

Embracing Common Wisdom: The New Juvenile Code in Georgia

An Assessment



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Center for Law & Justice

April 2018

Dear Reader:

A decade ago, the Georgia Appleseed Center for Law & Justice (“Georgia Appleseed”), the Barton Child Law & Policy Center, and Voices for Georgia’s Children formed the JUSTGeorgia coalition with one primary goal—to advocate for the enactment of a modern revised Juvenile Code. A critical step in what was ultimately a successful effort was a statewide interview process managed by Georgia Appleseed in which volunteer lawyers ventured across the state to engage with juvenile justice and child welfare stakeholders to assess the adequacy of the existing code.

This effort culminated in a report titled *Common Wisdom: Making the Case for a New Georgia Juvenile Code*. The report formed a critical underpinning for the subsequent effort by many individuals and organizations that resulted in the enactment of the new Juvenile Code that went into effect on January 1, 2014.

The Juvenile Code Assessment Project (“Project”) again engaged volunteers to tap into the wisdom of stakeholders across the state through interviews with professionals in the juvenile justice and welfare systems. Stakeholders included judges, prosecutors, defense counsel, government agency leaders, case workers, child advocates, guardians ad litem, and court appointed special advocates. The interviews focused on the effectiveness of critical new or revised provisions of the law after three years of implementation experience. The purpose of this assessment was to identify any needed amendments to the law and to identify any aspects of the law that might not be achieving full potential for positive impact because of inadequate resources.

Georgia Appleseed reviewed its interviews with stakeholders and presents key findings in this report. One volunteer who analyzed interviews for the *Common Wisdom* report and interviews for this *Embracing Common Wisdom* report remarked on the contrast in responses. She said that during her first experience, stakeholders were “spitting mad because they were so frustrated with the inadequacies of the Code,” but that stakeholders seemed markedly calm during this second experience.

We commend Georgia’s elected officials for listening to stakeholders and experts, and embracing their wisdom, as they enacted a modern Juvenile Code. We have discerned some areas of concern and include them with recommendations in this report. We commend those who work in juvenile justice who embraced the new Code and helped to make its implementation a success.

Sincerely,

C. Talley Wells
Executive Director

Taylor Daly, Chair
Board of Directors

INTRODUCTION

In 2013, the Georgia General Assembly unanimously enacted a revised Juvenile Code. Three years into its implementation, Georgia Appleseed conducted an assessment to obtain feedback on how the revised Code is working. Volunteer attorneys, paraprofessionals, and support staff spread out across Georgia to interview stakeholders who are regularly using the revised Code. A majority of the stakeholders reported that it was being implemented as written and was working remarkably well in dependency and delinquency

“The change in law has been very good, especially for the children.”

Court Appointed Special Advocate

“The revised code has had a positive impact.”

Court Appointed Special Advocate

proceedings; stakeholders disagree whether the new “Child in Need of Services” statutory section has been implemented effectively throughout Georgia. Drawn from that input, this report presents key findings and provides recommendations for actions that would continue to improve juvenile justice.

The enactment of the revised Juvenile Code was a critical component of justice reform in Georgia. Its unanimous passage demonstrated a commitment to administering justice for children based on current social science knowledge of the development of children, incorporated best practices, and embodied consensus from practitioners and stakeholders in the juvenile justice system. The General Assembly has enacted both technical fixes and substantive changes annually since enactment of the revised Juvenile Code.¹

Georgia Appleseed’s Juvenile Code Assessment Project engaged pro bono attorneys and other volunteers to conduct interviews statewide of 174 stakeholders currently active in Georgia’s juvenile justice and child welfare systems.² The interviews were based on 111 questions that were developed by the Advisory Council to this Assessment Project and by Georgia Appleseed staff. The questions focused on the effectiveness of specific provisions of the Code.³ Stakeholders responded only to questions that pertained to their work areas, with only 37 stakeholders responding to all 111 questions. In this report, responses are calculated as percentages of

“Overall, the revisions have been good and successful. Problems are more in issues of lack of resources and facilities for those who have greater needs and are not appropriate to detain or just release back into the community.”

Juvenile Court Judge

¹ Melissa Carter, Executive Director of the Barton Child Law and Policy Center at Emory Law School, provides an annual summary of these revisions. The 2017 update is located in Appendix A.

² Stakeholders were spread as follows. Court Appointed Special Advocate - 35; Court Administrator - 10; DFCS Administrator - 15; DFCS Caseworker - 21; DJJ Intake Officer - 3; DJJ Probation Officer - 3; Independent Court Intake Officer - 1; Independent Court Probation Officer - 1; Judge - 38; Parent Counsel - 2; Private Defense Counsel (Child) - 3; Prosecuting Attorney - 13; Public Defender - 16; SAAG - 18. Note that three survey results did not identify a category of stakeholder and several had more than one category.

³ A copy of the questionnaire used during the Stakeholder interviews is provided in Appendix B.

the number of stakeholders who responded to the question, not a percentage of all the 174 stakeholders queried.

The Project also asked several questions pertaining to stakeholders' opinions on matters not in the Code, specifically whether the current age range in juvenile justice proceedings should be increased to include seventeen-year-olds and whether state law should limit or prohibit the use of shackles. A sampling of responses of juvenile court judges is included in Appendix C.

The Project's overall finding is that the revised Juvenile Code is working well and as intended. Stakeholders commented that it presented fewer challenges than they saw under the prior Code. With the exception of CHINS, it is being applied with consistency across the State.

The Project identified two primary areas of concern. A majority of stakeholders reported that additional funding is needed to provide the services and programs contemplated under the Code to ensure its goal of providing better help for children and their families involved in the juvenile justice system. Second, two dozen stakeholders raised concerns about the process for termination of parental rights, with related concerns about guardianship and permanency for children.

KEY FINDINGS

I. Child in Need of Services

A new Child in Need of Services (CHINS) statutory section was introduced in the 2013 Juvenile Code, establishing provisions for children whose offenses relate to their status as children. These offenses are actions that would not be violations of the law if committed by an adult. The most common offenses are truancy (unexcused absences from school) and runaway (absence from home without consent). The main purpose of the new law was to remove those offenses from delinquency provisions and to develop a process that would ensure that intervention services are made available to children and families. The intervention services are intended to prevent the child's behavior from escalating to more serious, potentially delinquent, activities. Results from the Assessment Project show that one or more stakeholders in every jurisdiction reported challenges in implementing CHINS.

Stakeholders responding to CHINS questions represented every judicial district in Georgia. 110 stakeholders responded to the question: "How, in general, would you describe the implementation of CHINS in your jurisdiction?" Within each judicial district, some stakeholders responded that CHINS has been effectively implemented, while others within the same judicial district maintained that CHINS' implementation has been ineffective. 12 stakeholders had a neutral position, hedging their comments so that we are unable to conclude whether those individuals found the implementation of CHINS effective or ineffective. 44 stakeholders responded that CHINS'

implementation has been effective. 54 stakeholders responded that CHINS' implementation has been ineffective.

Stakeholders articulated several areas of concern regarding CHINS. Many noted that communities have insufficient resources to provide the services needed for CHINS to be effective. Stakeholders also observed that CHINS lacks the coordination, oversight, and uniformity needed to be effective statewide. Some stakeholders were concerned that CHINS has an insufficient range of consequences. Several stakeholders who found CHINS ineffective raised concerns about runaways and trafficked youth. Some stakeholders observed that CHINS helps more with preventing dependency cases than with preventing delinquency cases. We address these areas below. A sampling of responses is provided in Appendix D.

1. Resources for CHINS services

The underlying premise of CHINS relies on the availability of services within the community. Many stakeholders reported not seeing adequate services for CHINS. One Stakeholder explained, "CHINS is partially effective. Why only partially? Because of lack of funding, lack of oversight for CHINS services, and lack of services for CHINS in the community. It is a good "theory" but not good when put into practice. If the State wants DFCS (or a different organization) to run it, make it statutorily that way." Another stakeholder said, "The main problem is we are limited in resources in this area. Our biggest needs are in counseling and finding solutions for teenagers in broken homes (older children)." *One juvenile court judge noted that CHINS depends upon "a strong service network of providers and different opportunities for children in order to implement it. There are some jurisdictions where CHINS cases are going well and some that have no idea what's going on. Success of CHINS is totally dependent on the resources in your community. Those resources are not being provided equitably to children in all communities."*

2. CHINS coordination, oversight, and uniformity

Many stakeholder responses conveyed a sense of floundering in seeking to implement CHINS. Aware of the need for assistance, the Georgia General Assembly included funding in its fiscal year 2019 budget to create a new position for a CHINS statewide coordinator within the Council of Juvenile Court Judges. This is a first step in addressing a stakeholder's concern that "CHINS has been a Catch 22 that pushes the problem from one agency to another." Another stakeholder suggested that "there needs to be a best practices sharing program implemented because every jurisdiction handles CHINS differently. They need to streamline some things and figure out what is working and what isn't. The Council of Juvenile Judges is putting together a best practices notebook, which is a good start." Or, succinctly, "there needs to be more specific guidance on who does what."

Georgia Appleseed doubts that one new staff position will be sufficient on its own to provide the needed coordination given the variability in practices and resources

throughout jurisdictions statewide, but it is a necessary component in making CHINS implementation effective statewide. The issue of oversight remains nebulous. A judge lamented, “things are often put into place but there is no follow-through and no consequences.”

