Common Wisdom: Making the Case for a New Georgia Juvenile Code

Judicial District 8

Georgians Appleseed Center for Law and Justice
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I. INTRODUCTION

A. Acknowledgments

Arnall Golden Gregory LLP (“AGG”) acknowledges and thanks the attorneys and staff who contributed their time and talents to this project. James Gober spearheaded and oversaw AGG’s overall participation in the project, with assistance from Robert Dow. Frank White reviewed and synthesized all of the subject interviews and authored this summary report. The underlying stakeholder interviews were conducted and summarized by Anisa Abdullahi, Daniel Bradfield, Henry Chalmers, Robert Dow, Lisa Dowling, Susann Estroff, Richard Gardner, Kevin Getzendanner, James Gober, Sarah Hale, Erin Harris, Stacy Hyken, Stephanie Jones, Ajay Koduri, Karen Mills, Bart Newman and Frank White. Finally, AGG’s research librarian, Sybil Turner, provided valuable assistance in accumulating demographic information and other data concerning the judicial district at issue in this report. AGG is honored to have participated in this project, and to play even a modest part in the reformation of Georgia’s juvenile justice system.

B. Statement By Reporting Law Firm

This report will summarize information, ideas and opinions concerning the current juvenile justice system in Georgia elicited in interviews conducted by attorneys at AGG of various stakeholders who live and work in Georgia’s Eighth Judicial District (the “District”). Between June of 2007 and January of 2008, AGG attorneys conducted interviews with a total of twenty stakeholders in the District, including current and former juvenile court judges, a juvenile court administrator, a juvenile court prosecutor, a juvenile court public defender, a Special Assistant Attorney General, an official with the Department of Family and Children Services, an official with Court Appointed Special Advocates (CASA), state legislators, a high school principal, a middle school law enforcement officer, a school board member, a juvenile mental health provider, attorneys who represent parents and children, a guardian ad litem, a young adult formerly in the foster care system, and parents and guardians of children who have had involvement with the juvenile justice system. An AGG attorney also attended and recorded comments by participants at a town hall meeting on juvenile justice reform sponsored by the JUSTGeorgia Project in Milledgeville, Georgia on November 6, 2007.

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2 Please note that all views expressed herein are solely those of the subjects interviewed. The views reported are opinions and perceptions of the interviewees based upon their experiences within Georgia’s juvenile justice system. The firm does not take a position on any of the views summarized in this report.
C. Overview Of JUSTGeorgia Project

This report is one of ten judicial district reports prepared to help guide a much-needed effort to replace Georgia’s outdated juvenile code with new legislation that will better serve the public safety and child welfare goals of this State. Judges, lawyers, and others who must turn to the juvenile code on a daily basis agree that it is unclear, outdated and difficult to apply. Responding to these views, JUSTGeorgia seeks passage of a new juvenile code that will better organize current state law regarding juvenile justice and child welfare, better reflect the impact of federal law throughout the juvenile code, incorporate research-based scientific findings and best practices in the child development field and respond to the hard-earned wisdom of Georgians who work with or are impacted by the current juvenile code on a regular basis. Under the direction of JUSTGeorgia Partner Georgia Appleseed, teams of trained volunteers set out all across the state to ask stakeholders three simple but important questions about the current juvenile code that governs child neglect and abuse (deprivation), foster care, delinquency and the juvenile courts: What’s working? What’s not? And how would you, the stakeholder, make it better?

Throughout the State’s ten judicial districts, JUSTGeorgia volunteers, mainly lawyers, conducted face-to-face interviews with hundreds of individuals who have a stake in the Juvenile Court system: juvenile court judges, law enforcement officers, child advocates, public defenders, prosecutors, legislators, educators, child welfare experts, school social workers, parents, children, and other community members. Every effort was made to be as inclusive as possible so that members of every demographic and geographic component of the State would have an opportunity to provide input.

To reach an even more diverse group of citizens, JUSTGeorgia conducted a town hall meeting in each of Georgia’s ten judicial districts. The ten town hall meetings were publicized throughout the districts in a variety of ways, including radio, television, newspapers, flyers, statewide email distribution lists and personal contact. JUSTGeorgia engaged professional facilitators through The University of Georgia’s Fanning Institute to ensure that everyone who attended a town hall meeting would have an opportunity to participate and provide input. Sophisticated software enabled the facilitators to capture citizens’ comments anonymously and project them onto a large screen for other participants to see and use as a springboard for additional brainstorming and reaction.

Hundreds of interview summaries, together with the town hall meeting notes, were then compiled by district and summarized into ten judicial district reports. The district reports, in turn, have been compiled into one comprehensive statewide report, summarizing the strengths and weaknesses of Georgia’s current juvenile code and

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3 JUSTGeorgia is a joint project partnered by Voices for Georgia’s Children, Georgia Appleseed, and the Barton Child Law & Policy Clinic at the Emory School of Law. Formed in 2006, JUSTGeorgia is working to build a statewide coalition that will advocate, monitor, and report on the conditions, laws, and policies that affect Georgia's youth.
making practical and realistic recommendations for fixing it. All reports are accessible through www.GaAppleseed.org and www.justga.org.

