

Child Protective Services: Juvenile Court Placement Issues

2102.7 Juvenile Court Procedures

The Georgia Juvenile Court Code (O.C.G.A. 15-11) provides for both a specific process and for certain rights of each party heard. The Code recognizes basic rights including all hearings being recorded, the right to legal counsel at all stages, the right to testify, the right to introduce evidence and to cross-examine adverse witnesses, the privilege against self-incrimination, the right to privacy, in that the public and all non-involved persons can be excluded, and the right to appeal decisions.

72-Hour Hearing

When a child is placed into care as the result of the filing of a deprivation complaint or by the issuance of an ex parte order, there must be an informal hearing within 72 hours of the filing of the complaint or the issuance of the ex parte order, allowing the court to determine whether there is “reasonable cause to believe that the allegations of the complaint are true.”

The 72-hour hearing apprises the parents of the allegations of the deprivation complaint, informs them of their rights to legal counsel and may appoint a lawyer (guardian-ad-litem) or court appointed special advocate (CASA) for the child.

The judge will hear limited testimony from the parties to determine whether there is reasonable cause to believe that the allegations of deprivation are true. Limited hearsay evidence may be allowed with case managers having the opportunity to testify to what was told to them by other persons who are not in attendance at the court. If the judge (or referee) finds ‘reasonable cause,’ the complaint may be certified into a petition for an adjudicatory (10-day) hearing. This petition must be presented to the court within five (5) calendar days of the 72-hour hearing.

The order issued as a result of the 72-hour hearing **MUST** contain a “contrary to the welfare of the child” or “placement is in the best interest of the child” finding (see Foster Care Manual Section 1002.2).

Adjudicatory (10-Day) Hearing

Unless waived by the court, the adjudicatory hearing must be held within ten calendar days of the complaint being certified into a petition (Georgia Juvenile Court Code).

At the adjudicatory hearing, the issue is whether the child was deprived at the time of the signing of the deprivation complaint. The judge may not allow hearsay evidence, and persons with firsthand knowledge of the matter must personally testify. The department (or petitioner) bears the burden of proof that the allegations in the petition are true. If the court finds the petition is true, it should make both specific findings of fact and conclusions of law (Georgia Juvenile Court Code 15-11-55). If the child is found to be deprived the court may immediately or at a later date make a disposition.

At a hearing on a petition alleging deprivation of a child, the court makes and files its findings as to whether the child is a deprived child and whether such deprivation is found to be the result of alcohol or other drug abuse.

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Such findings become the basis of the Initial Case Plan for Reunification. Judicial determination may be made at this time (or at a later order) as to whether DFCS is making “reasonable efforts to preserve and reunify families.”

Dispositional Hearing

The dispositional hearing is often held immediately following the adjudicatory hearing or the court may schedule the hearing at a later date.

The issue is to determine what action, custody, and recommendations are in the best interest of the child now that he or she has been found “deprived.” The focus is different from the adjudicatory hearing, and the court may hear information (hearsay included) that is helpful, including agency and court reports, medical, psychological and any other information deemed appropriate to the court’s final disposition and order.

If available, DFCS should share the results of the Comprehensive Assessment with the court to assist in decision-making regarding the placement and needed services,

The Initial Case Plan may be incorporated into the dispositional order of the court (or in a later supplemental order).

The possible dispositional alternatives are:

Permit the child to remain with parent or other custodian, possibly with supervision; or

Transfer temporary legal custody to DFCS, another agency or any individual (including a putative father) who has been assessed and approved for the care of the child.

Time Limits of Juvenile Court Orders

Initial orders granting temporary custody to DFCS shall remain in effect no longer than twelve (12) months from the date of removal of the child from the home.

An order granting temporary custody of a child to an entity or individual other than DFCS shall continue in force for no longer than two (2) years. The court may terminate its order earlier than the two years or may extend its duration for further periods (see Foster Care Manual 1002.3).

Protective Orders

The county department may request the court to issue a separate order restraining or otherwise controlling the conduct of a parent or relative in a case at any time. The county department, in consultation with the supervisor and the SAAG, needs to determine if a separate order is necessary.

In addition to transferring custody of a child, the Juvenile Court may include Protective Orders (O.C.G.A. 15-11-11) in the dispositional or subsequent orders. A protective order maybe modified, extended or terminated by the court as deemed necessary and in the best interest of the child. Such orders are enforceable by the court. The protective order may require the parent or relative:

To stay away from the home or the child;

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To permit a parent to visit the child at stated periods;

To abstain from otherwise offensive conduct against the child, his parent or any other person to whom custody of the child is awarded;

To give proper attention to the care of the home;

To cooperate in good faith with an agency to which custody of a child is entrusted by the court or with an agency or association to which the child is referred by the court;

To refrain from acts of commission or omission that tend to make the home not a proper place for the child;

To ensure that the child attends school pursuant to any valid law relation to compulsory attendance;

To participate with the child in any counseling or treatment deemed necessary after consideration of employment and other family needs; and

To enter into and complete successfully a substance abuse program approved by the court.

Requirement

The case manager and supervisor discuss, prior to any court hearing, all available information that supports the department's position on a case that will be in court. The supervisor reviews the documented evidence and helps determine that the case manager has sufficient evidence to support each allegation of the deprivation complaint or petition. The supervisor assists the case manager in determining the department's recommendations to the court and to prepare for the courtroom testimony. The SAAG is an important part of this review process and must be made fully aware of all evidence, potential witnesses and the department's recommendations prior to representing the department in court.