3. CHINS and compliance measures

Many stakeholders were concerned that CHINS’ focus on providing needed services to youth neglects the reality that CHINS lacks a compliance mechanism. One judge explained his frustration with CHINS: “I hate CHINS because there is nothing we can do to effect change. There are no consequences for the children. We have a good program, and they work with the [youth] and try to get the services to the ones who want to be helped. But the ones who come to court.... I fuss at the kids, that’s the most I can do. Or put mama on a protective order and threaten to lock her up if they don’t get to school --which isn’t fair to mama because she’ll send them to school, but they won’t go. I can put them on probation. What happens if they violate probation? Nothing. This is a problem with the code; no enforcement arm that I can see. Put them on a graduated sanctions program, it may help. The threat of action does more than the actual action does if the kid knows there is some consequence to what they are doing. But if they learn pretty quick there aren’t any consequences then they don’t care.” Another stakeholder agreed, observing that “there are no real consequences that are set forth under the code for lack of CHINS compliance. And there is little being done by either the courts or the parents to reinforce the expected behaviors. Without accountability, CHINS is ineffective.”

4. Runaways

Several stakeholders who find CHINS ineffective expressed troubling concerns about runaways. A district attorney observed that “runaways often go into the sex industry. CHINS is preventing us from detaining kids when we need to do so for their own safety. These kids really fall through the cracks.” A judge explained that, “Most people think the runaway is a status offense. But it is worse than that. To me, that’s the worst thing a child can do to a parent, the most harmful thing – the parent doesn’t know if child is alive, dead, raped. It is a complete nightmare. But there are no consequences. The most we can do is hold them in detention for 24 hours to find the parent. That’s it.” A court administrator said that the CHINS program presents a barrier in assisting runaways in connection with human trafficking.” Another suggested that “runaways present a serious problem because they are exploited and more robust intervention is needed through a non-punitive admittance to a center with counseling (24/7 supervision/availability).”

II. Dependency

The 2013 revisions to the Code also significantly modernized the dependency provisions. This part of the law addresses the status of children who have been abused, neglected, or abandoned. Results from the Assessment Project show that the Code is working as intended, although there is a natural and difficult tension between a timely process, the length of out-of-home placements, and the time parents may need to demonstrate their ability to care for a child.

1. The court appoints a guardian ad litem in each dependency case, according to 122 stakeholders (81%).
2. While stakeholders responded that hearings in dependency cases are being held timely, 56 stakeholders (38%) reported facing challenges with getting planning functions to be completed timely. (Planning functions include diligent search, case plan, transition plan/written transitional living plan.) As one Division of Family and Children Services (“DFCS”) worker noted, “termination of parental rights is often happening too quickly -- when it is unrealistic for parents to rehabilitate themselves in that amount of time.” Several other DFCS employees voiced similar concerns.
3. Several Court Appointed Special Advocates (“CASAs”) reported that court continuances were prolonging out-of-home placements and increasing trauma for children. One CASA summarized the problems as follows: “court continuances, often due to conflicts for the attorneys for cases in higher courts, prolong the duration of the child remaining in foster care or out of home placement, exacerbating the child's trauma of removal from home, and increasing costs to the State when resources could be applied to other children or to other needs of this child.”
4. 126 stakeholders (95%) reported that courts are making findings in many cases that unsupervised visitation is not in the best interest of the child, but that the court is working with the families to develop plans which prepare the family to be allowed unsupervised visits. Several stakeholders agreed that “visitation is considered at every hearing and hearings are frequent” and that frequency of family visitation is tailored to the needs and age of the child.
5. Several stakeholders noted that there are insufficient foster homes in their districts.

III. Delinquency

The delinquency provisions of the Code address situations in which a juvenile (a child under the age of 17) commits an act that could be punished as a crime if committed by an adult.

The Assessment Project key findings outlined below also demonstrate that the revised Code is generally working very well in delinquency proceedings.

1. 118 stakeholders (82%) responded that the Code presents definitions that are clear in delinquency related provisions. 126 stakeholders (90%) responded that delinquency hearings are held in a timely manner most or all of the time; however, 14 stakeholders (10%) responded that meeting the timelines required by the Code presents challenges. Because of the importance of having tight deadlines in delinquency proceedings, these challenges do not reflect a shortcoming in the Code, but rather the reality of the difficulty of bringing a case to trial in ten days, particularly in light of scheduling conflicts, discovery needs, crime lab processing, identifying relatives, and locating witnesses.
2. Representation is appropriate, with stakeholders reporting that:
 - a. delinquency hearings are conducted by a district attorney (136 stakeholders (92%)),
 - b. juveniles determined to be indigent are represented by counsel (60 stakeholders (97%)), and
 - c. on the rare occasion when a child waives counsel, the process used for determining the appropriateness of the waiver is consistent with Code requirements (60 stakeholders (95%)).
3. Guardians ad litem are appointed in a variety of circumstances, such as when the parent/guardian is not present, when requested by the district attorney, when requested by the child's attorney, whenever there appears to be conflict between the child and the parent/guardian, and at the judge's discretion in other circumstances.
4. 120 stakeholders (94%) reported that the Department of Juvenile Justice Detention Assessment Instrument is used in determining detention or pre-release adjudication.
5. 100 stakeholders (92%) responded that the court always orders a risk assessment prior to considering a disposition involving secure detention, as required by the O.C.G.A. §15-11-602(b)(3). 115 stakeholders (88%) responded that the juvenile court complies with the requirement that it issue an order requiring the "least restrictive disposition." O.C.G.A. § 15-11-601.
 - a. One judge reported "although the risk assessments are always completed, the assessment documents are not always presented to the court."
 - b. Several stakeholders reported that the risk assessment, used by the judge at the dispositional stage, is not well defined.
 - c. Several stakeholders felt that the definition of "least restrictive disposition" was not clear.

6. Some districts have non-secure residential facilities for juveniles, but there are not enough. One stakeholder reported: *“There are no non-secure residential facilities in this jurisdiction. This is part of the problem.”* The non-secure residential facilities usually do not accept juveniles charged with sex or other violent offenses.
7. 95 stakeholders (94%) agreed that dispositional orders properly conform to the differences in authorized dispositions for children being adjudicated for a Class A designated felony and those being adjudicated for a Class B designated felony.
8. 107 stakeholders (80%) said that juveniles may be required to pay probation fees.
 - a. 37 stakeholders (28%) responded that juveniles who are put on probation are **ALWAYS** required to pay probation fees.
 - b. 70 stakeholders (52%) responded that juveniles who are put on probation are **SOMETIMES** required to pay probation fees.
 - c. 15 stakeholders (11%) responded that juveniles who are put on probation are **NEVER** required to pay probation fees.
 - d. 12 stakeholders (9%) responded that juveniles who are put on probation are **RARELY** required to pay probation fees.
9. 105 stakeholders (84%) reported that competency evaluations are routinely ordered for children under the age of 13 who are accused of committing serious violent felonies. However, several stakeholders, including both judges and district attorneys, noted that competency evaluations are only ordered when requested by the child’s attorney.

AREAS OF CONCERN

We note below two areas of concern that appear to require remedy outside of the Juvenile Code itself. One points out an overarching issue of funding. The other addresses a concern in dependency hearings related to termination of parental rights and guardianship. We asked no questions specifically directed at parental rights, apart from those involving timing of hearings. Yet we received feedback indicating concerns about parental rights and guardianship that we detail below.

I. Resource Limitations

Many of the challenges reported in the juvenile justice system related to CHINS or delinquency proceedings, such as insufficient programs and opportunities for youth and insufficient non-secure detention facilities, appear to result from a need for additional resources rather than from deficiencies in the Juvenile Code itself. Other delinquency problems or shortcomings also reflect issues outside of the Code, such as a lack of

resources for timely competency evaluations and delays in cases due to attorney conflicts with trials in State or Superior Courts.

II. Termination of Parental Rights and Permanent Guardianship

In addition to the timing issues noted in the above findings, a number of stakeholders raised broader concerns about the termination of parental rights and guardianship.

Five months before Georgia Appleseed’s volunteers began conducting stakeholder interviews, the Georgia Court of Appeals reversed a juvenile court order terminating parental rights. *In Re Interest of E.M.D.*, 793 S.E.2d 489 (Ga. Ct. App. 2016). The Court of Appeals held that the “trial court’s factual findings are insufficient to support its conclusion that any continued dependency experienced by these children will cause or is likely to cause them serious physical, mental, emotional, or moral harm . . .” *Id.* at 501.

Several stakeholders referred to that ruling in their response to the questionnaire. Their comments underscore the tension between parental rights and the best interest of the child. Some believe that the Juvenile Code places the best interest of the child foremost. For example, a CASA observed: “I am in favor of the permanency objectives and associated timelines set out under the new Code. I believe the new Code is clearly aimed at helping children achieve permanency as expediently as possible. I like the new Code’s treatment of continuances, but believe the new continuance standards are not being adhered to by the parties or the court. The courts’ liberal approach to giving continuances is frustrating the goals of the new Code.”

Other stakeholders believe that those same provisions do not adequately protect parental rights. One juvenile court judge depicted the Court of Appeal’s decision in *E.M.D.* as a “pendulum swing . . . with the Court of Appeals wanting to not finally sever the parental rights. It has been a policy shift as to the overall theme that the parental relationship is so important it has to be cautiously severed.” One stakeholder, a special assistant attorney general (“SAAG”), opined that this problem arises at least in part from the lack of guardianship: *“Guardianship needs to be promoted more in cases where a parent cannot complete a case plan either because of a low IQ, a drug problem, or homelessness, but still allows the parent to communicate with or have a relationship with their children. We shouldn’t be required to terminate parental rights. If a child does not want the rights terminated, I should have to recognize that child’s wishes, especially if that child is 10 or older.”*⁴

Although permanent guardianship is included in the Code, a juvenile court judge pointed out that it is “DFCS protocol to restrict the use of Permanent Guardianship as a viable permanency option to only those children 14 and older (unless DFCS leadership agrees that such permanency should be pursued)” and urged that that protocol “needs to be statutorily addressed.” Another juvenile court judge stated that “guardianships

⁴ Georgia Senate Bill 131, which would require a stay of an adoption pending appeal of a termination of parental rights, was passed by the 2018 General Assembly.

are no longer permanent. There are not any permanency options for children who do not reunify other than termination and adoption.”