In March 2008, the Young Lawyers Division of the State Bar of Georgia (YLD) released its Proposed Model Juvenile Code for Georgia, a compilation of best practices based on four years of intensive research. With the YLD’s Proposed Model Juvenile Code as the starting point, JUSTGeorgia is preparing a legislative package for the comprehensive revision of the Georgia Juvenile Code, preserving best practices where feasible and tailoring the proposed legislation to meet Georgia’s unique needs as informed by the input of the hundreds of stakeholders who took the time to share their views with the JUSTGeorgia volunteers. The resulting legislative package will be submitted to the Georgia General Assembly.

The goal from the beginning of this project has been to hear from the people who have a stake in the workings of the Juvenile Court system. Throughout this process, JUSTGeorgia has remained true to its commitment to listen to and report the views of these stakeholders as accurately as possible.

II. DESCRIPTION OF THE EIGHTH JUDICIAL DISTRICT

A. Basic Information About The District

The District is located in the east-central part of Georgia, roughly south of Madison, east of Macon, north of Vidalia and west of Swainsboro. It covers 18.1% of the land area of the state, but only 4.9% of Georgia residents live in the District. The District is comprised
of twenty-seven (27) counties\textsuperscript{4} and encompasses five (5) of the judicial circuits.\textsuperscript{5}

\textsuperscript{4} The District is comprised of the following counties: Baldwin, Ben Hill, Bleckley, Candler, Crisp, Dodge, Dooly, Emanuel, Greene, Hancock, Jasper,Jefferson,Johnson, Jones, Laurens, Montgomery, Morgan, Pulaski, Putnam, Telfair, Toombs, Treutlen, Twiggs, Washington, Wheeler, Wilcox and Wilkinson.

\textsuperscript{5} The District encompasses the following judicial circuits: Cordele, Dublin, Middle, Ocmulgee and Oconee.
Based on 2006 estimates by the United States Census Bureau, the population of the District is approximately 462,611. Roughly 24.3% of the population is under the age of 18. The District is approximately 61% white, 36% black and 3% Hispanic.

The District is largely rural and relatively poor. As of 2004, the median household income was approximately $31,665, ranging from a low of $24,297 in Hancock County to a high of $45,130 in Jones County. Also, as of 2004, approximately 19.0% of persons in the District lived below the poverty line, markedly above the 13.7% poverty figure that applies to the state of Georgia as a whole.  

B. The Juvenile Court System In The District

1. Judges, Attorneys and Caseloads

According to statistics from the 2007 Annual Report by the Judicial Council of Georgia, over 5,700 juvenile cases were filed in the District in fiscal year 2007, representing approximately 3.7% of the cases filed statewide. The greatest concentration of cases was in the Ocmulgee Circuit (1,731 cases) and the Dublin Circuit (1,334 cases), and the fewest cases were handled by the Cordele Circuit (377 cases). As is the case

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6 Of the twenty-seven (27) counties in the District, thirteen (13) have 20% or more of their residents living below the poverty line.
statewide, the vast majority of juvenile cases in the District concern delinquency followed by deprivation (including termination of parental rights). Other cases involve such issues as traffic violations, unruly conduct or special proceedings. The District adjudicates a slightly higher percentage termination of parental rights and unruly behavior cases than the statewide average.

According to the Council of Juvenile Court Judges of Georgia, there are eight juvenile court judges or associate judges serving the District. One judge single-handedly hears all of the juvenile cases in the Ocmulgee Circuit, in which the greatest number of cases are filed. In addition, according to statistical information obtained from each circuit’s respective offices of district attorneys and public defenders, each circuit has at least one full-time prosecutor handling juvenile court cases and one full-time public defender who represents defendants in juvenile court cases. The concept of teamwork is utilized in some circuits. For example, the District Attorney’s office in the Middle Circuit is funded for one attorney to cover cases in juvenile court, but in practice the work is shared among three attorneys. Similarly, in the Ocmulgee Circuit, the full-time juvenile court public defender is assisted one day a week by another public defender.

2. Court Appointed Special Advocates

The District is served by three Court Appointed Special Advocate (“CASA”) programs: TLC CASA, South Central CASA and Ocmulgee CASA. A volunteer CASA is appointed in all deprivation and termination of parental rights cases, subject to volunteer availability. TLC CASA (also known as Laurens CASA) serves twelve counties in the Middle, Dublin and Oconee circuits. South Central CASA serves the four counties that make up the Cordele Circuit. Finally, in conjunction with guardians ad litem, the Ocmulgee CASA serves the eight counties that make up the Ocmulgee Circuit. In the Ocmulgee Circuit, in 2007, about 60% of the cases were handled by CASA; the remaining 40% were handled by guardians ad litem. Three counties in the District – Montgomery, Telfair and Pulaski, all in the Oconee Circuit – do not have a CASA program, and instead rely entirely on guardians ad litem to advocate for children in the juvenile court system.

