- DFCS and any other public agencies or institutions providing services; and
- Anyone else the court believes is a "necessary and proper" party to the proceedings.<sup>33</sup>

Anyone receiving the summons gets a copy of the petition and is required to appear before the court at the hearing. This gives the court broad discretion to look at the individual circumstances of the child and involve in the proceeding those people or agencies whose participation will be essential to the child's success.

Any person or agency that fails to appear after being summoned by the court may be held in contempt of court.<sup>34</sup>

---

<sup>27</sup> New Code Section 15-11-3.

<sup>28</sup> Comments to P.M.C. § 15-11-102.

<sup>29</sup> New Code Section 15-11-12(b).

<sup>30</sup> New Code Section 15-11-12(c).

<sup>31</sup> New Code Section 15-11-2(52).

<sup>32</sup> *Id.*

<sup>33</sup> New Code Section 15-11-423(a).

<sup>34</sup> New Code Section 15-11-425. Penalties for contempt are found in New Code Section 15-11-31 and may include fines or short-term imprisonment.

## Who Gets Representation?

### Right to Counsel

Any party to the proceeding has a right to be represented by counsel. If the party is an indigent person, he or she is entitled to a court appointed attorney.<sup>35</sup> A person is indigent if he or she cannot, without undue hardship, pay for the costs of representation.<sup>36</sup>



**Puzzling Provisions:** The specific provisions relating to the child's right to counsel in CHINS cases are somewhat confusing. The first subsection of New Code Section 15-11-402 requires a court to appoint counsel for a child alleged to be in need services. In a later subsection, the child is required to be told about his or her right to counsel and given the opportunity to either hire a lawyer of his or her choosing, or, if he or she is indigent, to have the court appoint one. Read together, these provisions clearly show that the child has the right to counsel in CHINS proceedings and the court is to ensure that right is protected through either appointed counsel or an attorney selected by the child.

If the child has been appointed an attorney before, whether on a delinquency or dependency matter, the court is to appoint the same attorney for the child in the CHINS proceeding, if possible.<sup>37</sup> The attorney is to continue representation through any appeals, unless excused by the court.<sup>38</sup>

### Guardians *ad Litem*

The court may also appoint a guardian *ad litem* (GAL) for a child alleged to be in need of services, either on its own motion or at the request of the child's attorney.<sup>39</sup> The primary role of the GAL is to assist the court in determining the best interests of the child.<sup>40</sup> The specific duties track those for guardians *ad litem* in dependency cases, and include:

- Maintaining regular contact with the child and ascertaining his or her views on the issues before the court;<sup>41</sup>
- Conducting an independent investigation into the facts and circumstances of the case;<sup>42</sup>
- Attending all hearings and providing written reports to the court and the parties with recommendations on placement, services and other matters in the child's best interests;<sup>43</sup> and

<sup>35</sup> New Code Section 15-11-423(b).

<sup>36</sup> New Code Section 15-11-2(38). The New Code does not set a specific income level to be considered indigent for a Child in Need of Services case. Children in dependency cases are always considered indigent, and in delinquency cases the standards from the criminal procedure code, Title 17, apply. All other determinations of indigence in juvenile court fall under the general definition.

<sup>37</sup> New Code Section 15-11-402(e).

<sup>38</sup> New Code Section 15-11-402(f).

<sup>39</sup> New Code Section 15-11-402(c).

<sup>40</sup> *Id.*, New Code Section 15-11-105.

<sup>41</sup> New Code Section 15-11-105(c)(1) & (2).

<sup>42</sup> New Code Section 15-11-105(c)(3).

<sup>43</sup> New Code Section 15-11-105(c)(8) & (15).



- Monitoring progress of the child and his or her services.<sup>44</sup>

The court may appoint the same person to serve as both the child’s attorney and guardian *ad litem*, unless or until there is a conflict between the attorney’s duties to the child as a client and the attorney’s opinion of the child’s best interests.<sup>45</sup> If the child has been appointed a GAL before, whether on a delinquency or dependency matter, the court is to appoint the same GAL for the child in the CHINS proceeding, if possible.<sup>46</sup>



**Puzzling Provisions:** New Code Section 15-11-402(b) provides that a court should appoint a CASA to serve as the guardian *ad litem* for the child whenever possible. However, CASA training, funding, and program standards are specific to dependency cases and therefore, CASAs generally only serve in dependency cases. Practically speaking, courts should not plan to use CASAs for CHINS cases. However, if a child is alleged to be both dependent and a child in need of services, a CASA appointed for the dependency case may be able to make an appropriate contribution to the CHINS proceeding.

### Representation of the State

As will be discussed below, if law enforcement or DFCS believes that a child in need of services should be in state custody, there must be a hearing in which someone must present the state’s point of view.<sup>47</sup> Additionally, at the adjudication hearing, the petitioner has the responsibility for proving that the child is in need of services.<sup>48</sup> If the court action was initiated by a school official, law enforcement or DFCS, or if court requested that a petition be filed, then the state will be the petitioner and should be represented by counsel in the hearing.



**Puzzling Provisions:** Unlike the delinquency section of the New Code, which specify in Section 15-11-473 that a prosecuting attorney must conduct the proceedings on behalf of the state, the CHINS section is silent as to how the state should be represented. Earlier versions of the New Code did require a prosecuting attorney, but these provisions were removed during the legislative process. This suggests that the legislature did not want to require prosecutors to participate in these cases. However, this leaves courts without clear guidance on who has responsibility to bring the case on the state’s behalf.

<sup>44</sup> New Code Section 15-11-105(c)(17).

<sup>45</sup> New Code Section 15-11-402(c).

<sup>46</sup> New Code Section 15-11-402(e).

<sup>47</sup> New Code Section 15-11-414.

<sup>48</sup> New Code Section 15-11-440.

## IV. How Does a CHINS Case Come Before the Court?

There are two primary ways a child can come to the court's attention: through police interaction or by someone making allegations directly to the juvenile court in the form of a complaint.

### ***Police Contact***

A law enforcement officer can take a child into temporary custody if:

- There are reasonable grounds to believe that the child has run away from his or her parent, guardian, or legal custodian;
- The child's health or welfare is in danger from his or her circumstances unless immediate action is taken; or
- The officer is acting pursuant to a court order.<sup>49</sup>

A law enforcement officer who has taken a child into custody must take the child directly to a medical facility if the child has an injury or other condition that needs treatment.<sup>50</sup> The officer must also make every effort to contact the child's parent, guardian, or legal custodian right away.<sup>51</sup> Law enforcement may not keep the child in temporary custody for longer than 12 hours; by that point they must either release the child to his or her parent, guardian, or legal custodian, or contact the juvenile court.<sup>52</sup>

### ***Complaint***

A complaint is an initial pleading describing the circumstances believed to require the court's intervention.<sup>53</sup> It can be filed by the child's parent, guardian, or legal custodian, or by a DFCS employee, a school official, a law enforcement officer, a guardian *ad litem*, or an attorney.<sup>54</sup> The juvenile court intake officer is responsible for receiving complaints.<sup>55</sup>

Every complaint should include:

- The child's name, date of birth, and address;<sup>56</sup>
- The names and addresses of the child's parent, guardian, legal custodian, other family members, and other people living in the child's home;<sup>57</sup>
- A description of the acts alleged to have been committed by the child that, if true, would make the child a child in need of services;<sup>58</sup> and

---

<sup>49</sup> New Code Section 15-11-410(a).

<sup>50</sup> New Code Section 15-11-410(c).

<sup>51</sup> New Code Section 15-11-411(b).

<sup>52</sup> New Code Section 15-11-411(a) & (c).

<sup>53</sup> New Code Section 15-11-2(14).

<sup>54</sup> New Code Section 15-11-390(a).

<sup>55</sup> New Code Section 15-11-390(e).

<sup>56</sup> New Code Section 15-11-390(b)(1).

<sup>57</sup> New Code Section 15-11-390(b)(2).

<sup>58</sup> New Code Section 15-11-390 (b) does not specifically require this, but it is an essential element of a complaint. New Code Section 15-11-2(14).