It is clear from these comments, that are representative of two dozen more, that stakeholders are concerned about termination of parental rights and the virtual absence of permanent guardianship because of DFCS protocol.

RECOMMENDATIONS

Based on our analysis of current law and on the input received from stakeholders as outlined in this report, Georgia Appleseed recommends the following actions. We believe the recommendations will further the goal of fairly and uniformly administering justice for children in a developmentally-appropriate manner while protecting legal rights.

I. Child in Need of Services

- a. **Funding.** Effective implementation of the revised Code requires services for children outside of the juvenile justice system. Such services may include structured after-school or evening programs such as tutoring, athletic programs, counseling, and behavioral health services. Success of the CHINS program is particularly dependent upon the availability of these services. To facilitate children benefitting from these services, the services need to be available to children and their families within their community. These services are also beneficial to children in dependency proceedings.
- b. **Coordination.** Some stakeholders expressed a desire for uniform coordination of the CHINS program. The General Assembly recently appropriated funds for a new position for CHINS coordination within the Council of Juvenile Court Judges. Georgia Appleseed recommends additional allocation to the Council of Juvenile Court Judges to support a robust coordination of CHINS implementation, and to ensure greater standardization and equity of services throughout the state.
- c. **Runaways.** Several stakeholders expressed concerns that CHINS does not work effectively with runaways. Georgia Appleseed recommends that these concerns be evaluated. We would ordinarily suggest that the Criminal Justice Reform Council consider this issue, but that Council is scheduled to sunset in July 2018. If the Council of Juvenile Court Judges becomes the entity for CHINS coordination, as indicated by the 2018 appropriation for a CHINS coordinator, perhaps that is the appropriate entity to investigate whether runaways are benefitting from CHINS.

II. Dependency

- a. Guardianship. Several stakeholders are concerned about issues involved in the termination of parental rights, noting that the only options are re-unifying children with their parents and terminating parental rights. The Code envisions a third aspect, permanent guardianship, that is currently not a viable option because the Division of Family and Children Services only funds permanent guardianship upon the granting of a waiver.
 - We recommend that the Division of Family and Children Services review its protocol regarding guardianship to be supportive of the Juvenile Code, specifically by providing funding for permanent guardians.

III. Delinquency

- a. Non-secure placement. Stakeholders reported that some jurisdictions have non-secure facilities, but not enough. Other stakeholders reported no non-secure facilities within their jurisdictions. When children reside outside of their community, it weakens the family's ability to preserve and strengthen family relationships.
 - The General Assembly should fund the expansion of non-secure residential facilities, including into each jurisdiction, so that children are placed closer to their home and community.

APPENDIX A



About Juvenile Justice Reform in Georgia

A Summary of Legislative Reforms from 2013-2017¹

2013 Juvenile Justice Reform Legislation: House Bill 242

In 2012, Governor Deal signed an executive order extending the term of his inter-branch Special Council on Criminal Justice Reform for Georgians (Council) and enlarging its membership. The Council was specially tasked with examining the juvenile justice system and making recommendations for improvement with the aims of protecting public safety, holding offenders accountable, and controlling state costs. Guided by technical assistance provided by the Pew Center on the States, the Annie E. Casey Foundation, and the Crime and Justice Institute, the Council conducted an extensive analysis of the state's juvenile justice data and solicited input from a broad and diverse set of stakeholders.

Despite declining trends in the number of youth involved with the juvenile justice system, Georgia's juvenile justice system was being operated at a substantial cost and witnessing poor outcomes.² In FY 2013, the state budget for the Department of Juvenile Justice exceeded \$300 million, the majority of which was used to operate residential facilities.³ The long-term Youth Development Campuses (YDCs) cost \$91,126 per bed per year, and the short-term Regional Youth Detention Centers (RYDCs) cost \$88,155 per bed per year.⁴ Despite these investments, the recidivism rate remained high, with more than half of delinquent youth committing a subsequent offense leading to a re-adjudication of delinquency or an adult conviction of a crime within three years. To address the factors contributing to these unacceptable results, the Council proposed a number of policy recommendations, which together, were projected to significantly decrease the number of juvenile offenders in detention and realize an estimated \$88 million in state savings through 2018.⁵ Savings presented opportunities for investment

¹ Prepared by Melissa D. Carter, Executive Director, Barton Child Law and Policy Center, Emory Law School. Last updated June 6, 2017.

² Report of the Special Council on Criminal Justice Reform for Georgians, December 2012.

³ Report of the Special Council on Criminal Justice Reform for Georgians, December 2012.

⁴ Report of the Special Council on Criminal Justice Reform for Georgians, December 2012.

⁵ Report of the Special Council on Criminal Justice Reform for Georgians, December 2012.

in local, evidence-based programs proven to reduce recidivism through reallocation of resources.

The specific strategies to achieve these reforms were combined with previous legislative efforts to comprehensively revise the Juvenile Code led by Representative Wendell Willard, chairman of the House Judiciary Committee, and passed unanimously by the Georgia General Assembly as House Bill 242.

House Bill 242 comprehensively revised the Juvenile Code in technical and substantive ways. The result is a more developmentally-appropriate approach to administering justice for children involved in dependency (abuse and neglect), delinquency, competency, and status offense cases that is based in research and best practice. The new code is stylistically consistent and reflects a new organizational structure in which provisions relating to different types of cases are separated into integrated, self-contained sections (or articles). Substantive provisions are also amended to comply with federal law, reflect social science research, incorporate best practices, and embody consensus from practitioners and stakeholders. The intended result is improved justice for children and their families who are before the juvenile court through greater procedural protections to protect clearly-established legal rights administered fairly and uniformly.

HB 242:

- Provides legal definitions of essential terms;
- Creates two categories of “designated felonies” to differentiate dispositional options for non-violent and low-risk offenders from more serious offenders;
- Provides jurisdiction for juvenile courts to review independent living services offered to children involved with the child welfare system after age 18;
- Clarifies that a child is a legal party to a dependency proceeding and entitled to be present in court unless the court makes a finding that it is not in the child’s best interest to attend;
- Encourages courts to refer cases for mediation if appropriate;
- Clarifies applicable timelines for various proceedings and decisions;
- Provides a right for a child in a dependency proceeding to be represented by a lawyer and by a guardian ad litem who should be a Court Appointed Special Advocate (CASA) whenever possible;
- Promotes preservation of relationships for children in foster care by requiring joint placement of siblings and visitation with parents or other relatives;
- Enhances information sharing procedures;
- Creates an option to reinstate parental rights for a child in foster care under certain circumstances;

- Creates Children in Need of Services (“CHINS”) as a new approach for intervening with children who have committed an act that would not be against the law but for the fact it was committed by a child, commonly referred to as status offenses (e.g., running away, skipping school);
- Provides a process for responding to children who have been found to be unrestorably incompetent to stand trial, meaning that because of a permanent disability or limitation they will never be able to understand the charges or legal proceedings and assist an attorney in their defense;
- Provides that a child’s right to be represented by an attorney cannot be waived by the child’s parent;
- Prohibits status offenders and certain misdemeanants from being held in residential facilities;
- Mandates use of a validated risk and needs assessment and detention assessment instrument prior to detention and disposition decisions;
- Allows the court to order behavioral health evaluations and competency evaluations under certain circumstances; and
- Requires enhanced data collection and reporting.

2014 Juvenile Justice Reform Legislation: Senate Bill 364

The new Juvenile Code took effect January 1, 2014. Over the course of the first year of implementation, legal practitioners and other system stakeholders identified certain challenges to applying the new law. Accordingly, the Council entertained a proposal to address various technical revisions to correct deficiencies in statutory language and refine the reforms that began with HB 242.⁶ The Georgia General Assembly passed Senate Bill 364 to advance those proposed amendments into law.

2015 Juvenile Justice Reform Legislation: House Bill 361

Efforts to perfect the new Juvenile Code continued in the 2015 legislative session, during which House Bill 361 was considered and passed. HB 361 includes additional corrections that needed to be made as a result of drafting errors or omissions from HB 242.

Two substantive reforms also were made in the bill, consistent with recommendations made by the Council.⁷ The “extraordinary cause” standard for post-indictment transfer of a case involving a child age 13-17 alleged to have committed voluntary manslaughter,

⁶ Report of the Georgia Council on Criminal Justice Reform, January 2014.

⁷ Report of the Georgia Council on Criminal Justice Reform, February 2015.

aggravated sodomy, aggravated child molestation, or aggravated sexual battery to juvenile court was replaced with a list of factors the superior court judge must consider in order to make a developmentally-appropriate and individualized determination as to the appropriate court to hear the case. Additionally, prosecuting attorneys were authorized to file a complaint alleging a child is in need of services (“CHINS”) and to intervene in CHINS cases to represent the interests of the state.

2016 Juvenile Justice Reform Legislation: Senate Bill 367

Senate Bill 367 was introduced in the 2016 legislative session to advance the recommendations in the 2016 report of the Criminal Justice Reform Council that required legislative action. With regard to continuing juvenile justice reforms, the Council’s recommendations built on the success of the past three years, during which the state had witnessed impressive reductions in the number of youth in secure confinement, awaiting placement, and committed to the Department of Juvenile Justice.⁸ These system improvements demonstrate what research consistently proves – that children experience better outcomes when their needs are met in the community.

Research consistently proves that the majority of young offenders outgrow their delinquent and criminal behavior as engagement in school and work increases. Accordingly, the Council’s juvenile justice recommendations focus on schools as a primary source of referrals to the juvenile justice system. The Council specifically recommended:

- Mandating the use of educational approaches to address a student’s problematic behavior rather than over-relying on the juvenile justice system;
- Improving the fairness of school disciplinary proceedings by establishing minimum qualifications and training standards for school disciplinary officers; and
- Clarifying the role of School Resource Officers (SROs) in responding to school discipline by requiring a written agreement between local schools and local law enforcement.⁹

The combined aim of these proposals is to emphasize the inclusion of children in classroom learning rather than promoting exclusionary discipline practices that predictably lead to encounters with the juvenile and criminal justice systems.