During the 2007 fiscal year, CASA programs statewide served Georgia’s children with a ratio of approximately 4.9 children per advocate. The Eighth District CASA programs during the same period collectively served a much higher ratio of about 8.7 children per advocate. The ratio was especially high for the TLC CASA program where, on average, each advocate served approximately 13.9 children, and for the South Central CASA program, where the ratio was 12.9 children per advocate. A senior official with one of these CASA programs stated that the high ratio does not necessarily indicate an overwhelming caseload or a shortage of volunteers, but that her program definitely experiences both: “We are overburdened and desperately need more volunteers to advocate for our children.” When there are an insufficient number of CASA advocates, the burden usually falls to the guardians ad litem or to the CASA program staff.
3. Youth Detention Centers

There are three (3) regional youth detention centers in the District, located in Sandersville (Washington County), Eastman (Dodge County) and Cordele (Crisp County).

C. Particular Challenges Confronting The District

The District is confronted with many of the challenges that typically face economically disadvantaged areas. There is widespread poverty, schools perform poorly, economic opportunities are scarce and community resources are lacking. Juveniles in the District, in particular, live in what one stakeholder referred to as a “no economics” environment, in which there is little basis for hope, and young people perceive themselves as required either to “join a gang or sell drugs.”

III. STATUS OF THE DISTRICT’S JUVENILE SYSTEM

While the 20 stakeholders interviewed by AGG expressed a broad range of thoughts and opinions, certain discernable trends and consensus about areas in which improvement is needed – both within categories of stakeholders and across the board – are readily apparent.

A. General Perceptions Of The Juvenile System

The most consistent opinion expressed by the pool of stakeholders was the belief that the juvenile justice system in the District is severely flawed, dysfunctional and ineffective. Essentially everyone interviewed, regardless of the nature of his or her interaction with the system, asserted that the system is plagued with numerous and severe problems, the result of both the current structure of the Juvenile Code and the persistent lack of funding and other resources necessary for the system to work effectively. Expressions of overall dissatisfaction with the system were frequently harsh and extreme. Typical rhetoric employed by the subjects were statements that the system is “just broken,” “overwhelmed,” “closer to poor than good,” “strained to near irrelevance,” or “about as effective as putting a Band-Aid on cancer.”

B. What Is Working?

Stakeholders routinely seemed most challenged when asked to identify aspects of the current juvenile justice system that are working well. (One interviewee, well acquainted with the operation of the juvenile justice system, when confronted with this question, reportedly hesitated for the better part of two minutes, smiled a few times while racking his brain and then answered, “I don’t know.”) Subjects who were able to identify any positive aspects of the current system cited the following:
The processes and procedures for case intake, the filing of petitions and complaints, and other procedure and due process-oriented provisions of the Code.

The provision of counsel and other resources to indigent parties, and the extent to which their rights are protected by the process.

The short timeframes that apply in deprivation cases.

The requirement that the detention hearing for a child charged in a delinquency case be held within 72 hours after the child is taken into custody.

The CASA program; more specifically the express authority afforded juvenile court judges to appoint a CASA volunteer, pursuant to O.C.G.A. §§ 15-11-9 and 15-11-9.1, is perceived to have given the CASA program and its volunteers some additional credibility and quasi-official authority.

The Truancy Panel, a collaboration among the Department of Juvenile Justice (“DJJ”), the Department of Family and Children Services (“DFCS”) and the school system, established as an intermediate step for parents and guardians of truant children before involvement with the court system. By meeting with parents/guardians, the Panel investigates why a child is missing school and then, based on its findings, creates an action plan for the parents/guardians to follow in order to alleviate the truancy problem. If the parents/guardians adhere to the action plan and the juvenile is no longer truant, then the parents/guardians are not subject to court action. If, however, the parents/guardians fail to adhere to the action plan, then the matter is referred to the juvenile court and the parents/guardians face sanctions. The Truancy Panel is reported to have been instrumental in reducing the number of truant children in the circuit from 500 in its first year of existence to only 38 in its second year.

Inter-agency meetings, held monthly in some areas, of representatives of the DJJ, DFCS, the school system and agencies dealing with mental health, domestic violence and indigent medical care. At these meetings, representatives of the various agencies share information and concerns, both generally and relating to specific cases, and otherwise foster better and more collaborative working relationships with one another.