- The name of any public institution or agency that has the responsibility or ability to supply services alleged to be needed by the child.<sup>59</sup>

If the person bringing the complaint does not have all of this information, that should be noted in the complaint.<sup>60</sup>

If a school official is bringing the complaint, additional information is required to demonstrate the steps the school has already taken to address the issue with the child.<sup>61</sup> Specifically, a complaint from a school official must *also* include information showing that:

- The school district has tried to resolve the issue through educational approaches;<sup>62</sup>
- The school district has attempted to engage the parent, guardian, or legal custodian in resolving the issue and:
  - The parent, guardian, or legal custodian was unwilling or unable to resolve it;
  - The issue remains a problem; and
  - Court intervention is needed;<sup>63</sup>
- And, if the child is eligible or suspected to be eligible for disability or special education services, the school district has:
  - Determined the child’s eligibility under the Individuals with Disabilities Education Act or Section 504 of the Rehabilitation Act of 1973;<sup>64</sup> and
  - Reviewed the child’s Individualized Education Program (IEP), if applicable, and made any appropriate modifications.<sup>65</sup>

Based on the complaint, the court may issue an order authorizing the police to bring the child into temporary custody.<sup>66</sup> In determining whether to issue an order, the court is required to:

- Consider the results of a detention assessment;
- Determine whether continuation in the home is contrary to the child’s welfare;
- Determine whether there are available services that would prevent the need for custody; and
- Make individualized, written findings of fact to support the order.<sup>67</sup>

---

<sup>59</sup> New Code Section 15-11-390(b)(3).

<sup>60</sup> New Code Section 15-11-390(b)(4).

<sup>61</sup> New Code Section 15-11-390(c).

<sup>62</sup> New Code Section 15-11-390(c)(1).

<sup>63</sup> New Code Section 15-11-390(c)(2).

<sup>64</sup> New Code Section 15-11-390(d)(1).

<sup>65</sup> New Code Section 15-11-390(d)(2).

<sup>66</sup> New Code Section 15-11-410(a).

<sup>67</sup> New Code Section 15-11-410(b).



**Ideas in Application:** Police contact and the filing of a complaint are not mutually exclusive ways for the child to come before the court. The 14 year-old boy suspected to have run away in our previous example could have ended up in temporary police custody in different ways. For example: (1) The police could have encountered him, suspected he was a runaway, brought him into temporary custody, called the juvenile court, and filed a CHINS complaint; or (2) The parents could have filed a complaint with the juvenile court after they discovered he was gone, the court could then have entered an order to bring him into temporary custody after evaluating the statutory, and police could have picked him up pursuant to that order.

If the complaint alleges that the child has run away, and it is the first time this child has been alleged to have run away, the child's parent, guardian, or legal custodian can request that the complaint be dismissed and any CHINS proceedings or process will be terminated.<sup>68</sup>

## V. What's the Process?

### ***Detention Decisions (if any)***

As previously discussed, if a child is picked up by law enforcement, the longest law enforcement can exercise temporary custody over the child is 12 hours.<sup>69</sup> By the end of that 12-hour period, either the child must have been returned to his or her parent, guardian, or legal custodian, or the court must be notified.<sup>70</sup> If the court is notified, it then is charged with determining the child's placement.<sup>71</sup>

### **Initial Placement Alternatives**

The court is required to select the least restrictive placement consistent with the child's needs for protection or control, and should consider the following, which are present in order of preference:

- Placement with the child's parent, guardian, or legal custodian with that person's promise to bring the child to court upon request;<sup>72</sup>
- Placement in the custody of DFCS for foster care;<sup>73</sup>
- In limited circumstances, placement in a DJJ facility.<sup>74</sup>

Under no circumstances may a child believed to be in need of services be placed in an adult jail.<sup>75</sup>

<sup>68</sup> New Code Section 15-11-405.

<sup>69</sup> New Code Section 15-11-411(a).

<sup>70</sup> New Code Section 15-11-411(c).

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> New Code Section 15-11-412.

In order for the court to place the child in a DJJ placement, which can be a secure placement such as a Regional Youth Detention Center (RYDC) or a nonsecure residential facility such as a group home operated by or for DJJ,<sup>76</sup> one of the following three circumstances must apply:

- The child must be alleged to be a runaway;<sup>77</sup>
- The child must be alleged to be “habitually disobedient of the reasonable and lawful commands of his or her parent, guardian, or legal custodian and [] ungovernable;”<sup>78</sup> or
- The child must have previously failed to appear for a scheduled hearing.<sup>79</sup>

Additionally, the court must administer and consider a detention assessment before sending the child to a DJJ placement.<sup>80</sup> The child cannot remain in the DJJ placement more than 24 hours.<sup>81</sup>

### **Case Plans for Children Placed in Foster Care**

If the child is placed in foster care, the child is required to have a case plan.<sup>82</sup> The case plan must meet the requirements for a case plan in a dependency case,<sup>83</sup> which include:

- Involvement of the parent, guardian, or legal custodian, the child, and DFCS in developing the case plan;
- A plan to keep the child in the most appropriate, least restrictive, and most family-like setting available, and in close proximity to his or her family;<sup>84</sup>
- Detailed content requirements such as:
  - A description of the circumstances that brought the child before the court;<sup>85</sup>
  - A description of the child’s and his or her family’s strengths and needs;<sup>86</sup>
  - Specific time-limited goals and related activities designed to enable the child to return home, with clear assignment of individual responsibilities for accomplishing those activities;<sup>87</sup>
  - The plan for visitation between the child and the family;<sup>88</sup>

---

<sup>75</sup> New Code Section 15-11-412(c).

<sup>76</sup> “Nonsecure residential facility” is defined in New Code Section 15-11-2(49) as “community residential locations operated by or on behalf of DJJ and may include group homes, emergency shelters, wilderness or outdoor therapeutic programs, or other facilities that provide 24 hour care in a residential setting.”

<sup>77</sup> New Code Section 15-11-412(a)(1).

<sup>78</sup> New Code Section 15-11-412(a)(2).

<sup>79</sup> New Code Section 15-11-412(a)(3).

<sup>80</sup> New Code Section 15-11-412(a). A detention assessment is “an actuarial tool, approved by the board [of the Department of Juvenile Justice] and validated on a targeted population, used to make detention decisions and that identifies and calculates specific factors that are likely to indicate a child's risk to public safety pending adjudication and the likelihood that such child will appear for juvenile proceedings for the act causing the detention decision to be made.” O.C.G.A. § 49-4A-1 (as amended by HB 242).

<sup>81</sup> New Code Section 15-11-412(a).

<sup>82</sup> New Code Section 15-11-404.

<sup>83</sup> *Id.*

<sup>84</sup> New Code Section 15-11-201(a).

<sup>85</sup> New Code Section 15-11-201(b)(1).

<sup>86</sup> New Code Section 15-11-201(b)(2).

<sup>87</sup> New Code Section 15-11-201(b)(4) & (5).

<sup>88</sup> New Code Section 15-11-201(b)(8).

- The plan for educational stability for the child, including plans for keeping the child in his or her home school district or, if that is not in the child's best interest, prompt enrollment in a new school;<sup>89</sup> and
- An account of the health and education information about the child.<sup>90</sup>

In addition to the requirements from dependency cases, New Code Section 15-11-404 adds some specific requirements for case plans in a CHINS case, including:

- A description of personal, family, or environmental problems that may contribute to the child's behaviors;<sup>91</sup>
- A description of the child's mental and physical health needs and safety needs;
- Identification of the least restrictive placement that will safeguard the child's best interests and protect the community;<sup>92</sup>
- An assessment of available community resources to address the child's and family's needs;<sup>93</sup>
- Assessments of the availability of court diversion programs and preventative measures.<sup>94</sup>

The New Code does not specify a time by which the case plan must be in place, but the requirement applies to a child alleged to be in need of services, as well as to a child who has been adjudicated a child in need of services, *if the child must be placed in foster care*.<sup>95</sup> In dependency cases, the case plan needs to be submitted to the court no later than 30 days after the child is removed from his or her home.<sup>96</sup> Much of the information required would be extremely helpful to the court from the earliest stages of decision making, so the best practice would be to complete the case plan as soon as possible after the child comes into care.