⁸ As reported by the Criminal Justice Reform Council, since 2013, Georgia has decreased its population of youth in secure confinement by 17% and reduced the number of children awaiting placement by 51%. Overall commitments to the Department of Juvenile Justice have declined by 33%.

⁹ Report of the Georgia Council on Criminal Justice Reform, February 2016.

In addition to these school-based reforms, the Council confronted an unintended consequence of the Juvenile Justice Reform Act of 2013: the juvenile courts' expansion of the use of secure detention for younger children. Since the reforms took effect in 2014, the rate of detention of children age 13 and under had more than tripled.¹⁰ In 2015 alone, 450 youth age 13 and younger were detained.¹¹ Thus, the Council recommended establishing a statutory presumption against detention of youth in this age category except for those who have committed a serious offense. In such serious cases, detention can be considered if indicated by the validated assessment instrument, and with judicial approval.¹²

Finally, the Council continued its support for the use of accountability courts as alternatives to traditional approaches of disposing cases. SB 367 expands the definition of "accountability court" to recognize "operating under the influence court divisions" and "family treatment court divisions," and authorizes juvenile courts to establish these specially-focused programs.¹³

2017 Juvenile Justice Reform Legislation: Senate Bills 174 and 175

Building on the popularity of accountability courts as a criminal and juvenile justice reform strategy, the Council's 2017 report recommended enhanced flexibility and clarified procedures to ensure the success of Family Treatment Courts (FTC).¹⁴ The goal of an FTC is to facilitate reunification between parents and their children by assessing a parent's level of substance abuse treatment and implementing evidence-based programs. To expand the capacity of these courts to meet the growing need of substance-affected families, the Council identified the lack of judicial time to focus on FTC operations as one barrier.¹⁵ Accordingly, the Council recommended allowing judicial circuits to employ part-time juvenile court judges as a dedicated staffing resource to preside over FTCs.¹⁶ In addition, the Council recommended requiring a written protocol to clarify the referral procedure and including Division of Family and Children Services (DFCS) employees in collaborative planning groups.¹⁷ These recommendations were advanced by Senate Bill 174, which passed in the 2017 legislative session.

¹⁰ Report of the Georgia Council on Criminal Justice Reform, February 2016.

¹¹ Report of the Georgia Council on Criminal Justice Reform, February 2016.

¹² Report of the Georgia Council on Criminal Justice Reform, February 2016.

¹³ Report of the Georgia Council on Criminal Justice Reform, February 2016.

¹⁴ Report of the Georgia Council on Criminal Justice Reform, February 2017.

¹⁵ Report of the Georgia Council on Criminal Justice Reform, February 2017.

¹⁶ Report of the Georgia Council on Criminal Justice Reform, February 2017.

¹⁷ Report of the Georgia Council on Criminal Justice Reform, February 2017.

The Council's 2017 report also contained recommendations for continued adjustments to juvenile justice interventions based on three years of experience operating under the new Juvenile Code. As the Council began its work looking toward the 2017 legislative session, a few juvenile court judges expressed their concerns about children charged with serious delinquent offenses who subsequently were found by the court to be incompetent to proceed and therefore, released to the community. One particularly high-profile case in Atlanta underscored the urgent need to address this gap. Therefore, the Council recommended that an allowance be made in the law for a juvenile court to temporarily detain a child deemed incompetent to proceed when he or she is determined to present a significant risk to public safety and when no less restrictive alternatives exist. Moreover, the Council recommended that the Department of Juvenile Justice (DJJ) and the Department of Behavioral Health and Developmental Disabilities (DBHDD) collaborate to develop forensic residential services and a protocol for long-term treatment and rehabilitation of youth who are deemed incompetent to stand trial but present a risk to public safety.¹ This recommendation was enacted by passage of Senate Bill (SB) 175 in the 2017 legislative session.

SB 175 also enacted the Council's final juvenile justice recommendation for 2017, which was intended to encourage greater parental accountability and involvement in delinquency and CHINS cases. On the theory that increased parental participation may deter further delinquent conduct, SB 175 authorizes a juvenile court to enter an order in any CHINS or delinquency proceeding directing the behavior of the child's parent, guardian or legal custodian so as to promote the child's treatment, rehabilitation, and welfare. Such an order can require the parent to ensure the child's attendance at school, monitor homework, attend school meetings, prohibit the child from associating with certain people, cooperate with probation officials, complete a substance abuse program, pay the costs of treatment and other services, and pay restitution or a judgment. The parent's compliance with the order is enforced through a contempt action.

¹ Report of the Georgia Council on Criminal Justice Reform, February 2017.

APPENDIX B



Stakeholder Identification

Name (Last, First)

Stakeholder Category

- CASA Court Administrator DFCS Administrator DFCS Case Worker
 DJJ Intake Officer DJJ Probation Officer Independent Court Intake Officer
 Independent Court Probation Officer Judge Parent Counsel
 Private Defense Counsel (Child) Prosecuting Attorney Public Defender
 SAAG

Business Address

City

Zip code

State

Length of Service (Years)

Business E-mail

Business Phone

Geographic Scope of Responsibility [County(ies); judicial district(s), statewide]

Relevant Training/Prior Role(s)

Gender

Race/Ethnicity

Delinquency and Related Items

Definitions

1. Have you encountered any challenges in applying any of the definitions [15-11-471] in the revised code pertinent to delinquency proceedings?

Yes No

2. Is so, please explain

Timelines

3. Are delinquency proceedings being held in a timely manner?

- Yes, always
 Most of the time
 We face recurring challenges in meeting deadlines

4. Does compliance with any of the statutory time limits [15-11-472] present any particular challenge either to the state or the child?

Yes No

5. If so, please explain

6. How often are continuances granted?

Rarely Sometimes Often

7. For what reasons are continuances granted?

- Child not transported to court
- Child otherwise not present
- Parent not present
- For probation to complete a pre-disposition report
- Awaiting behavioral health or other evaluation
- Witnesses not present
- Investigation in progress
- Attorney not present
- Other

If other, please explain

Advocates/Representatives

8. Are all delinquency proceedings conducted by a district attorney on behalf of the state [15-18-6.1, 15-11-473 & 15-11-520]? [Y/N]

- Yes No

9. If not, by whom are they being prosecuted?

- Solicitor Contract Attorney Probation Officer

10. Is every child provided with counsel free of cost to the child or parents?

- Yes No

11. If not, are counsel appointed for children determined to be indigent?

- Yes No

12. If so, what are the standards by which indigence of the child is determined?

- Parent's income
- Child's income
- Conflict between the parent and child
- Court determines indigence using poverty guidelines
- Public defender office determines indigence using poverty guidelines

13. How often do children waive counsel?

- Never Rarely Regularly

14. Is the waiver process consistent with the requirements of 15-11-511(b)?

- Yes No

15. How is the phrase, "... if a child's liberty is in jeopardy... ," in 15-11-475(c) being applied [See also 15-11-511(b)]?

- Charged with misdemeanor
 CHINS
 Traffic
 Felonies
 If child is subject to being placed on any form of probation
 Child at risk of detention

16. Under what circumstances does the court appoint a GAL [15-11-476]?

- Parent/guardian not present
 When requested by the child's attorney
 When requested by the ADA
 Whenever there appears to be conflict between the child and parent/guardian
 Other circumstances at judge's discretion

If other circumstances, please explain

Custody/Detention

17. Is the Department of Juvenile Justice Detention Assessment Instrument being administered in all cases to determine whether a juvenile should be detained or released [15-11-502 & 15-11-505]?

- Yes No

18. Who makes the detention determination (including any override decision)?

- DJJ employee
- Intake worker employed by juvenile court
- Judge
- Probation office
- Law enforcement official

19. How long are children held prior to their detention hearings?

- Not more than 48 hours in cases where the child was not arrested pursuant to warrant
- Within 5 business days if child is held pursuant to warrant
- Court conducts weekend reviews
- Other

If other, please explain

Bail

20. Are children and their parents/legal guardians informed of the right to bail [15-11-507]?

- Yes
- No

21. How often is bail posted?

- Never
- Rarely
- Regularly

Predisposition

22. Are behavioral health evaluations being ordered, obtained, and results considered before ordering a child charged with a designated felony into restrictive custody [15-11-471 & 15-11-477(b)]?

- Yes
- No

23. If no, please explain why such evaluations are not being used.

24. What entity is providing behavioral health evaluations?

- DBHDD-Department of Behavioral Health and Developmental Disabilities
- Psychologist who has contract with the court
- Private psychologist
- DJJ

25. Is a risk assessment always ordered when the court is considering a disposition involving secure detention [15-11-2(65) & 15-11-602(b)(3)]?

- Yes
- No

26. If no, please explain why such assessments are not being used.

Disposition-General

27. Does the court comply with the requirement that it issue an order requiring the “least restrictive disposition” [15-11-601(a)]?

- Yes
- No

28. What non-secure residential facilities [15-11-2(49)] are available in the jurisdiction for all eligible children?

29. What categories of children are not being accepted at these facilities?

- Those charged with violent offenses
- Those with violent offenses on their criminal history
- Those charged with misdemeanor offenses against persons
- Those with mental health needs
- Those with domestic violence cases
- Those with past weapons offenses
- Those with past felony adjudications
- Those with past theft offenses
- Sex offenders

30. Do dispositional orders properly conform to the differences in authorized dispositions for children being adjudicated for a Class A designated felony versus a Class B designated felony [15-11-602]?