One interview subject, a young adult who spent a sizeable share of her childhood and adolescence in the foster care system, had high praise for the Independent Living Program (“ILP”), which she said had made an overwhelmingly positive difference in her life by enabling her to go on educational field trips (which inspired her to set more ambitious goals for herself), socialize with other young people (providing a sense of normalcy and making her feel like less of an outcast among her peers) and otherwise prepare herself for the transition to independence and self-sufficiency. (The subject is now a college student, and the ILP is assisting with her tuition.)
Finally, another stakeholder, a juvenile mental health provider, identified certain juvenile court judges in the District who “really understand the system well and are excellent advocates for the children,” and also noted, as a positive development, that defense attorneys are becoming “more savvy” in challenging the credentials of mental health providers who give opinions on a child’s mental condition.

C. What Is Not Working?

In contrast to the few aspects of the current juvenile justice system that were identified as working relatively well, stakeholders identified numerous aspects of the system that are extremely problematic and in need of reform. (As one stakeholder, who is very well acquainted with the juvenile justice and child welfare system, replied when asked to cite aspects of the current system that are not working well, “Where do I begin?”)

1. Problems With The Juvenile Code

   a. Disorganization

   Numerous stakeholders identified the very structure and organization of the current Juvenile Code as one of the primary sources of many of the system’s problems. In its current configuration, provisions for the system are found in two different titles of the Georgia Code, Titles 15 and 49, while provisions dealing with the two distinct subjects with which the juvenile justice system is designed to deal – delinquency and deprivation – are confusingly “jumbled together,” lacking any logical organization and causing both judges and attorneys to have to “dig through” the Code in order to glean the provisions that potentially apply to a given case. This disorganization renders the Code unnecessarily complex, and leaves stakeholders feeling that the rights of children and parents are “not generally understood.” One stakeholder said that the Juvenile Code is currently so confusing and “muddled” that even the Georgia Court of Appeals has difficulty interpreting it correctly. As an example, the stakeholder cited a recent case in which the Court of Appeals construed O.C.G.A. § 15-11-58 (read together with Section 15-11-30.1) to provide that parents are “parties,” and thus have an independent right to file an appeal, in a delinquency case. This result is the only instance the stakeholder had ever heard of in which a third-party – that is, a party other than the state and the accused – had been found to have an independent right of appeal in a criminal proceeding. He noted that even victims in criminal cases involving adult defendants do not have such rights.

   b. Criminalization Of Consensual Sex Between Teenagers

   Numerous stakeholders also were highly critical of the fact that the list of offenses in O.C.G.A. § 15-11-28(b)(2)(A) making a child eligible for prosecution as an adult includes “aggravated child molestation.” Because of the way this offense is defined elsewhere in the Georgia Code, this provision places teenagers who have engaged in
consensual sexual acts with other teens – a relatively commonplace occurrence, even among so-called “good kids” – in jeopardy of being classified as child molesters, tried as adults and subjected to extremely severe penalties, including lengthy terms in prison. In addition, even if the teen is tried as a juvenile, “aggravated child molestation” is a designated felony under O.C.G.A. § 15-11-63 that exposes the teen to a sentence of from one to five years in a youth detention facility. One stakeholder recounted the story of a teenaged boy in his hometown who had been a star athlete and above-average student at a private school, but “had his life ruined” because he was tried as an adult for a consensual sex act with another teen and sent to jail, rather than being treated as a juvenile who needed specific treatment for his problems.

c. Inconsistencies With Federal Law

Another problem with the current Juvenile Code mentioned by stakeholders was that it does a poor job of integrating the massive overlay of federal law that state juvenile court judges are obligated to follow. O.C.G.A. § 15-11-58 was cited as an example. That section provides that any removal of a child must be based on a finding that “reasonable efforts” were made by DFCS to preserve or reunify the family at issue. But the term “reasonable efforts” is not defined anywhere in the Code. Rather, the phrase was simply parroted from a corresponding federal statute. In addition, it is unclear whether a “reasonable efforts” finding by the court is a substantive precondition to a ruling removing the child, or merely a finding that must be made in order for federal funding to be available for the child’s foster care after removal.

At the same time, federal privacy statutes, such as HIPAA, were reported to be too much of an obstacle to providing information that juvenile courts and child welfare agencies need in order to monitor progress in cases concerning, for example, a mentally ill child or a drug addicted parent in treatment. Lacking a clear understanding of what HIPAA does and does not permit to be disclosed in response to court order or subpoena, doctors routinely refuse to testify or produce records to the very courts or agencies that placed the child under their care in the first place. Stakeholders indicated that an amended Code needs to emphasize a “safe harbor” that permits this information to be accessible in such circumstances.

2. Limitations on Juvenile Court Judges and Prosecutors

Another frequently cited problem with the current Code is that it affords juvenile court judges insufficient discretion to handle each case in the manner that best suits the circumstances presented in ways that serves the best interests of children. This lack of discretion was characterized as especially problematic in rural areas where juvenile court judges may actually know the children and families and thus be particularly well-suited to tailor relief that will fit the needs of the situation and get effective results.