### **Continued Custody Hearing**

If the child is not returned to his or her parent, guardian, or legal custodian, the court must hold a continued custody hearing. The timelines for the hearing vary depending on where the child is placed:

- If the child is placed in a DJJ facility, the hearing must be held within 72 hours.<sup>97</sup>
- If the child is in a foster care placement, the hearing must be held within 5 days.<sup>98</sup>

---

<sup>89</sup> New Code Section 15-11-201(b)(12).

<sup>90</sup> New Code Section 15-11-201(b)(13). Note that this is not the full list of case plan requirements, but rather is intended to summarize key provisions of 15-11-201 that are relevant in CHINS cases.

<sup>91</sup> New Code Section 15-11-404(3).

<sup>92</sup> New Code Section 15-11-404(5).

<sup>93</sup> New Code Section 15-11-404(5).

<sup>94</sup> New Code Section 15-11-404(6) & (7).

<sup>95</sup> New Code Section 15-11-404.

<sup>96</sup> New Code Section 15-11-200(a).

<sup>97</sup> New Code Section 15-11-413(a).

<sup>98</sup> New Code Section 15-11-413(b). Note, however, that if the five day timeframe ends on a weekend or a holiday, then hearing may be held on the next business day.



**Puzzling Provisions:** The continued custody hearing timelines are not aligned with the limitations on detention in a DJJ facility nor are they consistent with the timelines for a dependency case. Under New Code Section 15-11-413(a), the continued custody hearing must be held within 72 hours if the child is in a DJJ facility. However, under new Code Section 15-11-412(a), a child cannot be held in a DJJ facility for more than 24 hours without a continued custody hearing. Because a child must be released from a DJJ facility after 24 hours, for all practical purposes, the court must hold a continued custody by that time or transfer the child to foster care. Moreover, if the child is in foster care, the continued custody hearing should be held more expeditiously to stay consistent with dependency timelines that apply when a child is removed from parental custody. In such cases, the initial hearing is held within 72 hours. Thus the continued custody hearing in a CHINS matter would occur either within 24 hours (if the child is placed in a DJJ facility) or within 72 hours (if the child is in foster care). The statutory timelines prescribed by New Code 15-11-413 do not fit cleanly with other mandates.

The first responsibility of the court at a continued custody hearing is to inform the parties of:

- The nature of the allegations about the child;
- The nature of the proceedings;
- The possible court orders if the child is found to be in need of services; and
- The due process rights of the parties. Specifically:
  - The right to counsel;
  - The right against self-incrimination;
  - The right to confront witnesses;
  - The right to testify or compel others to testify;
  - The right to a speedy adjudication; and
  - The right to appeal.<sup>99</sup>

Once this information has been provided, the court must determine whether there is probable cause to believe that the child has committed a status offense or is otherwise in need of services.<sup>100</sup> If there is probable cause, the court must make determinations about whether continued custody is necessary, what placement is appropriate if continued custody is needed, and whether a CHINS petition should be filed.<sup>101</sup> If there is not probable cause, the child should be released, and the case does not proceed further.

#### Placement Determination at Continued Custody Hearing

If there is probable cause to believe the child has committed a status offense or is otherwise in need of services, the court can either release the child to his or her parent,

---

<sup>99</sup> New Code Section 15-11-413(b).

<sup>100</sup> New Code Section 15-11-414(a).

<sup>101</sup> New Code Section 15-11-414(a), (b), & (c).

guardian, or legal custodian, or it can order that the child remain in state custody.<sup>102</sup> The New Code imposes limitations on when the child's freedom can be restrained prior to adjudication. The court must determine by clear and convincing evidence that:

- The child's freedom should be restrained;
- No less restrictive alternative is appropriate; and<sup>103</sup>
- Either:
  - The child's detention or care is necessary to protect others from the child;<sup>104</sup> or
  - Detention is necessary to ensure that the child returns to court for further proceedings.<sup>105</sup>



**Puzzling Provisions:** New Code Section 15-11-415(a)(3) lists a court order for the child's detention as an additional ground for a court order for the child's detention, which seems circular. This paragraph appears to be a holdover from O.C.G.A. § 15-11-46, which applied more broadly and allowed court intake officers to authorize a child's detention if there was a court order. It does not fit the analysis that is occurring at the continued custody hearing, so it has been omitted from the criteria listed above.

Additionally, before ordering continued custody, the court must make three other determinations, supported by individualized, written findings of fact:

- Whether the child's continuation in his or her home would be contrary to his or her welfare;<sup>106</sup>
- Whether there are available services that would prevent the need for detention;<sup>107</sup> and
- Whether reasonable efforts were made to safely maintain the child at home and prevent the need for removal.<sup>108</sup>

In determining whether continued custody of the child is appropriate, the court must keep the following considerations in mind:

- A child cannot be detained:
  - For punishment, treatment or rehabilitation;<sup>109</sup>
  - To allow the parent, guardian or legal custodian to avoid responsibility for the child;<sup>110</sup>
  - To satisfy a victim, law enforcement, or the community;<sup>111</sup>
  - For administrative convenience;<sup>112</sup>

<sup>102</sup> New Code Section 15-11-414(a).

<sup>103</sup> New Code Section 15-11-415(a).

<sup>104</sup> New Code Section 15-11-415(a)(1) (requiring that "Such child's detention or care is required to reduce the likelihood that he or she may inflict serious bodily harm on others during the interim period").

<sup>105</sup> New Code Section 15-11-415(a)(2).

<sup>106</sup> New Code Sections 15-11-414(e)(1) & 15-11-415(e).

<sup>107</sup> New Code Section 15-11-414(e)(2).

<sup>108</sup> New Code Section 15-11-414(e)(2). Technically, this provision allows this finding to be made at some later point, so long as it is made within 60 days from the child's removal from the home. However, since the court is already required to determine whether there were services that could have prevented the removal in order to authorize detention under 15-11-415(e), it would be most efficient to make this finding at the continued custody hearing.

<sup>109</sup> New Code Section 15-11-415(b)(1).

<sup>110</sup> New Code Section 15-11-415(b)(2).

<sup>111</sup> New Code Section 15-11-415(b)(3).



- To facilitate the investigation of the case or questioning of the child;<sup>113</sup> or
- Because of the lack of a more appropriate placement for the child.<sup>114</sup>
- Continued custody must be used in a way that reflects the values of:
  - Respect for the child’s privacy, dignity, and individuality, and that of his or her family;<sup>115</sup>
  - Protection of the child’s physical and psychological health;<sup>116</sup>
  - Tolerance for diverse values and preferences;<sup>117</sup>
  - Equality of treatment, regardless of race, class, ethnicity or sex;<sup>118</sup>
  - Avoidance of stigmatization, regimentation, or depersonalization of the child;<sup>119</sup> and
  - Protection of the child’s right to counsel.<sup>120</sup>
- If the child can remain in the custody of the parent, guardian, or legal custodian if reasonable services are provided, the court should order those services, rather than authorizing continued custody by the state.<sup>121</sup>

If after this analysis the court determines continued custody is necessary, the court order must include the facts on which this decision is based.<sup>122</sup> The court must place the child in the least restrictive environment consistent with his or her needs, which in most cases will be in DFCS custody for purposes of foster care placement.<sup>123</sup> The court may order that the child be detained in a DJJ facility for up to 72 hours after the continued custody hearing, but only for the purpose of allowing time to arrange for another appropriate placement for the child.<sup>124</sup>

If the court determines that continued custody is not warranted, the child must be returned to the custody of his or her parent, guardian or legal custodian.<sup>125</sup> The court can set conditions for the child’s release.<sup>126</sup> As noted above, the court may also order services to support the child’s safe return home.<sup>127</sup>

#### Determination of What Should Follow the Continued Custody Hearing

Regardless of where the child is placed, once the court finds there is probable cause that the child is in need of services, the other determination that must be at the continued custody hearing is what should happen next in the case. The court may either:

---

<sup>112</sup> New Code Section 15-11-415(b)(4).

<sup>113</sup> New Code Section 15-11-415(b)(5).

<sup>114</sup> New Code Section 15-11-415(b)(6).

<sup>115</sup> New Code Section 15-11-415(d)(1).

<sup>116</sup> New Code Section 15-11-415(d)(2).