- Yes No

Disposition-Probation

31. How often are juveniles who are put on probation required to pay probation fees?

- Always Sometimes Rarely Never

32. What programs/services may be used as part of probation supervision?

- Community service Individual counseling Family counseling
 FFT-family functional therapy ART-aggression replacement therapy
 Anger management classes Baby Think It Over Community works
 Conflict resolution Electronic monitoring Future Focus
 Generation Success Girls on Track MRT-moral recognition therapy
 GED classes Community service programs Job training programs
 Sex offender therapy Multi-systemic therapy (MST)
 Tutorial/school based activities

33. In cases involving theft or property damage how often is restitution required?

- Regularly Sometimes Rarely

34. Under what other circumstances may restitution be ordered?

35. What challenges are there to enforceability of restitution provisions of probation orders?

Competency

36. Are competency evaluations routinely ordered for children under age 13 accused of committing serious violent felonies [15-11-652(b)]?

- Yes No

37. If no, why are such evaluations not being ordered?

38. Is the definition of “incompetent to proceed” [15-11-651(3)] sufficient guidance for the court and for the examiner administering a competency evaluation?

- Yes No

39. If no, please explain.

40. Who provides the competency evaluations in the jurisdiction?

- DBHDD
 Contracted psychologist
 DJJ
 Other

If other, please explain

41. For children deemed unrestorably incompetent, is the court appointing a plan manager and ordering the development of a comprehensive services plan?

- Yes No

42. Does the court monitor the implementation of the services plan?

- Yes No

43. Who provides competency remediation services in the jurisdiction?

- DBHDD
- Contracted psychologist
- DJJ
- Other

If other, please explain

44. What can be done to address unrestorably incompetent children who continue to commit serious offenses?

Child in Need of Services Issues

General

45. How, in general, would you describe the effectiveness of the implementation of CHINS in your jurisdiction?

46. To the extent that you believe that implementation has been less than fully effective, please give your opinion as to why that is so.

47. Are applicable CHINS timelines being met [15-11-400]?

- Yes, always
- Most of the time
- We face recurring challenges in meeting deadlines

48. To what extent does the court extend the time for filing a petition to allow for potential informal resolution of the matter?

49. How often are continuances granted?

- Often
- Sometimes
- Never

50. For what reason(s) are continuances granted?

- Child not transported to court
- Child otherwise not present
- Parent not present
- For probation to complete a pre-disposition report
- Awaiting behavioral health or other evaluation
- Witnesses not present
- Investigation in progress
- Attorney not present
- Other

If other, please explain

51. Please describe the process/mechanisms in place in your jurisdiction to implement CHINS.

52. How often are children otherwise eligible for CHINS held in secure detention facilities?

- Never Rarely Regularly

53. If held in secure detention longer than 24 hours after the continued custody hearing or if held after adjudication/disposition, what is the legal basis/justification?

54. Do you have any recommendations with regard to how CHINS implementation can be improved in your jurisdiction?

Definitions

55. Have you encountered any challenges in the definitions pertinent to CHINS?

- Yes No

56. Please explain.

Complaint

57. How do complaints filed by schools demonstrate compliance with the requirement that the school has attempted to resolve the matter using available educational resources?

58. Do the school districts in your jurisdiction have in place a specific process or protocol governing the management of potential CHINS matters?

- Yes No

Advocates/Representatives

59. Is every child provided with counsel free of cost to the child or parents [15-11-402]?

- Yes No

60. If not, why are counsel not being provided?

61. How often does the court appoint a guardian ad litem in each CHINS case [15-11-402(b)]?

- Often Sometimes Rarely Never

62. If a GAL is not always appointed, what factors are considered by the court in determining whether or not to appoint a GAL?

63. How often does the court allow the child's attorney also to serve as GAL?

- Often Sometimes Rarely Never

64. How often has the court in such cases found it necessary to appoint subsequently a separate GAL because of a potential conflict of interest?

- Often Sometimes Rarely Never

Petitions

65. How often does a prosecuting attorney file a CHINS petition and prosecute CHINS proceedings in your jurisdiction [15-11-420]?

- Always Sometimes Never

66. If the prosecuting attorney sometimes but not always files and prosecutes CHINS proceedings, what factors does she/he use in making the decision to engage?

67. If the prosecutor does not file and prosecute, who does?

Disposition

68. What structured after-school or evening programs or other court approved programs are available for CHINS in your jurisdiction?

- Tutoring
- Athletic programs
- Counseling
- Other

If other, please explain

69. Are periodic disposition reviews held in accordance with 15-11-445? (after 3 months and then every 6 months).

- Yes No

Dependency and Related Issues

Definitions

70. Have you experienced any challenges applying the definitions pertinent to dependency or termination of parental rights issues?

Yes No

If yes, please explain.

Advocates/Representatives

72. Is every child provided with counsel free of cost to the child [15-11-103 & 11-11-36(a)(3)]?

Yes No

73. If not, why is counsel not being so provided?

74. Does the court appoint a guardian ad litem in each dependency case [15-11-104(b) & 15-11-36(a)(4)]?

Yes No

75. If not, why is a GAL not being appointed?

76. How often does the court allow the child's attorney to also serve as GAL?

Often Sometimes Rarely Never

77. How often has the court in such cases found it necessary to appoint subsequently a separate GAL because of a potential conflict of interest?

- Often Sometimes Rarely Never

78. How often does the court appoint a CASA to act as GAL?

- Always Usually Rarely Never

79. How often is a CASA appointed even when the child attorney also is appointed as a GAL?

- Always Usually Sometimes Rarely Never

80. Are individual attorneys assigned to the same public defender office allowed to represent child and parent in dependency/TPR cases?

- Yes No

81. Are children being provided appointed counsel in privately-filed dependency cases?

- Yes No

82. Are children generally present for all proceedings unless the court has determined that presence would not be in the child's best interest?

- Yes No

Timelines

83. Are all hearings being held timely? (preliminary protective hearing, adjudication, disposition, permanency planning hearing (age-differentiated), termination of parental rights)

- Yes, always
 Most of the time
 We face recurring challenges in meeting deadlines

84. Are all planning functions occurring timely? (diligent search, case plan, transition plan/WTLP)

- Yes, always
 Most of the time
 We face recurring challenges in meeting deadlines

85. Does compliance with any of the time limits present any particular challenge either to the state or the child?

- Yes No

86. If yes, please explain.

Post-Removal Visitation

87. What has been the effect of the new provision that establishes a presumption that post-removal parental visitation will be unsupervised?

88. What is the frequency of visitation being ordered?

- Pursuant to DFCS policy
 Other

If other, please explain.

89. How is that frequency determined?

- DFCS financial constraints
 Child placed far from parents' home
 Other

If other, please explain.

90. What conditions, if any, are placed on unsupervised visitation?

- Don't leave the country
- Don't leave the state
- Other

If other, please explain.

91. Are courts making a finding that unsupervised visitation is not in the child's best interests?

- Yes
- No

92. If yes, how often?

- Always
- Usually
- Sometimes
- Rarely
- Never

93. On what factual basis?

- Physical or emotional danger to the child
- Danger of absconding
- Other

If other, please explain

Youth over 18

94. If a person 18 years of age or older continues to be under the supervision of DFCS or to receive services from DFCS, does this court retain jurisdiction over the individual with regard to relevant elements of the disposition order?

- Yes
- No

95. Are periodic reviews carried out to assure that the youth receives appropriate services?

- Yes
- No

96. Is such an individual provided with counsel/GAL/CASA?

Yes No

97. Are courts encountering resistance from DFCS to provide services to children in care past the age of 18?

Yes No

98. If yes, please explain.

Issues of General Applicability

99. Does the court have a mediation program?

Yes No

100. Which types of cases are referred for mediation?

- School fights Domestic violence cases Theft cases
- Property damage case Misdemeanors Misdemeanors and some felony cases
- Other

101. Who serves as mediator?

- Court personnel trained in mediation
- Contracted mediators
- Other

If other, please explain

102. How are mediation costs handled?

- Parties share cost
- Mediation provided for free
- Other

If other, please explain.

103. Are any data collected and shared with regard to mediation outcomes?

- Yes
- No

104. Are there any other issues or concerns arising out of the revised code that you wish to share that were not addressed in our prior questions.

Beyond the Code Issues

Raise the Age

105. Should the law be changed to extend the delinquency jurisdiction of the juvenile court to include 17 year olds?

- Yes
- No

106. How would such a change affect your work?

Shackling

107. How often are juveniles restrained by shackles or similar devices when present at juvenile court proceedings?

- At all hearings
- At all hearings except adjudicatory hearings
- There is a presumption against shackling—only shackled if present a risk to courtroom safety

108. If shackles or similar devices are used what types are employed?

- Leg restraints
- Handcuffs
- Belly chains
- Combination of two or more of the above