One stakeholder articulated that the current system is too “all or nothing” oriented, especially in deprivation cases. That is to say, juvenile court judges have authority to grant relief or take remedial measures only at the extreme ends of the
spectrum, but not at critical points between those extremes that would better address problems presented in specific cases. This stakeholder believes that juvenile court judges need a larger array of “disposition alternatives” at their command.

In deprivation cases, numerous stakeholders indicated that a juvenile court judge should be able to craft relief from a broader spectrum of options – from offering services and supervision with the parent’s consent, to mandating such services, to requiring the family to place the child with a relative, to removing the child altogether – whichever best suits the unique circumstances of each case. The court needs to have a continuum of approaches available to deal with and help families that come before it. Instead, under the current system, the options are limited to two: either the prescribed burden of proof is met giving the court the authority to impose remedial measures, or the burden is not met allowing the court to do nothing. Stakeholders believe the court should have authority to impose varying degrees of relief based on different levels of proof that may be met in a given case. For example, a juvenile court judge should not have to find that a child is legally deprived in order to retain jurisdiction and allow the court to address undesirable circumstances in the child’s case.

Similarly, the situation that frequently arises in cases involving consensual oral sex between teenagers, discussed at section III.C.1.b of this Report above, was cited as an example of the “all or nothing” framework that unduly limits judges’ discretion in delinquency cases under the existing Code, and causes extreme, unjust and ineffectual results. Another cited example of the extent to which judges are not afforded sufficient discretion or authority in the delinquency context was the fact that, in cases involving one of the “designated felonies” under O.C.G.A. § 15-11-63(e)(2)(C), and specifically after the Court of Appeals’ decision in In the Interest of S.S., 276 Ga. App. 666 (2005), juvenile court judges are not permitted to re-visit and reduce sentences if the juvenile seems to be rehabilitating. In that case, the Court of Appeals ruled that once physical custody of a child is transferred to the DJJ, a juvenile court cannot alter the sentence, because the commitment to the DJJ overrides the designated felony statute and divests the juvenile court of jurisdiction. The Court of Appeals reached this conclusion despite the fact that the designated felony statute requires the juvenile court to obtain a progress report on the child every six months after sentencing. Stakeholders complained that it makes no sense for a juvenile court judge to obtain and review a progress report if he or she is powerless to take any action (such as reduce the child’s sentence) in response to it.

Also in the delinquency context, a juvenile prosecutor complained about the lack of discretion that he is afforded under the current Code. As an example, he cited the significant gap between the 60-day maximum detention sentence provided for delinquency offenses and the minimum sentence of 12 months for one of the designated felonies under O.C.G.A. § 15-11-63, which leaves prosecutors with insignificant flexibility to resolve cases by negotiating compromised sentences with defense counsel. As the prosecutor expressed his dilemma in this regard, “It’s a long jump from 60 days to a year.” This situation results in many cases being tried, requiring an expenditure of court and system resources, which might otherwise have been resolved by agreement on a shorter detention period. Similarly, the prosecutor said that his ability to negotiate guilty
pleas is compromised by the complete discretion that is vested in the DJJ to determine the disposition of juveniles who are committed. His inability to control or even predict the ultimate determination by the DJJ deprives him of any leverage to negotiate with defense counsel.

One juvenile court judge expressed the view that the general lack of discretion afforded courts under the current Code is the by-product of a perception that juvenile courts are somehow “inferior” to other state courts. He believes juvenile court judges should be afforded far more discretion in the handling of their cases because they routinely handle “very serious cases, involving very serious problems and circumstances” that impact their communities. This judge proposes that the juvenile courts be made state-level courts, on a par with the superior courts. He further urges that all juvenile court judges be full-time employees, enabling them to make the level of commitment required to stay involved and truly make a difference in individual cases.

3. Problems Integrating With The Justice System For Adults

Stakeholders also complained about the division of exclusive jurisdiction of the court under the current system. Children who commit criminal offenses and are sent to the superior court to be tried as adults are often left sitting in jail for as long as two years before a trial, only to have their cases sent back down to the juvenile court by a change in the charges (e.g., dropping the “aggravated” portion of the charge). In contrast, when such a case finally comes before the juvenile court, a resolution is reached in as little as a month. The other, “senior” courts often simply do not have the time and resources to deal with these cases in a timely fashion, and so they end up backlogged for unreasonable periods of time. Or, after a lengthy delay, they get sent back to the juvenile court in any event.

4. Selection Of Juvenile Court Judges

Numerous stakeholders expressed a belief that the system would be better served if juvenile court judges were elected rather than appointed, and thus had greater “independence and willingness to do what they believe is right.” Under current law, the local superior court judges appoint the juvenile court judge, thereby creating the perception that some judges are “too beholden” to the judges who appointed them. As one stakeholder, who supports the independence that he thinks would be promoted by electing juvenile court judges, explained, “Juvenile issues are too important for judicial ‘politics’ to play a role.”