<sup>117</sup> New Code Section 15-11-415(d)(3).

<sup>118</sup> New Code Section 15-11-415(d)(4).

<sup>119</sup> New Code Section 15-11-415(d)(5) & (6).

<sup>120</sup> New Code Section 15-11-415(d)(7).

<sup>121</sup> New Code Section 15-11-415(f).

<sup>122</sup> New Code Section 15-11-414(e).

<sup>123</sup> New Code Section 15-11-414(b)(2) (cross-referencing New Code Section 15-11-411, prioritizing DFCS custody as the preferred placement option after return to the parent, guardian or legal custodian).

<sup>124</sup> New Code Section 15-11-414(d).

<sup>125</sup> New Code Section 15-11-414(b)(1).

<sup>126</sup> New Code Section 15-11-414(e).

<sup>127</sup> New Code Section 15-11-415(f).

- Refer the child to a community-based risk reduction program;<sup>128</sup> or
- Order that a CHINS petition be filed and set a date for an adjudication hearing.<sup>129</sup>

Community-based risk reduction programs are alternatives to formal court proceedings, and will be discussed further in the next section of this guide.

The timelines and requirements for a petition are described in the court process section of this guide.



**Quick Recap:** Findings required at a continued custody hearing are:

- ✓ Whether there is probable cause that the child is in need of services (If there is no probable cause, the court stops here)
- ✓ Whether the child’s freedom should be restrained
- ✓ Whether no less restrictive alternative is appropriate
- ✓ Whether detention is necessary to protect others from the child or to ensure that the child attends future proceedings
- ✓ Whether the child’s continuation in his or her home would be contrary to his or her welfare
- ✓ Whether there are available services that would prevent the need for continued custody
- ✓ Whether reasonable efforts have been made to prevent the child’s removal from his or her home
- ✓ Whether the child should return home, be placed in DFCS custody, or remain in a DJJ facility until an appropriate placement is found
- ✓ Where a CHINS petition should be filed or the child should be referred to a community-based risk reduction program

## ***Opportunities for Problem Solving Outside of Court***

The goals of understanding and addressing the causes of a child’s behavior are not always best achieved through the traditional adversarial court process. Therefore, the New Code provides opportunities for problem solving outside of the court. These include school-based efforts, community-based risk reduction programs, and mediation.

### **School-Based Efforts**

Schools are the state institutions with the most regular contact with most children, and local school districts have their own resources for responding to students’ problems.<sup>130</sup> In

<sup>128</sup> New Code Section 15-11-414(c)(1).

<sup>129</sup> New Code Section 15-11-414(c)(2).

<sup>130</sup> For example, State Board of Education Rule 160-4-8-.01 requires each local school district in Georgia to have a student services plan. See <http://www.doe.k12.ga.us/External-Affairs-and-Policy/State-Board-of-Education/SBOE%20Rules/160-4-8-.01.pdf>.

addition to the programs and services available to the general student population, state and federal law require schools to provide individualized services to support children with disabilities.<sup>131</sup> Because these resources exist in the child’s community, in a place where the child already spends time, it may be more efficient and less disruptive to use them to respond to a child’s needs, rather than going through the juvenile court.

To encourage the use of school-based interventions, the New Code does not permit a school official to file a CHINS complaint unless he or she can show that the local school district has:

- Tried to resolve the issue through educational approaches;<sup>132</sup>
- Attempted to engage the parent, guardian, or legal custodian in resolving the issue and:
  - The parent, guardian, or legal custodian was unwilling or unable to resolve it;
  - The issue remains a problem; and
  - Court intervention is needed;<sup>133</sup>
- And, if the child is eligible or suspected to be eligible for disability or special education services, the school district must have:
  - Determined the child’s eligibility under the Individuals with Disabilities Education Act or Section 504 of the Rehabilitation Act of 1973;<sup>134</sup> and
  - Reviewed the child’s Individualized Education Program (IEP), if applicable, and made any appropriate modifications.<sup>135</sup>

If a CHINS petition is filed based on a complaint by a school official and the petition does not show that these steps were taken, the petition must be dismissed by the court.<sup>136</sup>

If the complaint is filed by someone other than a school official and the court believes that school-based programs and services would be important to the appropriate resolution of the child’s case, the court can summon the school district to participate in court proceedings and provide services in the case.<sup>137</sup>

### **Community-Based Risk Reduction Programs**

The New Code continues the authority given to juvenile courts by the O.C.G.A. to establish local community-based risk reduction programs in their jurisdictions.<sup>138</sup> The purpose of these programs is to use existing community resources for assessment and intervention with children and families in CHINS, delinquency, or dependency cases.<sup>139</sup> They may include early

---

<sup>131</sup> Federal requirements are found in Section 504 of the Rehabilitation Act of 1973 and its associated regulations and in the Individuals with Disabilities Education Act. *See* 29 U.S.C. § 794; 34 C.F.R. Part 104; & 20 U.S.C. § 1414. State requirements are found at O.C.G.A. § 20-2-152.

<sup>132</sup> New Code Section 15-11-390(c)(1).

<sup>133</sup> New Code Section 15-11-390(c)(2).

<sup>134</sup> New Code Section 15-11-390(d)(1).

<sup>135</sup> New Code Section 15-11-390(d)(2).

<sup>136</sup> New Code Section 15-11-422(b).

<sup>137</sup> New Code Section 15-11-423(a) (permitting the court to summon “any [] public agencies or institutions providing services, and any other persons who appear to the court to be proper or necessary parties to [the] child in need of services proceeding.”)

<sup>138</sup> New Code Sections 15-11-38, 15-11-39, & 15-11-40; O.C.G.A. § 15-11-10.

<sup>139</sup> New Code Section 15-11-38(a).

intervention programs to prevent children and families from becoming involved in future cases before the court.<sup>140</sup>

Courts have broad discretion to design their own community-based risk reduction programs within the general framework that the statute provides. The key elements of that framework are:

- A community-based risk reduction program is established by a court order that lays out the procedures, requirements, and supervision for the program.<sup>141</sup>
- The court's involvement is for the limited purpose of facilitating the creation of the program and protecting the confidentiality of the children and families participating in the program.<sup>142</sup>
- The court may enter into protocol agreements with local school districts, DFCS, service providers, and any other entity that provides treatment or education to children and families within the court's jurisdiction.<sup>143</sup>
- Protocol agreements authorize participating agencies to exchange confidential information obtained by consent or court order for the limited purpose of assessing or treating the child or family.<sup>144</sup>
- Cases are referred to a multi-agency staffing panel, which develops a multi-agency intervention plan for the child.<sup>145</sup>
- The child and the parent, guardian, or legal custodian may attend any reviews of the case by the multi-agency staffing panel.<sup>146</sup>
- The parent, guardian, or legal custodian must be informed of the process, the importance of following the intervention plan, and the possible consequences if the case is referred to the court.<sup>147</sup>
- If the parent, guardian, or legal custodian consents to the intervention plan and then fails to comply with it, he or she may be reported to DFCS for a dependency investigation.<sup>148</sup>

There are four points at which a child in need of services may be referred to a community-based risk reduction program:

- A participating agency that identifies a child at risk of becoming a child in need of services may refer the child directly to the multi-agency staffing panel without any complaint or petition being filed with the juvenile court.<sup>149</sup>
- The court may order a referral at the continued custody hearing.<sup>150</sup>

---

<sup>140</sup> New Code Section 15-11-38(b).

<sup>141</sup> New Code Section 15-11-38(a).

<sup>142</sup> New Code Section 15-11-38(b).

<sup>143</sup> New Code Section 15-11-38(c).

<sup>144</sup> New Code Sections 15-11-38(c) & 15-11-40.

<sup>145</sup> New Code Section 15-11-38(d).

<sup>146</sup> *Id.*

<sup>147</sup> New Code Section 15-11-38(d).

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> New Code Section 15-11-414(c)(1).