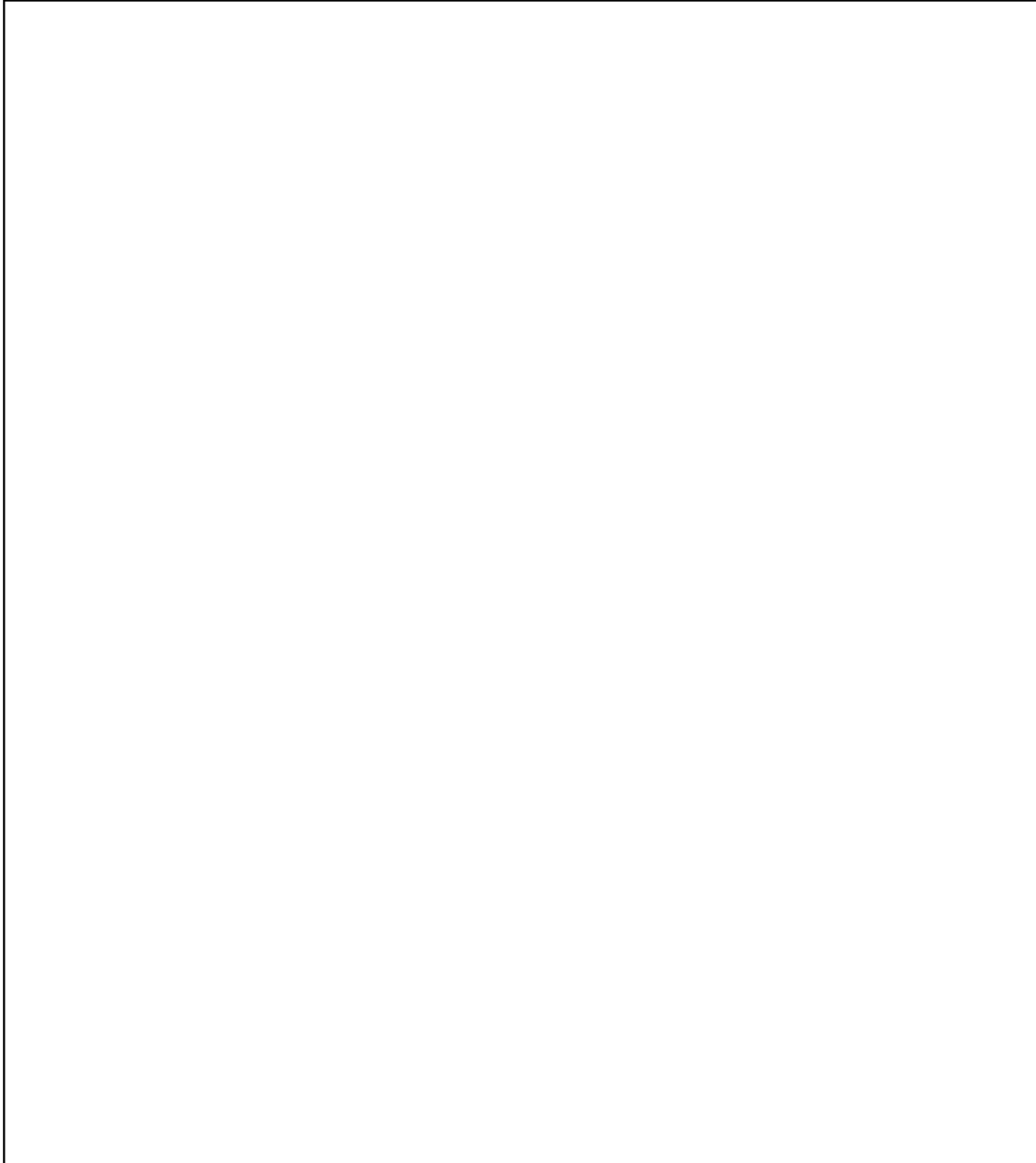
109. Should state law prohibit the use of shackles or limit their use to circumstances where necessary to assure public safety?

- Yes
- No

110. Please explain.

Additional Comments

111. Are there any other issues or topics you wish to bring to the attention of Georgia Appleseed?

A large, empty rectangular box with a thin black border, intended for the respondent to provide additional comments or issues to be brought to the attention of Georgia Appleseed.

APPENDIX C

BEYOND THE CODE - RAISING THE AGE AND SHACKLING

The stakeholder survey contained several questions for informational purposes only, including questions about raising the age for juvenile court jurisdiction and shackling of juveniles in courtroom proceedings. We provide the responses to the survey questions in hopes that it will promote further discussion and review of these subjects.

A. Raising the Age to Seventeen for Delinquency Matters

Currently, the Juvenile Code of Georgia defines a child as being under the age of *seventeen* for delinquency purposes. See O.C.G.A. 15-11-2. But the same Code defines a child as being under the age of *eighteen* for CHINS and dependency purposes. See O.C.G.A. § 15-11-2(10)(A).

We asked stakeholders in the Georgia juvenile justice system from across the state whether the law should be changed so that seventeen-year-olds are included under juvenile delinquency jurisdiction. They were then asked how such a change would affect their work. The majority of stakeholders responded that the law should be changed. In this appendix, we present a summary of the responses and we follow it with quotations from juvenile court judges articulating how such a change would affect their work.

The stakeholders gave various reasons for believing that seventeen-year-olds should be treated under the juvenile delinquency system, but the following four rationales were most often provided: (1) based on scientific research and anecdotal evidence, seventeen-year-olds do not have the maturity or brain development of adults to fully understand the legal consequences of their actions or control their impulses; (2) seventeen-year-olds are still children in need of the protections and services provided through the juvenile justice system and not provided through the criminal justice system; (3) excluding seventeen-year-olds from the juvenile justice system is inconsistent with other Georgia laws and systems, including the dependency laws and systems and CHINS laws and programs, which provide services to seventeen-year-olds; and (4) punishing seventeen-year-olds with adult criminal sentences unfairly burdens children with criminal records that will follow them throughout their lives.

Stakeholders also provided reasons for believing that seventeen-year-olds should continue to be treated as adults. The impact on workloads and resources was the most commonly noted adverse consequence of including seventeen-year-olds in the juvenile justice system. Some stakeholders believe that by the time a child is seventeen, the services provided by the juvenile justice system are no longer effective, and the child needs to face the criminal system to be “scared straight.” Some stakeholders also mentioned that including seventeen-year-olds could adversely impact younger children in the juvenile delinquency system.

Stakeholders in favor of including seventeen-year-olds in the juvenile justice system also noted that such inclusion would cause a significant increase in caseloads, stating that seventeen-year-olds get in trouble more often than younger children, commit more serious crimes than younger children, and are involved in cases that typically take longer to prosecute. Many stakeholders, therefore, believe that expanding the maximum age for prosecution must come with a corresponding expansion in juvenile court personnel and other resources. Several stakeholders pointed out that an expansion of the juvenile justice system to include seventeen-year-olds would result in a commensurate reduction in superior court caseloads and expended resources. Other stakeholders noted that the increased workload would be minimal because the juvenile court would be continuing to work with youth previously before it as sixteen-year-olds.

The majority of stakeholders who responded to this question agree that seventeen-year-olds should be prosecuted as children in the juvenile justice system rather than as adults in the criminal system. A change in Georgia law to expand the juvenile justice system to include seventeen-year-olds would benefit children in need of protection and services and bring consistency to delinquency, dependency, CHINS, and other legal systems and programs in Georgia. However, to be most effective, such a change should come with a commensurate increase in resources to the juvenile justice system.

To provide a flavor of the feedback, we include below responses from juvenile court judges on how changing the law would affect their work, grouping the responses according to whether or not the judge favored including seventeen-year-olds in delinquency jurisdiction.¹

¹ Our pro bono interviewers asked, “Should the law be changed to extend the delinquency jurisdiction of the juvenile court to include 17- year-olds?”

116 (73%) responded that the law should be changed to extend delinquency jurisdiction to seventeen-year-olds. Of that 73%, this opinion was held by all 17 (100%) of the public defenders who responded; 29 (81%) of juvenile court judges, 7 (88%) of court administrators; 17 (71%) of CASAs; 4 (33%) of prosecutors; 12 (60%) DFCS case workers; and 13 (81%) of SAAGs. 159 stakeholders responded to the question, with 43 (27%) responding that the law should not be changed with respect to the Code’s use of age 16 as the cut off for adjudicating individuals as juveniles rather than adults. There is not a significant difference of opinion between stakeholders in large metropolitan areas and less populated areas.

The only category of stakeholders where the majority of those responding was against the inclusion of seventeen-year-olds was prosecuting attorneys, with 8 stakeholders (67%) of those responding to the question opposed.

Responses from juvenile court judges who favored including seventeen-year-olds in delinquency jurisdiction regarding how such a change would affect their work:

1. "Raising the age to include 17-year-old children would be my highest priority. More than 45 states have now done so. At 17, the children's brains and judgement skills are still developing. It is unjust to brand a child as a criminal for life for choices made so young."
2. "I do not think it would be dramatic to include 17-year-olds. It would be kids we already have contact with and are already trying to help, and it would be great to have one more chance to impact them. There would not be many new cases. I do not see it as an overburden to us or on the systems. It would be a realistic chance of making a difference. At 17 or 18, you have a chance to help them with GED, training, etc. There is a real difference between 14 and 17. At 14, when you tell them about school and jobs, it may not mean anything to them. But getting that same information at 17, they may listen."
3. "There would be more cases, the court would need more money, but these children are still developing and should not be treated in the adult system."
4. "It would add to the volume but would not change what I do. I believe the age should be changed because I don't think there is any rational basis anymore to treat a 17-year-old as an adult for criminal justice purposes based on what we've learned in the last 20 years. I think to even extend the age to 21 would be okay, or even to 25 for some. Maybe declining levels of interventions 14-18, 18-21, 21-25, and then phase out jurisdiction. I've seen a lot of lives ruined. For example, I reference charging 13-16-year-olds as adults for certain crimes, especially sex offenses. Research shows that juvenile sex offenders are different than adult sex offenders. Much of this code lags the reality of medical science. Entrust juvenile court judges to decide transfer of juvenile murder cases."
5. "I think the juvenile court is better able to manage delinquent children because I can be more 'hands on' at this stage. The children can continue getting services and treatment. The long-term effects are better because children are not getting stuck in jail due to the fact they cannot pay fines or post bail which often derails the Court's efforts to help those children get back on track, i.e., interferes with educational and counseling services."
6. "I feel very strongly that children at 17 should not be tried as adults. Changing this would not have much impact on the court. 17 seems like such an arbitrary number - why not do 18 if that is when these kids can vote, join the military, or graduate high school?"
7. "I think the juvenile court is better able to manage delinquent children because I can be more "hands on" at this stage. The children can continue getting services and treatment. The long-term effects are better because children are not getting stuck in jail due to the fact they cannot pay fines or post bail which often derails the Court's efforts to help those children get back on track, i.e., interferes with educational and counseling services."
8. "Change would seem appropriate for consistency across jurisdictional areas. It seems lopsided that a person who can't legally vote, sign a contract, drink, or

smoke, can be served a life sentence because they are 17. However, juvenile court sentences are not sufficient for some violent crimes.”