5. Ineffective Communication

Insufficient communication – even between and among courts and state agencies – was cited as another weakness in the current juvenile justice system. A juvenile prosecutor characterized this problem as “administrative chaos.”
As an example, one stakeholder, a juvenile court judge, stated that if he determines that parental rights should be terminated in a deprivation case, current law gives jurisdiction over the subsequent adoption to the superior court. Under the Code, however, the court is required to follow the case until the child is adopted. Yet, the juvenile court typically does not receive any updates from the superior court on cases that have gone to the adoption phase. The Juvenile Code also provides that judges should be “advocates,” implying that they are not necessarily meant to be impartial, but rather should stay intimately involved in each case. Without timely and proper communication between judges and the different courts, such involvement can be extremely difficult, if not impossible.

It was reported that CASA volunteers often are not notified of significant developments relating to a child placed under CASA observation, even though pursuant to 15-11-9.1(f)(1) “a CASA shall be notified of all court hearings . . . and other significant changes of the child’s case . . . .” Another stakeholder expressed his desire for more “coordination of services” among agencies and healthcare providers.

Similarly, school officials reported that there is ineffective communication among law enforcement, the juvenile courts, detention facilities and the school system. One principal stated that if a child is taken into the juvenile justice system outside of school, most often, the school receives no notification and is not even aware that the child is facing adjudication or facing deprivation issues until the child has been absent for too long or the court requests the child’s school records.

6. **Issues DFCS**

Numerous stakeholders cited the high turnover rate for DFCS employees in the District as a severe problem. A juvenile court judge noted the “lack of permanency” among DFCS personnel has made it exceedingly difficult for him to maintain any sort of continuity and consistency in his cases. As an example, this judge remarked that if he has placed a child in temporary custody, and the matter then comes before him for a twelve-month renewal conference, there often will have been three DFCS caseworkers on the file in the interim, and the DFCS caseworker before him at the renewal conference will be largely unfamiliar with the file and unable to explain why certain things did or did not occur in the previous twelve months (e.g., drug screens or psychological testing not having been performed). Another stakeholder, a young woman who had been involved in the juvenile system as a child, cited similar frustrations stemming from the constant turnover of her caseworkers, noting that her caseworker frequently was unfamiliar with her situation, and that she had difficulty knowing to whom she was supposed to report.

The reasons cited by stakeholders for the high turnover rate at DFCS were low pay and undesirable working conditions (i.e., dealing with dysfunctional families in dangerous communities). Low pay was also cited as adversely affecting the quality of applicants seeking jobs with DFCS, which in turn has a rippling, negative effect upon the entire system. Several stakeholders openly acknowledged, however, that these are causes
that most likely cannot be addressed through an amendment of the Code or other legislation.

In addition, some stakeholders noted that DFCS officials sometimes follow their internal policies in rote fashion, even if such policies are not truly in the best interest of the child, or are in contravention of provisions of the Juvenile Code and the advice being given by the Special Assistant Attorney General (“SAAG”) who represents DFCS. For example, it was reported that DFCS has – and automatically follows – a policy against placing a deprived child in the custody of his or her father, notwithstanding that such placement may be a viable, or even the most favorable, option for the child. One stakeholder observed that the DFCS policy manual seems to be designed more “to protect DFCS from criticism” than to best serve the interests of children.

Finally, it was reported that a subtle but material conflict exists between the DFCS and CASA mission statements, which can, at times, present an impediment to resolving issues favorably for a displaced child. The DFCS mission is to “preserve families”; whereas CASA’s goal is to seek a resolution in the “best interest of the child.” However nuanced these differences may appear to be, the variance can occasionally present a conflict between these two entities that may impede an efficient and effective resolution of the problems facing the child.

7. Problems With Guardianship

Stakeholders also indicated that improvements need to be made in the area of guardianship law, particularly temporary guardianship. They believe juvenile courts need to be authorized to mandate DFCS monitoring in such situations, to ensure that the court’s rulings are not evaded. Under the current system, for example, if temporary custody is granted to a grandparent, DFCS is no longer a party to the case and without monitoring the grandparent can simply give the child back to the parent from whom he or she was ordered to be removed.

8. Foster Care Issues

The stakeholder who grew up in the foster care system, from age 10 to 16, had a positive experience overall, but cited certain restrictions on the daily lives of foster children as a serious problem that needs to be redressed. Foster children in Georgia are required to obtain permission from the state for many seemingly routine childhood activities. For example, going swimming, jumping on a trampoline, learning to drive, attending slumber parties and going on school field trips all require state permission that is sometimes difficult to get in timely fashion, if at all. The necessity for permission also means that all activities must be planned carefully and in advance, leaving no opportunity for a foster child to take advantage of spontaneous or “last-minute” opportunities, no matter how positive they may be. This stakeholder expressed her belief that this permission requirement caused her to miss out on many childhood activities, causing her continually to feel “sidelined” and making it difficult to form and maintain friendships with more independent children. She reported that she eventually began to feel like it
was her fault that she could not keep up with her friends. Even with the benefit of caring, loving and diligent foster parents as her advocates, it was frequently difficult or impossible to get permissions when needed.