- At the disposition stage of the court process, the court may order an assessment of the child, and if the results of the assessment indicate that a community-based services case plan would be appropriate, the court can order that the case plan be developed by the multi-agency staffing panel.<sup>151</sup> If this occurs:
  - The case plan must be provided to the child and the parent, guardian, or legal custodian with a cover letter explaining the process and timelines for objecting to the case plan and the consequences of not responding to the court.<sup>152</sup>
  - The child and the parent, guardian, or legal custodian have 10 days to object to the case plan.<sup>153</sup>
  - If there is no objection within the 10-day timeframe, the case plan becomes a part of the disposition through a supplemental order of the court.<sup>154</sup>
  - If there is a timely objection, the court must hold a hearing and determine whether to adopt, reject, or modify the case plan.<sup>155</sup>

While there is no requirement that a court have a community-based risk reduction program, this flexible alternative provides a great way to involve community agencies and service providers in problem-solving with the child and the family outside or alongside the formal court process.

### **Mediation**

At any point during a CHINS case, the court may refer the parties to mediation.<sup>156</sup> In mediation, a trained, neutral mediator facilitates a conversation between the parties to help them come to agreement on the matters in dispute and develop solutions.<sup>157</sup> Mediation may be helpful in cases where the causes of the child’s behavior are in dispute; the mediator may be able to help the parties listen to one another and build a common understanding of the issue. Mediation may also help the parties come up with ideas for services or other steps that could help the child.

The New Code provides clear guidelines for cases referred to mediation:

- An order referring a case to mediation suspends court proceedings.<sup>158</sup> This means that time that passes after the order and until mediation is complete does not continue to count toward the deadlines required for the court process.
- Within 5 days of signing the order referring the case to mediation, the court must appoint a mediator from a list of court approved mediators who are registered with the Georgia Office of Dispute Resolution to mediate juvenile court cases.<sup>159</sup>
- The parties must sign a written agreement to mediate that:

---

<sup>151</sup> New Code Section 15-11-39(a) & (b).

<sup>152</sup> New Code Section 15-11-39(c).

<sup>153</sup> New Code Section 15-11-39(c)(2).

<sup>154</sup> New Code Section 15-11-39(d).

<sup>155</sup> New Code Section 15-11-39(e).

<sup>156</sup> New Code Section 15-11-20(a).

<sup>157</sup> New Code Section 15-11-2(45).

<sup>158</sup> New Code Section 15-11-23(a).

<sup>159</sup> New Code Section 15-11-21.

- Outlines the questions to be resolved; and
- Specifies the confidentiality and other conditions of mediation.<sup>160</sup>
- Mediation should begin as soon as possible after the mediator is appointed. It must be scheduled within 30 days unless the court extends that timeframe for up to another 30 days.<sup>161</sup>
- The mediator must remain impartial and may not assist the parties in agreeing to things the court could not approve.<sup>162</sup>
- Any party may withdraw from or terminate the mediation at any time.<sup>163</sup> The mediator must terminate the mediation when the mediator concludes:
  - The parties will not or cannot participate willingly or meaningfully in the process;<sup>164</sup>
  - One of the parties cannot adequately protect his or her own interests in the process;<sup>165</sup>
  - An agreement is unlikely;<sup>166</sup> or
  - One of the parties is a danger to him- or herself or others.<sup>167</sup>

Once an agreement is reached, it is to be presented to the court and will become an order of the court unless after a hearing the court determines that there is clear and convincing evidence that the agreement is not in the child’s best interest.<sup>168</sup>

## **Court Process**

If the case is going to go before the court, the adjudicatory process is triggered by the filing of a petition. The court then holds an adjudication hearing to determine whether the allegations of the petition are true and the child is in need of services. If the child is adjudicated as being in need of services, the court proceeds to a disposition hearing to determine the specifics of the intervention. Once the disposition is ordered, there are regular review hearings until the terms of the disposition are complete.

### **Petition**

The petition is a document filed with the court describing the specific reasons the child is alleged to be in need of services. Its filing commences the CHINS proceedings.<sup>169</sup> It must be styled as “In the interest of [child’s name], a child”<sup>170</sup> and include:

- The facts believed to make the child in need of services;<sup>171</sup>

---

<sup>160</sup> New Code Section 15-11-22(a).

<sup>161</sup> New Code Section 15-11-23(b) & (c).

<sup>162</sup> New Code Section 15-11-22(b) & (d). Specifically, the mediator cannot assist the parties in agreeing to things that would be “unenforceable for reasons such as fraud, duress, the absence of bargaining ability, unconscionability, or lack of court jurisdiction.”

<sup>163</sup> New Code Section 15-11-24(a).

<sup>164</sup> New Code Section 15-11-24(b)(1).

<sup>165</sup> New Code Section 15-11-24(b)(2).

<sup>166</sup> New Code Section 15-11-24(b)(3).

<sup>167</sup> New Code Section 15-11-24(b)(4).

<sup>168</sup> New Code Section 15-11-25.

<sup>169</sup> New Code Section 15-11-16(a)(3).

<sup>170</sup> New Code Section 15-11-16(b).

<sup>171</sup> New Code Section 15-11-422(a)(1).

- This should include facts that address every element of the CHINS definition, including the act the child is alleged to have committed, and the reasons the child needs care, guidance, counseling, structure, supervision, treatment, or rehabilitation.<sup>172</sup>
- A statement that it is in the best interests of the child and the public that the proceeding be brought;<sup>173</sup>
- The name, birth date, and address of the child;<sup>174</sup>
- The name(s) and address(es) of the child’s parent(s), guardian(s), or legal custodian(s);<sup>175</sup>
  - If the parent, guardian or legal custodian does not live in Georgia, cannot be found, or his or her address is unknown, the petition should include either:
    - The name of any known adult relative residing in the county, or
    - The known adult relative residing closest to the court.<sup>176</sup>
- The names and ages of any other family members living in the child’s home;<sup>177</sup>
- Whether the family has been encouraged to voluntarily use community services;<sup>178</sup>
- Whether any of this information is unknown;<sup>179</sup>
- If the petition stems from a complaint by a school official, whether the school district has:
  - Tried to resolve the issue through educational approaches;<sup>180</sup>
  - Attempted to engage the parent, guardian, or legal custodian in resolving the issue and:
    - The parent, guardian, or legal custodian was unwilling or unable to resolve it;
    - The issue remains a problem; and
    - Court intervention is needed;<sup>181</sup>
  - And, if the child is eligible or suspected to be eligible for disability or special education services:
    - Determined the child’s eligibility under the Individuals with Disabilities Education Act or Section 504 of the Rehabilitation Act of 1973;<sup>182</sup> and
    - Reviewed the child’s Individualized Education Program (IEP), if applicable, and made any appropriate modifications.<sup>183</sup>

---

<sup>172</sup> New Code Section 15-11-2(11).

<sup>173</sup> New Code Section 15-11-422(a)(1).

<sup>174</sup> New Code Section 15-11-422(a)(2).

<sup>175</sup> New Code Section 15-11-422(a)(3).

<sup>176</sup> *Id.*

<sup>177</sup> New Code Section 15-11-422(a)(4).

<sup>178</sup> New Code Section 15-11-422(a)(5).

<sup>179</sup> New Code Section 15-11-422(a)(6).

<sup>180</sup> New Code Section 15-11-390(c)(1).

<sup>181</sup> New Code Section 15-11-390(c)(2).

<sup>182</sup> New Code Section 15-11-390(d)(1).

<sup>183</sup> New Code Section 15-11-390(d)(2).

The petition may be prepared and presented to the court for filing by any person who believes the facts alleged in it to be true.<sup>184</sup> The petition cannot be accepted for filing unless the court or its authorized representative determines that bringing the case is in the best interests of the child and the public.<sup>185</sup>

The timeline for filing the petition depends on whether the child is in the temporary custody of the state. Specifically:

- If the child is kept in state custody, the petition must be filed within 5 days of the continued custody hearing.<sup>186</sup>
- If the child is returned to the his or her parent(s), guardian(s), or legal custodian(s) at the continued custody hearing, the petition must be filed within 30 days of the child's release.<sup>187</sup>
- If the child was never taken into custody, the petition must be filed within 30 days of the filing of the complaint.<sup>188</sup>

These timeframes can be extended if:

- There is good cause for the delay;
- Notice is given to all the parties;
- It is in the best interests of the child to extend the time; and
- The court issues a written order for the extension that includes the facts that justify the extension.<sup>189</sup>

If no petition is filed within the required timeframe including any extension, the court should dismiss the complaint without prejudice.<sup>190</sup> This means that the complaint could be refiled if necessary.