9. “We would have more work. We would have to expand. But it's an important issue because research shows that adolescent brains have not developed yet, and will not until around age 25. I believe the law should be changed to extend delinquency jurisdiction of the juvenile court to go up to age 21.”
10. “From my perspective, age is not the important factor, it is the nature of the offense. It makes more sense to handle these issues without an arbitrary cut-off age. This is true even though it would increase my workload. It does not make sense that a child can be treated like an adult although he cannot drink alcohol or own a gun. I would prefer to focus on rehab until a certain age and treat the child as long as the child is rehabilitatable.”

Responses from juvenile court judges who opposed including 17-year-olds in delinquency jurisdiction regarding how such a change would affect their work.

1. “Significantly. We already don't have enough services/money etc. for the ones we have. There isn't much you can do with someone already 17. The die is cast.”
2. “It would require more resources unless the state offered more treatment-based options. More associate judges, probation officers, and administrative staff would have to be hired.”
3. “This change would increase workload. By the time a child is 17, the services we provide are not as effective. If a child is committing delinquent acts until 17, have to cut bait and consider it a public safety issue. It makes it more difficult because some kids services don't work when they are 15 or 16.”
4. “We do not have adequate resources and time now. The additional load requires additional resources. This would be an example of the State creating an obligation which the counties have to fund. Some counties are very poor resulting in unequal opportunities. What you get depends on where you live. It is certainly not due process under the law.”
5. “I think there should be no change unless resources are added as well: judges, prosecutors, and probation officers. We would need expansion of resources to accommodate any change. I recognize the need to align jurisdiction over dependency and delinquency proceedings, but resources would be required when they are 17, especially for traffic offenses.”
6. “It would increase the case load for all of the stakeholders in the Juvenile Court system.”

B. Shackling during juvenile court proceedings

The current juvenile code is silent with respect to shackling - it does not limit, prohibit, or mandate the use of shackles on children.

We asked stakeholders in the Georgia juvenile justice system from across the state to respond to the question: **How often are juveniles restrained by shackles or similar devices when present at juvenile court proceedings?** They responded as follows:

- *At all hearings*: 65 individuals, comprising 47% of responding stakeholders
- *At all hearings except adjudicatory hearings*: 8 individuals, comprising 6% of responding stakeholders
- *Presumption against shackling - only shackled if present a risk to courtroom safety*: 64 individuals, comprising 47% of responding stakeholders

Stakeholders split evenly as to whether there is routine shackling of juveniles in court or whether there is a presumption against shackling during court proceedings. District 4 had the highest rate of shackling, with over 80% of stakeholders (9 individuals) responding that juveniles are shackled at all hearings. In contrast, District 1 had almost 80% of stakeholders (14 individuals) respond that juveniles are shackled in court only if they present a risk to courtroom safety.

In response to the query whether state law should change to prohibit the use of shackles or limit their use to circumstances where necessary to ensure public safety, there were slightly more stakeholders in agreement that use of shackles should be limited, at 60% (90 individuals). In District 8, 64% of stakeholders (7 individuals) preferred that the law on shackling not change. In contrast, in District 6, 87% (13 individuals) preferred a change to prohibit or limit shackling. In District 4, which has the highest shackling rate currently, 62% of stakeholders (8 individuals) responded that they would prefer a state law that prohibits or limits shackling.

Some stakeholders commented that shackling has a negative psychological impact on children, as it can be traumatic, frightening, and humiliating. One stakeholder mentioned that “according to research the psychological impact is great, and trying to convince a child that they are innocent until presumed guilty while shackled is tough. It is particularly traumatic and troubling seeing children who are so small that the cuffs slip off their wrists.” Another stakeholder pointed out that “adults are not shackled. But juveniles charged with the most minor crimes are shackled. It does not make sense. And it is contrary to the purpose of the juvenile code trying not to treat kids as criminals, but only as making bad choices.” Indeed, few stakeholders indicated they believe that shackling is truly “necessary,” and several pointed out that courtrooms are equipped with security personnel to address any threats to safety. Interestingly, one public defender observed that “unshackled children are generally more relaxed and better behaved.”

Those opposed to changing state law to limit or prohibit the use of shackles generally took a “better safe than sorry” approach to shackling, citing concerns over public safety. One stakeholder noted that shackling drives home the seriousness of the situation, believing that “shackling is a deterrent to future infractions” and that shackling “scares the kids straight.”

Those in favor and those opposed to this measure generally agreed that shackles should be used when a juvenile poses a serious threat to public safety. A judge suggested that “shackles should be limited. The Court should retain full authority to use them in any case in which there is a threat or risk to public safety.”

APPENDIX D

CHINS SURVEY RESPONSES

We provide below a sample of stakeholder responses to two questions concerning CHINS. The responses are grouped according to whether the stakeholder indicated that implementation of CHINS has been effective or ineffective, or whether the stakeholder was noncommittal as to the effectiveness of implementation.

45. How, in general, would you describe the effectiveness of the implementation of CHINS in your jurisdiction?

46. To the extent that you believe that implementation has been less than fully effective, please give your opinion as to why that is so.

INEFFECTIVE IMPLEMENTATION:

- A. "The District Attorney's office hates CHINS because the kids with the families that are the hardest to deal with are the ones with CHINS. The kids are constantly in trouble with the police, running away, or having issues with truancy. Runaways often go into the sex industry. The parents don't do what they need to do and neither do the kids. CHINS has made it very hard to detain them, and these are the kids who are at risk of harming themselves. How can you help kids that don't have responsible parents? These cases are the most DFACS involved. The kids have educational issues, etc. CHINS is preventing us from detaining kids when we need to do so for their own safety. These kids really fall through the cracks. I wish that we had a residential drug/alcohol treatment center in Georgia for these kids."
- B. "CHINS is useless. It is a good idea -- kids need help when they are not criminals and parents are involved. But it's a waste of time because the worst children do not have access to resources that might be helpful. Often the parents' behavior compounds the problems. CHINS is not specific as to who is responsible for what. Judges throw kids to DFCS, sometimes just bad kids, a dependent cause kid, a kid not at school, a kid not in mental health treatment, a kid that doesn't follow rules. If not DFCS, not DJJ, then who is it? The structure is not out there yet. I don't see the appropriate resources being available at this time."
- C. "Things are often put into place but there is no follow-through and no consequences. If school or probation does not do something, or the child has no insurance, there is not much they can do other than monitor school attendance. For CHINS cases, parents are not held accountable when the child is not in school or in treatment. They need to hold parents accountable but there is no court order so they can't take them to court."
- D. "CHINS is less than effective. It has less than effective implementation because there needs to be more specific guidance on who does what; the agencies are

overburdened. Usually, prosecutors have to take CHINS cases. Police officers don't understand how to file CHINS cases or don't know they can. The school system can file, but school systems want other agencies to do it. Filing cases shouldn't just depend on the departments but everyone should come together. DFCS is overburdened and doesn't usually file the cases. DFCS already has kids to take care of and CHINS is an additional responsibility. Other departments also need to provide services and don't want to take on this. We need guidance. Maybe Judges should be accountable for making sure things happen. There are not many CHINS meetings. Instead multidisciplinary team meetings (MDT) take place where participants talk about the school environment and attendance. These meetings are ineffective for CHINS purposes.”

- E. “I hate CHINS because there is nothing we can do to effect change. There are no consequences for the children. We have a good program, and they work with the people who work here, and try to get the services to the ones who want to be helped. But the ones who come to court... I fuss at the kids, that's the most I can do. Or put mama on a protective order and threaten to lock her up if they don't get to school--which isn't fair to mama because she'll send them to school, but they won't go. I can put them on probation. What happens if they violate probation? Nothing. This is a problem with the code; no enforcement arm that I can see. Put them on the graduated sanctions program, it may help. The threat of action does more than the actual action does if the kid knows there is some consequence to what they are doing. But if they learn pretty quick there aren't any consequences then they don't care. Most people think the runaway is a non-status offense. But to me, that's the worst thing a child can do to a parent--parent doesn't know if child is alive, dead, raped. A complete nightmare. But there are no consequences. The most we can do is hold them in detention for 24 hours to find the parent. That's it.”
- F. “CHINS has been a Catch 22 that pushes the problem from one agency to another. It is used to drop offenses to status offenses and then those children enter the DFCS system. But because they are often disruptive it is difficult to find placement for them.”
- G. “CHINS is unclear and no court has a good handle on this program. The only cases that are well handled are status offenses, and usually those are diverted for counseling and family therapy services by KidsNet. There is a need for better guidelines. Most of the CHINS program is left up to interpretation. There are no clear guidelines.”
- H. “When the legislation was passed, the attitude was here's a new law; figure it out. There needs to be a best practices sharing program implemented because every jurisdiction handles CHINS differently. They need to streamline some things and figure out what is working and what isn't. Council of Juvenile Judges is putting together a best practices notebook, which is a good start.”
- I. “The CHINS program is uneven. There are a variety of different needs, and it is frustrating for all parties. Police often don't know what to call it, and still use "unruly." The school district is trying to implement a complicated system of school attendance, with the school attorney involved and referring kids to DJJ for intake screen. If there were some clarity as to procedure or uniformity, it

might be effective. Some courts won't do CHINS. Every county has local teams, LIPT [local interagency planning team], and could send kids there. And make sure community resources are used until applying for Medicaid services. When meeting with family is not effective, proceed then to CHINS Committee and offer higher level of services. Sometimes long elaborating hearings in very serious CHINS cases are foster care cases waiting to happen. Either dependent or severe behavioral problem. Why do we have CHINS when DFCS usually becomes involved?"