This stakeholder also expressed her sense that the permission requirement significantly contributes to the delinquency of foster children and perpetuates certain stigmas and stereotypes, mainly because it discourages or even prevents them from leading active, healthy social lives. When foster children cannot get timely permission to participate in wholesome activities, she said, they feel limited, and that feeling can in turn lead to rebellion against the system. The subject suggested that the permission process be substantially streamlined so that a person can be readily available to give warranted and timely permission for beneficial activities. In addition, foster parents could be authorized to grant permissions, at least for certain common and clearly beneficial activities.

Finally, the subject described what she perceived to be a definitional bias that is caused by the juvenile justice system’s classification of teenaged foster children as “troubled,” even where they have had no “trouble” in their lives other than the absence of their parents and a stable home environment. This label also fosters the “outsider” stigma that many foster children feel. The subject also noted that labels given to children often affect their psychology – the “troubled” tag can become part of their self-image and “make it harder to get on a new path.” She urged that the system be reformed so as to label children more carefully, considering the profound effect a state-sanctioned label may have on a child’s life.

9. Elimination Of Short-Term Detention Programs And Failure To Enforce More Minor Violations

Several stakeholders complained about the elimination of “boot camp” programs and the scaling back or elimination of other short-term detention options. The elimination of these options – which these stakeholders viewed largely as a money-saving effort by the state – has reduced the capacity for detention of juveniles. In turn, these stakeholders perceive that the DJJ now seeks detention only where a child has committed a serious, violent felony. Juveniles convicted of burglary or other non-violent crimes receive only probation, which they do not take seriously or see as any substantial punishment for their actions or disincentive to engage in further criminal behavior. These stakeholders would like the juvenile courts to have the option of sentencing juveniles who commit misdemeanors or non-violent felonies to a 90-day, short-term program, such as a “boot camp,” just as superior courts are empowered to do.

Similarly, some stakeholders complained about the extent to which probation violations and restitution orders simply are not enforced in the District. This lack of

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7 For this stakeholder, the ILP program – discussed above – became her way out of this “permissions trap” once she reached the age of 14. Because the program is sponsored by the foster care system, all of its activities are pre-approved.
enforcement is believed to reinforce the perception among some juveniles and their families that orders issued by the juvenile courts need not be followed or “taken seriously.”

A juvenile prosecutor also complained that the high standard of proof for obtaining revocation of probation – beyond a reasonable doubt – is problematic even when probation violations are prosecuted. As a result, unless a fairly significant new offense is committed by a child on probation, and justifies an entirely new prosecution, there are no adequate tools to enforce the terms of juvenile probation. The prosecutor suggested that the standard of proof in juvenile court should be a preponderance of the evidence or some other lesser standard, as it is in superior court. He similarly stated that the standards for imposing, and the mechanisms for enforcing, restitution in juvenile cases need to be clarified in the Code, particularly in cases involving offenders who reach age 17 and “age out” of the juvenile system with their restitution obligations unfulfilled.

Finally, the foregoing, specific comments about lack of enforcement and reduced detention options were echoed by a larger number of stakeholders who complained more generally about the lack of real consequences under the current system for juveniles who break the law. As one subject stated, it “does a disservice” to juveniles when the system fails to hold them accountable for their offenses, and thus to try to reach them and get them on the right track, before they reach adulthood and perhaps become involved in more serious criminal activity. Another subject noted that the system’s failure to prosecute or impose real consequences on children who violate the law generates apathy for juvenile cases in law enforcement circles. As an example, he stated that, when a juvenile commits a residential burglary, law enforcement officials know that the system will not truly punish the juvenile for the crime, and thus perceive that investigation of the offense is a waste of their time. A juvenile prosecutor, who indicated that many law enforcement officials view the juvenile court system as “too soft” on juvenile offenders, echoed this view. As a result, he said, not only are truly dangerous children insufficiently punished, but remedial goals of the system are never brought to bear on the kids who are “reachable,” and need only some guidance and a second chance to “turn [themselves] around.” Another stakeholder, a law enforcement official at a middle school, reported that although juvenile delinquency is “out of control” in his area, he has been told not to pursue complaints because there already are too many pending for the District Attorney to handle.

10. Other Problems Caused By Insufficient Funding Of Agencies Or Programs

In addition to the issue of high turnover among DFCS employees discussed above, stakeholders identified a number of other problems with the current juvenile justice system that are primarily the result of insufficient funding.
a. Mental Health Services

Stakeholders reported that the system for provision of mental health services is “broken,” principally because the state does not provide enough funding to this segment of the juvenile justice system, particularly outside of the metropolitan Atlanta area. (One mental health provider in the District referred to areas of Georgia outside Atlanta as “neglected” in this regard, and – along with other stakeholders – urged that grant programs be more closely supervised and required to allocate funds more equitably to these rural parts of the state.) Meanwhile, mental health issues play an integral part in what the juvenile courts in the District must deal with in virtually every case. Without proper funding, money becomes the focus in these cases, as opposed to the appropriate care that is needed for the individuals involved.