### Summons

Once the petition is filed, it must be sent with a summons issued by the court to:

- The child;
- The child's parent, guardian or legal custodian;
- DFCS and any other public agencies or institutions providing services to the child; and
- Anyone else the court believes is a necessary or proper party to the case.<sup>191</sup>

The summons requires the person to come to court for the adjudication to participate in the hearing.<sup>192</sup> It must also include a statement that a party is entitled to be represented by an attorney at the hearing, and the court will appoint an attorney if the party cannot afford one.<sup>193</sup>

---

<sup>184</sup> New Code Section 15-11-420.

<sup>185</sup> *Id.*

<sup>186</sup> New Code Section 15-11-421(a).

<sup>187</sup> New Code Section 15-11-421(b)(2).

<sup>188</sup> New Code Section 15-11-421(b)(1).

<sup>189</sup> New Code Section 15-11-421(c).

<sup>190</sup> New Code Section 15-11-421(d).

<sup>191</sup> New Code Section 15-11-423(a).

<sup>192</sup> *Id.*

<sup>193</sup> New Code Section 15-11-423(b).



A summons is generally required to be delivered by personal service, meaning that it is taken to the person being summoned.<sup>194</sup> However, there are exceptions if the party cannot be found or is not within the state. Specifically, if the party is in the state and cannot be found but his or her address is known, or if the party is out of state but his or her address is known or can be found, the summons can be sent by registered mail, certified mail, or overnight delivery, return receipt requested.<sup>195</sup>

Service by mail or to an out of state party must be made more quickly than personal service within the state. Specifically:

- Personal service within the state should occur as soon as possible, but no later than 72 hours before the adjudication hearing.<sup>196</sup>
- Service by registered, certified, or overnight mail within or outside the state, or personal service outside the state, must occur at least 5 days before the adjudication hearing.<sup>197</sup>

Any party other than the child can waive his or her right to service according to these rules either through a written agreement or by appearing before the court voluntarily.<sup>198</sup> If a parent, guardian or legal custodian fails to appear in court after being summoned, or if he or she fails to bring the child to court after being ordered to do so, the court may issue an order for the parent, guardian, or legal custodian to come before the court and show cause why he or she should not be held in contempt of court.<sup>199</sup> If the parent, guardian, or legal custodian fails to appear in response to the order to show cause, the court may issue a bench warrant to have the parent brought in by police.<sup>200</sup> If an agency representative willfully fails to appear after being summoned, the court may also order that person to appear and show cause why he or she should not be held in contempt, but the provision does not allow a bench warrant to be issued for an agency representative.<sup>201</sup> A parent, guardian, legal custodian, agency representative, or other adult party held to be in contempt of court can be imprisoned for up to 20 days or fined up to \$1,000.<sup>202</sup> Additionally, a parent, guardian or legal custodian held in contempt can be required to pay court or service costs, attend educational or counseling programs, or to participate in a plan for the supervision and control of the child.<sup>203</sup>

A bench warrant may be issued for a child who fails to appear if:

- The child is 16 years old or older;<sup>204</sup> or
- The child is at least 14 and under 16, and there is sworn testimony that the child willfully refused to appear.<sup>205</sup>

---

<sup>194</sup> New Code Section 15-11-424(a).

<sup>195</sup> New Code Section 15-11-424(b) & (c).

<sup>196</sup> New Code Section 15-11-424(a).

<sup>197</sup> New Code Section 15-11-424(b).

<sup>198</sup> New Code Section 15-11-423(c).

<sup>199</sup> New Code Section 15-11-425(a).

<sup>200</sup> New Code Section 15-11-425(b).

<sup>201</sup> New Code Section 15-11-425(c).

<sup>202</sup> New Code Section 15-11-31.

<sup>203</sup> New Code Section 15-11-31(d).

<sup>204</sup> New Code Section 15-11-425(d).

<sup>205</sup> New Code Section 15-11-425(e).

A child who is found to be in contempt of court may be held in a DJJ facility for up to 72 hours if less restrictive alternatives are inappropriate, not available, or have been tried and have failed.<sup>206</sup>

### Adjudication

The timing for when an adjudication hearing must be held is determined by whether the child has been held in state custody:

- If the child was not released at the continued custody hearing, the adjudication hearing must be held within 10 days of the filing of the petition.<sup>207</sup>
- If the child was released or was never taken into state custody, the adjudication hearing must be held within 60 days of the filing of the petition.<sup>208</sup>

At the adjudication hearing, the petitioner has to prove that the allegations in the petition are true by clear and convincing evidence.<sup>209</sup> Presentation and consideration of evidence in the hearing must be consistent with the rules of evidence found in Title 24 of the O.C.G.A.<sup>210</sup> At the end of the hearing, the court must determine whether or not the child meets the statutory definition of a child in need of services.<sup>211</sup> If the court finds the child does not meet the definition, the court's jurisdiction over the matter ends and the case is complete. If the court determines the child does meet the definition, then the child is adjudicated as a child in need of services, and the next step is a disposition hearing.

### Disposition

At the disposition hearing, the court determines the right combination of services, supervision, and placement for a child determined to be in need of services. The disposition hearing can be held immediately after the adjudication hearing, or it can be scheduled for a later date.



**Puzzling Provisions:** The New Code gives two different deadlines for holding the disposition hearing. New Code Section 15-11-400, which summarizes the timeframes for CHINS proceedings, says the disposition hearing must be completed within 30 days of the adjudication hearing. New Code Section 15-11-442 says that it must be completed within 60 days. The difference seems to be a result of a legislative amendment to 15-11-442 to extend the timeline, so the 60-day period seems to better represent the legislative intent. However, the 30-day timeframe is part of the law, so to ensure compliance courts may prefer to hold disposition hearings within 30 days.

<sup>206</sup> New Code Section 15-11-31(b) & (c).

<sup>207</sup> New Code Section 15-11-400(c)(3).

<sup>208</sup> New Code Section 15-11-400(b)(3).

<sup>209</sup> New Code Section 15-11-440.

<sup>210</sup> New Code Section 15-11-17(b).

<sup>211</sup> New Code Section 15-11-441(b).

At the disposition hearing, the court can hear additional evidence regarding the services, supervision or placement that would be in the best interests of the child and the public.<sup>212</sup> The court must structure the least restrictive and most appropriate disposition possible.<sup>213</sup> The disposition may include:

- Allowing the child to remain at home without limitations or conditions;<sup>214</sup>
- Allowing the child to remain at home under limitations or conditions established by the court;<sup>215</sup>
- Placing the child on probation or unsupervised probation, under terms and conditions determined by the court;<sup>216</sup>
  - Unsupervised probation has terms and conditions, but the child has reduced reporting requirements and the probation officer does not actively supervise the child.<sup>217</sup>
- Requiring the child to engage in community service activities;<sup>218</sup>
- Requiring the child to pay restitution;<sup>219</sup>
- Requiring the child to attend an after-school or evening program, or other court-approved programs;<sup>220</sup>
- Requiring supervision of the child during the times of the day when the acts that form the basis of the petition generally occurred;<sup>221</sup>
- Subject to any terms or conditions the court may prescribe,<sup>222</sup> granting or transferring temporary legal custody of the child to:
  - Any person, including a biological parent, who is found to be qualified to care for the child;
  - An agency or other private organization authorized by law to care for children;
  - A public agency other than DJJ authorized by law to care for children; or
  - A person in another state, provided the placement is done in accordance with the Interstate Compact on the Placement of Children (ICPC);<sup>223</sup>
- Transferring jurisdiction to another state in accordance with ICPC;<sup>224</sup>
- Ordering the child and his or her parent, guardian, or legal custodian to participate in counseling or counsel and advice;<sup>225</sup>

---

<sup>212</sup> New Code Section 15-11-442(b)(10).

<sup>213</sup> New Code Section 15-11-442(b).

<sup>214</sup> New Code Section 15-11-442(b)(1).

<sup>215</sup> New Code Section 15-11-442(b)(2).

<sup>216</sup> New Code Section 15-11-442(b)(3).