- J. "Our County is ahead on this issue; CHINS is working well. The challenge to judges is dealing with the "worst of the worst" while trying to remain focused on children who are not obvious but are involved in the system. There are challenges when children "don't want to go to school." For example, a child may miss three days and a letter goes to the parent; after five days, a home visit is made by a social worker. Then, the child is ordered to a Saturday school program and a child study team (psychologists, doctors, etc.) puts a program together. The challenge is when the child and parent do not want the child to attend school. So what do you do with a 15- or 16-year old child who may be unruly and ungovernable? It is the child's fault but there is no real alternative to address this issue and the child should not be locked up in jail. The focus must shift to why does the child not want to go to school? Job readiness, GED availability can be helpful. Can you get to a parent to get appropriate information, is it appropriate to issue an order for DFACS to go out and observe the household? It is important to get information in a report. The issues become much more complicated when sexual abuse is at issue, especially with child trafficking. A child may believe she is falling in love, alienating her family unit, leading to her being kicked out of the family. The child may be a runaway who needs help. Funding is needed for this issue. There are church- and community-based programs that help but these offenses do not really get addressed by CHINS."
- K. "CHINS is effective as a tool to measure what has been done (i.e., monitoring and measuring), but is not effective in causing change going forward. Implementation has not been fully effective because people on the CHINS panel are from various agencies and there is not sufficient communication between the panel members. No one is ultimately responsible for implementing the change because there are too many stakeholders."
- L. "The County has implemented judge's protocol and it works well, including diversion to counseling resulting in no need for a case. Runaways present a serious problem because they are exploited and more robust intervention is needed through a non-punitive admittance to a center with counseling (24/7 supervision/availability) and they are apart from harmful influences."
- M. "I feel CHINS has been implemented, but I am not sure about effectiveness. I understand the reasons for and intent of CHINS and see it as very appropriate. The intent is to stop issues before they get beyond CHINS, but I feel the real services don't kick in until the child is already delinquent. The "slap on the wrist" is not necessarily enough for some children. It is not clear there are enough consequences. Or perhaps the lag between the misbehavior and

consequences is not sufficient to drive the message home. We need more focus on services up front that serve the preventative purposes. I also struggle with not being able to detain children in CHINS. The nature of the program is not enough services up front.”

- N. “CHINS effectiveness is poor. The implementation appears to be a band-aid; the CHINS resources are limited. In some cases, the parents may not have insurance to supplement the services needed to be effective. CHINS is a good idea. The best scenario is to catch the family early enough to break the cycle. Until the courts have the proper resources, it is a half-hearted attempt to provide resources.”
- O. “The court is doing the best that it can to implement CHINS. I am not fond of the CHINS program and think it poses an obstacle in assisting runaways in connection with human trafficking issues. There is a lack of uniformity in how courts are implementing CHINS. Also, it is often difficult to understand the requirements.”
- P. “CHINS has had limited effectiveness. Again, it is a resources issue. CHINS has the potential to be an effective alternative to delinquency, or at least be used along with the current delinquency process. But, because of a lack of resources, it is being used as a de facto “first offender” program in which children are being adjudicated delinquent and THEN placed in the CHINS program. But, they can only be placed in CHINS once, and then are right back in delinquency if they re-offend. CHINS needs more resources. It is simply being used as a “first offender” program, rather than being seen as a legitimate alternative in all cases to which it might be applicable.”
- Q. “There needs to be separate system for trafficking victims and runaways.”
- R. “I am on the panel that determines CHINS cases. I think CHINS is a great concept; however, I think that there are limited resources available for the implementation of CHINS. There are no real consequences that are set forth under the code for lack of CHINS compliance. And there is little being done by either the courts or the parents to reinforce the expected behaviors. Without accountability, CHINS is ineffective. Additionally, I think the CHINS section on “ungovernable offenses” is often exploited by parents who improperly report minor behavioral issues (such as failure of a child to clean his room) to the court. I believe juveniles would be more likely to comply with CHINS recommendations if clearly established consequences were written into the code and enforced by the court system.”

NEUTRAL - Neither Effective nor Ineffective Implementation

- A. “CHINS is good in theory, implementation still improving. Need more face to face and oversight.”
- B. “CHINS is difficult, most likely because of limited options. The court has a CHINS protocol and a multi-disciplinary team that tries to address issues pre-court. Once they make it to court, the options are few. Courts can threaten contempt, etc., but the cycle continues. The child will, for

- example, return to school for 30 days and then start the process over. Commercial sexual exploitation of children and chronic runaways can be more easily addressed in court than truancy. But it is difficult to determine what additional tools would help. Perhaps educating the parents as to why it's important to be in school and asking the court to fix a systemic issue of not valuing education would help.”
- C. “CHINS is somewhat effective. Children in CHINS lack good supervision and have very little change. Referrals are made but there is no follow up with family until the child screws up.”
 - D. “We are still working on revamping the CHINS protocol to comply with the updates because prior leadership did not effectively address changes in the law. One issue is that we cannot hold runaways and when they are released they often run again. We need more resources at the court's disposal for CHINS children, and need more parent accountability. The majority of evidence-based programs are designed to reduce recidivism, but if a child is low risk and exposed to this type of therapy with higher risk kids then this could lead to an increase in repeat offenders who otherwise could just grow out of the behavior.”

EFFECTIVE IMPLEMENTATION

- A. “CHINS is a great program, partner with local vendors to help children in diverse ways, such as parenting class for younger parents; dress for job interview; resume development; time management; how to get child health insurance; boxing club; barbering/cosmetology. With behavior issues we go to where the kids are and where we have made an impact. We try to be proactive and get the kids’ attention before the kids commit a crime and develop a criminal history. As with most programs, there is always room to improve; sometimes I would like the ability for a more “tougher love” approach -- something more than wagging a finger to get in the kids’ heads especially where there is disdain at authority. We want to get through to these kids before they end up at the Regional Youth Detention Center.”
- B. “CHINS language is an unfunded mandate, so they need a strong service network of providers and different opportunities for children in order to implement it. There are some jurisdictions where CHINS cases are going okay and then some that have no idea what's going on. There are judges that will say they have not received a CHINS complaint at all, and that's because no one knows what to do. Some of the prosecutors decide that they are going to be doing them no matter what. There is no one in charge. This court has an assigned ADA [assistant district attorney] and public defender, and they had a good system and were doing good work. But now we are being told to be hands off. I feel CHINS is totally dependent on the resources in your community as to whether it will be successful. That is not equitable to the children in the community. If the child is lucky enough to live in our county, he is going to have all these chances. However, if the

- child lives one or two counties over, there are no resources and the child will just end up in DFCS care before you know it.”
- C. “My general perspective is that CHINS has been effective and we’ve been working out some bugs and improved CHINS. It has come a long way. One recommendation is to have probation coaches at schools for more effectiveness. Better coordination is required between all parties (DFCS, court, SAAG, CHINS). We’re worried about children falling through cracks. We need to address the conflicts in deciding what really needs to be done. Also, the delay in the docket leads to more unruliness and having CHINS kids have to wait to be in a program puts more strain on the system.”
 - D. “CHINS has had moderate success. Most kids are treated with informal adjustments. There is a CHINS protocol and when a complaint is filed with the clerk, the program manager for DJJ and DFCS get together and decide which one needs to provide services. There are still turf wars and agencies that abdicate responsibilities. There is less of that than there used to be. Schools have robust truancy policies, so there is no need to reinvent the wheel. There are systems in place to deal with the type of need the child has. The effectiveness depends on the quality of services within each agency in the community.”
 - E. “I think that we have a high success rate, primarily because we very much tailor the services to each child and the family's needs. Well one thing I think that has been a problem is that there is not consistency with what it means to run your CHINS committee. The advantage is that courts can tailor to specific community needs, so it is good we don't have a firm set of rules. At the same time, I know that a lot of counties have had confusion on what they're supposed to do with this new category of CHINS cases. Where there is a lot of wiggle room there are a lot of benefits, but I think there could be more guidance. Maybe a list of best practices for courts to consider in how to structure CHINS programs.”
 - F. “CHINS is good, but basically only truancy cases end up in the courtroom. There are not enough services available in the community to meet the needs. Funding for those services is always an issue. It takes *months* to get them started, *if* you can get them and *if* they can be funded.”
 - G. Initially we experienced a good bit of confusion, but now an attorney files CHINS petitions. DJJ does intake, and a court-appointed attorney can handle all CHINS petitions. CHINS seems to be working more effectively now. Keeping children out of detention now that should not have been there.”
 - H. “We have seen improvement, more success stories where the case is successfully closed -- where the individual and family counseling services are put in motion.”
 - I. “CHINS is helpful, the services often come into place and prevent children from going into foster care. If there is an issue with school attendance, making sure child gets to school. The same with problems at home, bring in counseling at home. This is a very rural area, so it helps to provide availability to bring the counselors to the home (because parent may not be

- able to bring them out). The main problem is we are limited in resources in area. Our biggest needs are in counseling and finding solutions for teenagers in broken homes (older children). Boys and girls program with mentors would be helpful.”
- J. “CHINS is very good. It was a bit bumpy in the beginning, but once we got a CHINS panel coordinator that made a big difference.”
 - K. “CHINS has been effective. It has deterred kids from going into delinquency. It has helped families become aware of services they might not otherwise know about.”
 - L. “CHINS is extremely effective.”
 - M. “The CHINS program has had significant success. Data and numbers can back this statement. Kids charged with status offenses are referred to SKORE (Supporting Kids On the Road to Excellence). About 50% of all the cases referred to SKORE are truancy related.”
 - N. “CHINS is very effective because it gets kids on the radar with more people to get involved with the family earlier. It catches them before they're delinquent and pulls the family in. It identifies drug and mental health issues long before it ends up being a dependency case. It helps more with dependency than delinquency. But there is a lack of community resources to use for diversion programs.”

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