The prevailing perception is that more funds should be devoted to mental health treatment and counseling, especially for displaced children. Stakeholders also expressed a desire that more judges and attorneys in the system obtain basic training in the area of juvenile mental health evaluations. Because courts and lawyers are not sufficiently trained to spot deficiencies in such evaluations, stakeholders reported that clinically questionable evaluations are frequently admitted into evidence and used as the basis for a court’s order when they should rightfully be questioned or even disregarded.

b. Detention Facilities

Stakeholders also reported that funding shortfalls have resulted in a lack of vacant space in various detention facilities, including longer-term facilities such as Youth Development Centers. As a result, youth who should be incarcerated are left in the community placing themselves and others at risk.

11. Problems With The Detention Assessment Instrument (DAI)

Several stakeholders, including law enforcement and DFCS officials, expressed dissatisfaction with the Detention Assessment Instrument (“DAI”), a point system that is used by the DJJ in delinquency cases to determine whether a child is eligible for detention. Subjects characterized the DAI as overly arbitrary, not sensitive enough to the shifting circumstances in each case and followed too automatically by courts.

Outside agencies do not understand the process by which DAI points are awarded, and the number of points necessary for detention of the child to be recommended (10 points) is seen as too high. Instances also arise in which a child whose behavior is potentially dangerous has not yet accumulated 10 points on the DAI, and thus is not recommended for detention – a recommendation judges almost always follow because they feel “their hands are tied” – despite posing a bona fide threat to himself and the community. As an example, one subject recounted the story of a juvenile who was raised in “an awful” home environment and had to be placed in foster care. While in foster care, the child robbed his foster mother, broke the windows in the home and assaulted other foster children. This child, however, never accumulated enough DAI points to be
put in secure detention. His actions and the failure of the system to detain him as a consequence created fear in his foster family and frustration with DFCS. The child eventually aged out of foster care, began to live on the streets, and has since committed armed robbery. As a child, he was perceived as having “a good heart,” but truly needed some rehabilitation, which he never received because, this stakeholder asserts, the child was never detained. Conversely, children whose behavior is not genuinely dangerous, but who have somehow accumulated 10 or more points on the DAI, are routinely detained for no objectively legitimate reason.

12. Problems With Truancy

Some stakeholders, particularly school officials, also complained that the current juvenile justice system does not deal adequately with straight truancy cases that do not involve any physical deprivation or delinquency. Such cases are rarely prosecuted against the parents, and in the rare instance in which they are, DFCS generally refuses to become involved, leaving only limited resources for intervention with the family of a habitually truant child. These stakeholders also would like to see the Juvenile Code amended so as to clarify the juvenile court’s responsibility to enforce the truancy laws, and to provide juvenile court judges with greater authority to impose tangible sanctions on parents who violate them. One stakeholder, a school principal, also urged that the age under which school attendance is mandatory be raised from 16 to 17, or even 18.

13. Problems Facing Defense Attorneys

Stakeholders cited a number of difficulties that are faced by defense attorneys, especially public defenders, in the juvenile system. Stakeholders consistently noted that defense attorneys have inadequate time to prepare their cases – or sometimes even to meet and talk with their clients – before hearings or trials. Stakeholders also complained that defense attorneys frequently are unable to obtain sufficient information to defend their cases, because there is no workable procedure for discovery to be conducted, and that there is no funding for public defenders to obtain their own psychological evaluations or expert testimony.

D. What Can Be Done To Improve The System?

Stakeholders made a number of specific suggestions for improvement of the Juvenile Code and the system at large: first, and at the urging of numerous interview subjects, the very organization of the Juvenile Code needs to be a priority for improvement. Stakeholders with strong opinions on this issue recommended that the provisions in Title 49 that apply to juvenile proceedings and agencies be moved into Title 15, so that the Code appears in one comprehensive title. The provisions in Title 15 dealing with deprivation and delinquency also need to be separated and organized more logically, so that courts and attorneys can more easily discern the provisions that apply to a given case. Second, the Code should be amended to provide judges with greater levels of discretion and authority in all cases to order relief along a broader spectrum of options, based on different facts or levels of proof. Third, portions of the Code, and certain
policies promulgated by the DJJ, need to be made more consistent with the federal laws that the Code is supposed to incorporate. Fourth, the Code also should be amended to contain specific requirements with regard to review and follow-up on each individual case.

IV. CONCLUSIONS

Based on the foregoing, stakeholders in the District clearly perceive the juvenile justice system to be plagued with serious problems and badly in need of reform. While not all of the deficiencies noted above can be addressed through amendments to the Juvenile Code, reorganizing and reworking the Code could lead to dramatic improvements in a number of areas.