<sup>217</sup> New Code Section 15-11-2(74).

<sup>218</sup> New Code Section 15-11-442(b)(4).

<sup>219</sup> New Code Section 15-11-442(b)(5). Payment would generally be made to the court then be distributed to the appropriate payees. However, the court could transfer enforcement to another juvenile court if the child moves, or to a superior court once the child turns 18. *Id.*

<sup>220</sup> New Code Section 15-11-442(b)(7).

<sup>221</sup> *Id.*

<sup>222</sup> New Code Sections 15-11-442(b)(8) and 15-11-212(a)(2).

<sup>223</sup> New Code Sections 15-11-442(b)(8) and 15-11-212(a)(2). Note that New Code Section 15-11-442(b)(8) authorizes the court to order any disposition that could be made for a dependent child, and New Code Section 15-11-212(a) outlines the dispositions available for dependent children.

<sup>224</sup> New Code Sections 15-11-442(b)(8) and 15-11-212(a)(3).

- Ordering the child’s parent, guardian, or legal custodian to participate in educational or counseling programs;<sup>226</sup>
- Ordering DFCS to implement and the child’s parent, guardian, or legal custodian to participate in any case plan adopted by the court;<sup>227</sup>
- If the child is out of the care of the legally responsible parent, guardian, or legal custodian, temporarily ordering that parent, guardian, or legal custodian to pay child support;<sup>228</sup>
- Suspending the child’s driver’s license or prohibiting the issuance of a license to the child;<sup>229</sup> and/or
- If the child is adjudicated a child in need of services because he or she has committed a delinquent act and is in need of supervision but not in need of treatment or rehabilitation,<sup>230</sup> requiring the child to pay the fine that could be imposed on an adult that committed the same offense.<sup>231</sup>

Under no circumstances may a disposition order for a child in need of services place the child in a DJJ facility.<sup>232</sup>

All disposition orders must include written findings explaining the basis for the services, supervision or placements ordered, a specific plan for how the services are to be provided, and the length of time the order is to be in effect.<sup>233</sup> The order shall be in effect for the shortest time necessary to accomplish its goals, and the initial term may not be longer than two years.<sup>234</sup> If still in effect, all disposition orders in CHINS cases automatically end on the child’s 18<sup>th</sup> birthday.<sup>235</sup>

### **Continued Oversight**

After the disposition hearing, the court continues oversight of the case until the disposition order has expired or is terminated. Three specific types of hearings that may be held after dispositions are review hearings, hearings on motions to extend or to terminate a disposition order, and probation revocation hearings.

#### Review Hearing

The court must periodically review the case as long as the disposition order is in effect.<sup>236</sup> The first review must occur within three months after the disposition hearing.<sup>237</sup>

---

<sup>225</sup> New Code Sections 15-11-442(b)(8) and 15-11-212(a)(4).

<sup>226</sup> New Code Sections 15-11-442(b)(8) and 15-11-212(a)(5).

<sup>227</sup> New Code Sections 15-11-442(b)(8) and 15-11-212(a)(6).

<sup>228</sup> New Code Sections 15-11-442(b)(8) and 15-11-212(a)(7).

<sup>229</sup> New Code Sections 15-11-442(b)(9) and 15-11-601(a)(9). Note that New Code Section 15-11-442(b)(9) authorizes the court to order most dispositions that could be made for a delinquent child, and New Code Section 15-11-601(a) outlines the dispositions available for delinquent children.

<sup>230</sup> New Code Section 15-11-2(11)(B).

<sup>231</sup> New Code Section 15-11-442(b)(6).

<sup>232</sup> New Code Section 15-11-442(9).

<sup>233</sup> New Code Sections 15-11-442(c) & 15-11-443(a).

<sup>234</sup> New Code Section 15-11-443(a).

<sup>235</sup> New Code Section 15-11-443(c).

<sup>236</sup> New Code Section 15-11-445.

<sup>237</sup> *Id.*

Subsequent reviews should occur at least every six months thereafter until the disposition is complete.<sup>238</sup>

The New Code does not provide guidance for how these reviews should be conducted. A look back at the P.M.C. indicates that for children in foster care, if the reviews are conducted in accordance with the requirements for reviews in dependency cases in Article 3, they could satisfy one of the requirements for drawing down federal funding to help pay for the child's care under the Adoption and Safe Families Act.<sup>239</sup> Therefore, courts may wish to look to New Code Section 15-11-216, related to dependency case reviews, for the types of findings that should be made at a review hearing.

#### Extension or Termination Hearing

DFCS, DJJ, a Prosecuting Attorney, or the court itself can make a motion to extend a disposition order beyond its initial term.<sup>240</sup> The court can order the extension if:

- A hearing is held on the motion prior to the expiration of the disposition order;<sup>241</sup>
- All parties affected by the order are given reasonable notice of the hearing, their right to be heard, and the factual basis for the motion;<sup>242</sup>
- The court finds that an extension is necessary to accomplish the purpose of the disposition;<sup>243</sup> and
- The extension is for not more than two additional years.<sup>244</sup>

Additionally, a party or the court may make a motion to end a disposition order early.<sup>245</sup> The court can grant the motion if the purposes of the disposition order have been accomplished.<sup>246</sup>

#### Probation Revocation

If a child violates the terms of probation ordered as part of his or her CHINS disposition, a motion to revoke probation can be filed by anyone with knowledge of the facts about the violation or who has been informed of the situation and believes the facts to be true.<sup>247</sup> The motion must be served on the child, the child's attorney, and the child's parent, guardian, or legal custodian following the procedures laid out for service of summons (see page 24).<sup>248</sup> If the child is taken into custody because of the violation of probation, the provisions described above under "Detention Decisions" apply (see pages 10-17).<sup>249</sup>

---

<sup>238</sup> *Id.*

<sup>239</sup> P.M.C. §§ 15-11-628 & 629 and associated comments. The other ASFA requirements are addressed by the case planning requirements of New Code Section 15-11-404, and the required findings found in New Code Section 15-11-414(e).

<sup>240</sup> New Code Section 15-11-443(a).

<sup>241</sup> New Code Section 15-11-443(a)(1).

<sup>242</sup> New Code Section 15-11-443(a)(2).

<sup>243</sup> New Code Section 15-11-443(a)(3).

<sup>244</sup> New Code Section 15-11-443(a)(4).

<sup>245</sup> New Code Section 15-11-443(b).

<sup>246</sup> *Id.*

<sup>247</sup> New Code Sections 15-11-444(b) & 15-11-420.

<sup>248</sup> New Code Section 15-11-444(c). The service provisions are found in New Code Section 15-11-424.

<sup>249</sup> New Code Section 15-11-44(d). The detention provisions are found in New Code Sections 15-11-410, 15-11-411, 15-11-412, 15-11-413, 15-11-414 & 15-11-415.

A revocation hearing must be held within 30 days of the filing of the motion to revoke probation.<sup>250</sup> The standard of proof for the hearing is proof beyond a reasonable doubt.<sup>251</sup> If the court finds that the child did violate the terms and conditions of his or her probation, the court can:

- Extend the probation;<sup>252</sup>
- Add new conditions of probation;<sup>253</sup>
- Make any other disposition that could have been made at the original disposition hearing (see pages 25-26).

Note that placing a child in a DJJ facility is *not* an option at a probation violation hearing.

### ***Competency Related Issues***

If at any time after a CHINS petition is filed the court has reason to believe that the child is incompetent to proceed, the court must stay the proceedings and either order a competency evaluation or obtain the parties' agreement as to the child's competence.<sup>254</sup> "Incompetent to proceed" means that the child:

- Lacks the ability to understand the nature and purpose of the proceedings;
- Cannot understand how the proceedings relate to or may affect him or her; and
- Cannot assist his or her attorney in preparing and presenting the case.<sup>255</sup>

Although they can interrupt CHINS cases, competency proceedings follow a separate process under Article 7 of the New Code, with additional provisions related to services for some children determined to be incompetent to proceed found at the end of Article 5.<sup>256</sup> The competency process is distinct enough to be beyond the scope of this guide; it will be addressed by a separate guide.

---

<sup>250</sup> New Code Section 15-11-444(e).

<sup>251</sup> New Code Section 15-11-444(f).

<sup>252</sup> New Code Section 15-11-444(f)(1).

<sup>253</sup> New Code Section 15-11-444(f)(2).

<sup>254</sup> New Code Sections 15-11-652(a).

<sup>255</sup> New Code Section 15-11-651(3).

<sup>256</sup> See New Code Sections 15-11-450 & 15-11-451.

## Appendix A: Key Definitions from the New Code

**“Child”** means any individual who is:

- (A) Under the age of 18 years;
- (B) Under the age of 17 years when alleged to have committed a delinquent act;
- (C) Under the age of 22 years and in the care of DFCS;
- (D) Under the age of 23 years and eligible for and receiving independent living services through DFCS; or
- (E) Under the age of 21 years who committed an act of delinquency before reaching the age of 17 years and who has been placed under the supervision of the court or on probation to the court for the purpose of enforcing orders of the court.<sup>257</sup>

**“Child in need of services”** means:

- (A) A child adjudicated to be in need of care, guidance, counseling, structure, supervision, treatment, or rehabilitation and who is adjudicated to be:
  - (i) Subject to compulsory school attendance and who is habitually and without good and sufficient cause truant from school;
  - (ii) Habitually disobedient of the reasonable and lawful commands of his or her parent, guardian, or legal custodian and is ungovernable or places himself or herself or others in unsafe circumstances;
  - (iii) A runaway;
  - (iv) A child who has committed an offense applicable only to a child;
  - (v) A child who wanders or loiters about the streets of any city or in or about any highway or any public place between the hours of 12:00 Midnight and 5:00 A.M.;
  - (vi) A child who disobeys the terms of supervision contained in a court order which has been directed to such child who has been adjudicated a child in need of services; or
  - (vii) A child who patronizes any bar where alcoholic beverages are being sold, unaccompanied by his or her parent, guardian, or legal custodian, or who possesses alcoholic beverages; or
- (B) A child who has committed a delinquent act and is adjudicated to be in need of supervision but not in need of treatment or rehabilitation.<sup>258</sup>

**“Complaint”** is the initial document setting out the circumstances that resulted in a child being brought before the court.<sup>259</sup>

**“Court appointed special advocate”** or **“CASA”** means a community volunteer who:

- (A) Has been screened and trained regarding child abuse and neglect, child development, and juvenile court proceedings;
- (B) Has met all the requirements of an affiliate court appointed special advocate program;
- (C) Is being actively supervised by an affiliate court appointed special advocate program; and
- (D) Has been sworn in by a judge of the juvenile court in the court or circuit in which he or she wishes to serve.<sup>260</sup>

---

<sup>257</sup> New Code Section 15-11-2(10).

<sup>258</sup> New Code Section 15-11-2(11).

<sup>259</sup> New Code Section 15-11-2(14).

<sup>260</sup> New Code Section 15-11-2(16).

**“Foster care”** means placement in foster family homes, child care institutions, or another substitute care setting approved by the Department of Human Services. Such term shall exclude secure residential facilities or other facilities operated primarily for the purpose of detention of a child adjudicated for delinquent acts.<sup>261</sup>

**“Guardian ad litem”** means an individual appointed to assist the court in determining the best interests of a child.<sup>262</sup>

**“Juvenile court intake officer”** means the juvenile court judge, associate juvenile court judge, court service worker, DJJ staff member serving as an intake officer, or person employed as a juvenile probation or intake officer designated by the juvenile court judge or, where there is none, the superior court judge, who is on duty for the purpose of determining whether any child taken into custody should be released or detained and, if detained, the appropriate place of detention.<sup>263</sup>

**“Mediation”** means the procedure in which a mediator facilitates communication between the parties concerning the matters in dispute and explores possible solutions to promote reconciliation, understanding, and settlement.<sup>264</sup>

**“Mediator”** means a neutral third party who attempts to focus the attention of the parties upon their needs and interests rather than upon their rights and positions and who lacks the authority to impose any particular agreement upon the parties or to recommend any particular disposition of the case to the court.<sup>265</sup>

**“Nonsecure residential facility”** means community residential locations operated by or on behalf of DJJ and may include group homes, emergency shelters, wilderness or outdoor therapeutic programs, or other facilities that provide 24 hour care in a residential setting.<sup>266</sup>

**“Party”** means the state, a child, parent, guardian, legal custodian, or other person subject to any judicial proceeding under Title 15, Chapter 11.<sup>267</sup>

**“Restitution”** means any property, lump sum, or periodic payment ordered to be made to any victim. Restitution may also be in the form of services ordered to be performed by a child.<sup>268</sup>

**“Runaway”** means a child who without just cause and without the consent of his or her parent, guardian, or legal custodian is absent from his or her home or place of abode for at least 24 hours.<sup>269</sup>

---

<sup>261</sup> New Code Section 15-11-2(34).

<sup>262</sup> New Code Section 15-11-2(35).

<sup>263</sup> New Code Section 15-11-2(41).

<sup>264</sup> New Code Section 15-11-2(45).

<sup>265</sup> New Code Section 15-11-2(46).

<sup>266</sup> New Code Section 15-11-2(49).

<sup>267</sup> New Code Section 15-11-2(52).

<sup>268</sup> New Code Section 15-11-2(63).

<sup>269</sup> New Code Section 15-11-381(4).



**“Secure residential facility”** means a hardware secure residential institution operated by or on behalf of DJJ and shall include a youth development center or a regional youth detention center.<sup>270</sup>

**“Services”** means assistance including but not limited to care, guidance, education, counseling, supervision, treatment, and rehabilitation or any combination thereof.<sup>271</sup>

**“Status offense”** means an act prohibited by law which would not be an offense if committed by an adult.<sup>272</sup>

**“Truant”** means having ten or more days of unexcused absences from school in the current academic year.<sup>273</sup>

**“Unsupervised probation”** means a period of probation or community supervision prior to the termination of a child's disposition in which:

(A) All of the conditions and limitations imposed by the court in placing such child on probation remain intact;

(B) Such child may have reduced reporting requirements; and

(C) A probation officer shall not actively supervise such child.<sup>274</sup>

---

<sup>270</sup> New Code Section 15-11-2(67).

<sup>271</sup> New Code Section 15-11-2(68).

<sup>272</sup> New Code Section 15-11-381(5).

<sup>273</sup> New Code Section 15-11-381(6).

<sup>274</sup> New Code Section 15-11-2(74).

## Appendix B: Case Timelines

All the timelines for when different aspects of a CHINS case are to proceed are consolidated in New Code Section 15-11-400 and reproduced below for the reader's convenience:

(a) The continued custody hearing for a child alleged to be a child in need of services shall be held promptly and no later than:

- (1) Seventy-two hours after such child is taken into temporary custody if he or she is being held in a secure residential facility or nonsecure residential facility; or
- (2) Five days after such child is placed in foster care, provided that, if the five-day time frame expires on a weekend or legal holiday, the hearing shall be held on the next day which is not a weekend or legal holiday.

(b) If a child alleged to be a child in need of services was never taken into temporary custody or is released from temporary custody at the continued custody hearing, the following time frames apply:

- (1) The petition for a child in need of services shall be filed:
  - (A) Within 30 days of the filing of the complaint with the juvenile court; or
  - (B) Within 30 days of such child's release from temporary custody;
- (2) Summons shall be served at least 72 hours before the adjudication hearing;
- (3) An adjudication hearing shall be scheduled to be held no later than 60 days after the filing of the petition for a child in need of services; and
- (4) If not held in conjunction with an adjudication hearing, a disposition hearing shall be held and completed within 30 days after the conclusion of an adjudication hearing.

(c) If a child alleged to be a child in need of services is not released from temporary custody at the continued custody hearing, the following time frames apply:

- (1) The petition for a child in need of services shall be filed within five days of the continued custody hearing;
- (2) Summons shall be served at least 72 hours before an adjudication hearing;
- (3) An adjudication hearing shall be scheduled to be held no later than ten days after the filing of the petition for a child in need of services; and
- (4) If not held in conjunction with an adjudication hearing, a disposition hearing shall be held and completed within 30 days after the conclusion of an adjudication hearing.